

Central Bedfordshire
Council
Priory House
Monks Walk
Chicksands,
Shefford SG17 5TQ



please ask for Helen Bell
direct line 0300 300 4040
date 16 February 2012

NOTICE OF MEETING

DEVELOPMENT MANAGEMENT COMMITTEE

Date & Time

Wednesday, 29 February 2012 10.00 a.m.

Venue at

Council Chamber, Priory House, Monks Walk, Shefford

Richard Carr
Chief Executive

To: The Chairman and Members of the DEVELOPMENT MANAGEMENT COMMITTEE:

Cllrs A Shadbolt (Chairman), P F Vickers (Vice-Chairman), P N Aldis, A R Bastable, R D Berry, D Bowater, A D Brown, Mrs C F Chapman MBE, Mrs S Clark, I Dalgarno, Mrs R J Drinkwater, Mrs R B Gammons, K Janes, D Jones, Ms C Maudlin, T Nicols, I Shingler and J N Young

[Named Substitutes:

L Birt, P A Duckett, C C Gomm, R W Johnstone, K C Matthews, J Murray, B Saunders, B J Spurr, N Warren and P Williams]

All other Members of the Council - on request

MEMBERS OF THE PRESS AND PUBLIC ARE WELCOME TO ATTEND THIS MEETING

Please note that items 1 - 11 will be considered at 10.00am and items 12 - 18 will be considered at 2.00pm.

AGENDA

1. **Apologies for Absence**

Apologies for absence and notification of substitute members

2. **Chairman's Announcements**

If any

3. **Minutes**

To approve as a correct record, the Minutes of the meeting of the Development Management Committee held on 1 February 2012.
(previously circulated)

4. **Members' Interests**

To receive from Members declarations and their **nature** in relation to:-

- (a) Personal Interests in any Agenda item
- (b) Personal and Prejudicial Interests in any Agenda item
- (c) Membership of Parish/Town Council consulted upon during the application process and the way in which any Member has cast his/her vote.

5. **Petitions**

To receive Petitions in accordance with the scheme of public participation set out in Annex 2 in Part 4 of the Constitution.

REPORT

Item	Subject	Page Nos.
6	Planning Enforcement Cases Where Formal Action Has Been Taken	* 7 - 14

To consider the report of the Director of Sustainable Communities providing a monthly update of planning enforcement cases where action has been taken covering the North, South and Minerals and Waste.

- 7 **The addition of a Public Footpath between Churchills and Bunyans Walk, Harlington to the Definitive Map and Statement** * 15 - 30

The report proposes that Central Bedfordshire Council makes a Definitive Map Modification Order under Section 53 of the Wildlife and Countryside Act 1981 to add a Public Footpath onto the Definitive Map between points A-B-C as shown on the plan at Appendix A.

- 8 **Creation and extinguishment of public rights of way at Poppy Hill Lakes in Henlow and Langford** * 31 - 74

1. Members are asked to consider the making of public path orders to extinguish Langford Bridleway No. 5 which is obstructed by a fishing lake and to create a new bridleway to connect Langford with Henlow.

2. Members are also asked to approve the making of a public path order to create a new public footpath to run between two of the Poppy Hill Lakes and across the River Ivel to the Millennium Field in Henlow.

The proposals would require the construction of a new footbridge over the River Ivel and significant surfacing works to enable the new bridleway to be utilised as a cycle route.

Planning and Related Applications

To consider the planning applications contained in the following schedules:

Schedule B - Applications recommended for Approval - to be considered at 10.00am

Item	Subject	Page Nos.
9	Planning Application No. CB/11/03370/FULL	* 75 - 100

Address : Land to the rear of 197 Hitchin Road, Arlesey

Retention of use of land as a residential caravan site for 6 Gypsy families, including hardstanding utility blocks and landscaping.

Applicant : Mr Rooney

10 **Planning Application No. CB/11/04549/FULL** * 101 - 118

Address : The Bell, High Street, Westoning MK45 5JH

Full: Alterations and extensions to existing building and erection of three dwellings.
Revised application CB/11/03239/FULL.

Applicant : Oak Tree Management Service

11 **Planning Application No. CB/11/04550/LB** * 119 - 128

Address : The Bell, High Street, Westoning MK45 5JH

Listed Building: alterations and extensions to premises revised application to CB/11/03626/LB

Applicant : Oak Tree Management Service

Schedule B - Applications recommended for approval - to be considered at 2.00pm

Item	Subject	Page Nos.
12	Planning Application No. CB/11/04175/FULL	* 129 - 138
	Address : The Winston Churchill, Church Street, Dunstable LU5 4RP	
	Construction of a conservatory on the existing flat roof of the building, part restaurant seating and part storage.	
	Applicant : Mr Miah	

13 **Planning Application No. CB/11/03412/FULL** * 139 - 158

Address : Land at Barford Road, Blunham

Construction of 36 no. residential dwellings of 2, 3 & 4 bedroom with garages, associated parking, landscaping and highway.

Applicant : Sherwood Architects Ltd.

14 **Planning Application No. CB/11/04503/FULL** * 159 - 174

Address : Land at former Fairholme, Fairfield Road,
Biggleswade, Beds SG18 0DP

Residential development comprising of 19
no. unites plus associated car parking and
landscaping.

Applicant : Grand Union Housing Group

15 **Planning Application No. CB/11/04334/FULL** * 175 - 184

Address : 54 High Street, Sandy SG19 1AJ

Change of use from office to day care
nursery (non residential) for main building
and annexed building to rear of site.

Applicant : Mini Explorers

**Schedule C - Any other Applications - to
be considered at 2.00pm**

Item Subject Page Nos.

16 **Planning Application No. CB/11/03682/FULL** * 185 - 198

Address : Land adjacent to Marshalls Avenue,
Shillington

Erection of 8 no. Houses and 3 no.
Bungalows providing self contained
sustainable housing

Applicant : Grand Union Housing Group

17 **Exclusion of the Press and Public** *

To consider whether to pass a resolution under section
100A of the Local Government Act 1972 to exclude the
Press and Public from the meeting for the following item of
business on the grounds that the consideration of the item
is likely to involve the disclosure of exempt information as
defined in paragraph 1 of Part 1 of Schedule 12A of the
Act.

**Items to be considered following the
exclusion of the press and public**

<i>Item</i>	<i>Subject</i>	<i>Exempt Para.</i>	<i>Page Nos.</i>
EX1	Planning Enforcement case recommending further formal action for non compliance with Enforcement Notice	* 1	199 - 206

The report seeks a decision on further formal action.

Meeting: Development Management Committee
Date: 29 February 2012
Subject: Planning Enforcement cases where formal action has been taken
Report of: Director of Sustainable Communities
Summary: The report provides a monthly update of planning enforcement cases where formal action has been taken.

Advising Officer: Director of Sustainable Communities
Contact Officer: Sue Cawthra Planning Enforcement and Appeals Team Leader
(Tel: 0300 300 4369)
Public/Exempt: Public
Wards Affected: All
Function of: Council

CORPORATE IMPLICATIONS

Council Priorities:

This is a report for noting ongoing planning enforcement action.

Financial:

1. None

Legal:

2. None.

Risk Management:

3. None

Staffing (including Trades Unions):

4. Not Applicable.

Equalities/Human Rights:

5. None

Public Health

6. None

Community Safety:

7. Not Applicable.

Sustainability:

8. Not Applicable.

Procurement:

9. Not applicable.

RECOMMENDATION(S):

The Committee is asked to:

1. **To receive the monthly update of Planning Enforcement cases where formal action has been taken at Appendix A**
2. **To note recommendation of no further action for case as detailed at Appendices B**

Background

10. This is the update of planning enforcement cases where Enforcement Notices and other formal notices have been served and there is action outstanding. The list does not include closed cases where members have already been notified that the notices have been complied with or withdrawn.
11. The list at Appendix A briefly describes the breach of planning control, dates of action and further action proposed.
12. The case update at Appendix B recommends no further action.
13. Members will be automatically notified by e-mail of planning enforcement cases within their Wards. For further details of particular cases please contact Sue Cawthra on 0300 300 4369.

Appendices:

Appendix A – Planning Enforcement Formal Action Spreadsheet – North & South

Appendix B – Case update for case reference CB/ENC/11/0384, Simply Oak Potton Road, Biggleswade

Planning Enforcement formal action (DM Committee 29th February 2012)

	ENFORCEMENT CASE NO.	LOCATION	BREACH	DATE ISSUED	EFFECTIVE DATE	COMPLIANCE DATE	APPEAL	NEW COMPLIANCE DATE	RESULT	NOTES/FURTHER ACTION
1	CB/ENC/09/1355	2 Blackbird Street, Potton	Enforcement Notice, extension & alteration to roof & wall	13-Sep-10	11-Oct-10	12-Dec-10			Not complied	Enforcement Notice to be re-served on 2 and 2a Blackbird Street
2	CB/ENC/10/0068	Land at The Haven, Castle Hill Road, Totternhoe, Dunstable	Enforcement Notice, use of land for the stationing of container and the storage of building materials	22-Jun-10	20-Jul-10	17-Aug-10	Appeal dismissed	3-May-11	Part complied , container removed, some materials remain	Site being monitored to assess for further action
3	CB/ENC/10/0189	Land adjacent to 17 The Causeway, Clophill Bedfordshire MK45 4RA	2 Enforcement Notices material change of use of the land to a caravan site and construction of hardstanding	10-Aug-11	08-Sep-11	07-Nov-11 and 08-Mar-12	1 appeal received - Hearing 13/3/12			Appeal linked with planning appeal
4	CB/ENC/11/0060	Land at Oak Barn, Little Park Farm, Station Road, Ampthill, Bedford MK45 2RE	Enforcement Notice - construction of a detached building and an area of hardstanding	10-Mar-11	07-Apr-11		Appeal allowed 16/8/11		Enforcement Notice quashed.	Planning permission granted 12/12/11 for garage, CB/11/03468/full. To be built to approved plans by April 2012.
5	CB/ENC/11/0193	Land at 52 Clifton Road, Henlow SG16 6BL	Section 215 Untidy Land Notice	21-Jul-11	21-Jul-11	18-Aug-11			Not fully complied	Being monitored for full compliance
6	CB/ENC/11/0274 Case closed	Land Adjacent Harvest House and North West of the Fields, Church Street, Langford.	2 Enforcement Notices - use of land for storing of builders materials, equipment and waste and the erection of 3 timber buildings for building contractor's business.	30-Sep-11	28-Oct-11	25-Nov-11			Complied 9/12/11	No further action, complied
7	CB/ENC/11/0343	Church End Farm, Church Green, Totternhoe	Enforcement Notice, erection of agricultural building not in compliance with approved plans	23-Sep-11	28-Oct-11	28-Dec-11 and 28-Jan-12	Written reps appeal Site visit 25-Jan-2012			Await appeal decision
8	CB/ENC11/0411	Land at 35 Clay Furlong, Leighton Buzzard	3 Enforcement Notices 1. Erection of a front extension. 2. Erection of a fence exceeding 1m in height. 3. Erection of a canopy.	23-Jan-12	20-Feb-12	Various				Check compliance after May 2012

Planning Enforcement formal action (DM Committee 29th February 2012)

	ENFORCEMENT CASE NO.	LOCATION	BREACH	DATE ISSUED	EFFECTIVE DATE	COMPLIANCE DATE	APPEAL	NEW COMPLIANCE DATE	RESULT	NOTES/FURTHER ACTION
9	CB/ENC/11/0418	Land to the rear of 65, Shefford Road, Clifton SG17 5RQ	Breach of condition Notice - condition 16 (turning space) and 8 (access road junction) CB/10/01446/FULL	1-Dec-11	1-Dec-11	31-Dec-11	N/A		Part complied (turning space)	Turning space being constructed. Access road junction outstanding
10	CB/ENC/11/0535	Land east of Miletree Road Heath and Reach	Injunction - anticipated caravans/mobile homes	24-Oct-11	24-Oct-11	immediate				Monitor site
11	CB/ENC/11/0535	Land east of Miletree Road Heath and Reach	Enforcement Notice - unauthorised hard standing and access way	01-Nov-11	30-Nov-11	14-Dec-11 & 28-Dec-11	Appeal - written reps site visit 28/2/12			Await outcome of appeal. Planning application CB/11/03821/full refused 6/1/12 for caravan site.
12	CB/ENC/11/0606	Land at 70-74 Common Road, Kensworth, Dunstable. LU6 3RG	Enforcement Notice - the use of an outbuilding as an independent dwelling	2-Dec-11	3-Jan-12	3-Jul-12				Check compliance after 3/7/12
13	CB/ENC/11/0656	Land at 50 Redwood Glade, Leighton Buzzard	Without planning permission, the erection of a childrens play centre with raised platforms	23-Jan-12	20-Feb-12	20-Mar-12				
14	CB/ENC/12/0054	Woodside Caravan Park, Thorncote Road, Northill	Injunction - Change of use of land to gypsy site	3-Feb-12	3-Feb-12	3-Feb-12				Some caravans removed. Permanent Injunction granted 10-Feb-12
15	MB/ENC/05/0178	Land at Maulden Garden Centre, Water End, Maulden	Enforcement Notice - change of use from nursery to garden centre, construction of 6 buildings, siting of mobile home.	9-Apr-09	9-May-09	9-Nov-09	Appeal part allowed		Some details approved, further details received.	Enforcement Notice varied & part upheld on appeal and Planning permission granted. Site cleared, discussions with new owner to secure compliance with conditions.
16	MB/ENC/07/0085 See separate report	Woodview Nurseries, Shefford Rd. Meppershall	Enforcement Notice - Mobile home & conservatory	21-Jan-08	19-Feb-08	19-Aug-08	Appeal dismissed, Notice upheld	3-May-10	Not complied. Court Hearing March 2011 - prosecution and fine	2nd Court Hearing Feb 2012. Await Member decision on further action.
17	MB/ENC/09/0214	Land & Buildings at Lower Wood Farm, Sundon Rd, Harlington	Breach of conditions to Permissions 02/00553 & 06/00152. Enforcement Notice - outside storage & portacabins	15-Dec-08	12-Jan-09	12-Feb-09			Part complied Planning application CB/11/04219/full received 14/12/11	Await outcome of application

Planning Enforcement formal action (DM Committee 29th February 2012)

	ENFORCEMENT CASE NO.	LOCATION	BREACH	DATE ISSUED	EFFECTIVE DATE	COMPLIANCE DATE	APPEAL	NEW COMPLIANCE DATE	RESULT	NOTES/FURTHER ACTION
18	MB/ENC/08/0372	Dingley Dell, Toddington Road, Westoning, Bedford	Enforcement Notice. Unauthorised restaurant building and farm shop building	16-Jul-10	13-Aug-10	8-Oct-10			Planning permission granted	No further action at present, but check compliance with conditions
19	SB/ENC/07/0012	Land rear of Packhorse Place, Watling Street, Kensworth	Change of use of land for the parking of vehicles	5-Nov-07	5-Dec-07	01 Jan 2008 & 26 Feb 2008	21-Jan-08	28 Jul 2009 & 28 Sep 2009	Appeal dismissed but compliance periods extended.	No further action
20	SB/ENF/04/0002 SB/ENF/04/0003 SB/ENF/04/0004 SB/ENF/04/0005	Land at Stanbridge Road, Billington, Leighton Buzzard	Change of Use of land for stationing of caravans and mobile homes, & hardcore & fencing.	10-Feb-04	12-Mar-04	12-Jun-04	Appeal received 30/03/2004	31-Aug-05	Appeal dismissed & enforcement notice upheld	Section C appeal dismissed, Plot 7 appeal dismissed - Lost Legal challenge, site currently empty - to be monitored
21	SB/ENF/04/0007 SB/ENF/04/0008	Land rear of Fancott Cottages, Luton Road, Toddington	Erection of building for residential purposes, laying of hardcore, mobile home & storage of materials	08/09/04	08/10/04	08/01/05	Appeal received 01 Nov 2004	No Change	Appeal withdrawn. SB/TP/05/1217 & S106 Agreement approved, 2 years for compliance.	New planning applications withdrawn.
22	SB/ENF/05/0005	215 Common Road, Kensworth	Erection of a double garage and storeroom	16/03/05	18/04/05	18/07/05	6-May-05	6-Aug-05	Appeal dismissed & enforcement notice upheld.	Under new ownership, further action to be taken.
23	SB/ENF/05/0007 Case closed	Long Yard, Dunstable Road, Studham	Unauthorised stationing of mobile home for residential use	29-Jul-05	1-Sep-05	1-Dec-05	28-Sep-05	28-Dec-05	Appeal dismissed & enforcement notice upheld	Planning application granted 15/12/11, CB/10/00783. Check mobile home converted by June 2012
24	SB/ENF/07/0006 SB/ENF/07/0007 SB/ENF/07/0008	Dunedin, Harlington Road, Toddington	Change of use to bedsit accommodation, erection of building & extensions, non compliance with Condition 2 of SB/TP/98/0838	10-Aug-07	12-Sep-07	4-Dec-07	27-Sep-07	9-Jan-09	Appeal dismissed. Not complied	Prosecuted and fined September 2011. New Planning application invalid, further action to be taken.
25	CB/ENC/10/0449	Land at Dunedin, Harlington Road, Toddington	Enforcement Notice, change of use of land to the stationing of mobile homes, touring caravans and trailer tent	7-Sep-10	5-Oct-10	2-Nov-10			Not complied	Revised LDC application received, CB/12/00065/LDCE, await outcome.
26	SB/ENF/08/0009	21 Emu Close, Heath & Reach	Construction of single storey front and side extensions and loft conversion	14-Apr-08	14-May-08	14-Aug-08	20-Jun-08	4-Sep-09	Appeal part dismissed. Not complied.	Court Hearing 11th October 2011, prosecuted and fined. LDC proposed development received, await decision

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Planning Enforcement Case CB/ENC/11/0384

**Breach of Condition to Planning Permission MB/05/00606/FULL -
use of restaurant**

Recommendation that no further action is taken.

No formal enforcement action has been taken in this case, but a breach of planning control has been identified. A planning application has not been submitted and negotiations have failed to resolve the breach.

Background

This enforcement case relates to Simply Oak, Potton Road, Biggleswade. Planning permission was granted in July 2005, reference MB/05/00606/FULL, for the erection of new showroom, restaurant, workshop, boundary wall and formation of new access and car park.

Condition 10 to the above planning permission requires that "The restaurant use within the building hereby approved shall be ancillary to the principal operation of the building as a retail premises, showroom and workshop".

The restaurant is being advertised on Simply Oak website as The Oaks Restaurant as a venue for private functions including weddings and parties as well as a restaurant. This use of the restaurant has been established as not ancillary to the retail premises, showroom, and workshop. Therefore there is a breach of Condition 10.

The Council has not received any complaints regarding the use of the restaurant at Simply Oak, other than that a Council Officer noticed that the restaurant was advertised for private functions.

Action taken by the Council

Meetings and correspondence have taken place with the Manager of Simply Oak, advising that planning permission is required to continue using the restaurant at Simply Oak as a business that is not ancillary to the retail, showroom and workshop

business. A planning application has not been submitted, and the Manager has stated that the original planning permission includes a restaurant and that a license has been granted for the restaurant.

Recommendation

Government policy guidance makes it clear that enforcement action is a discretionary power to be taken by the Local Planning Authority only when it is expedient to do so. Government guidance also advises that enforcement action should not be taken simply to remedy the absence of a planning permission where development is acceptable on its planning merits.

In this case the Council has not received any complaints about the use of the restaurant for independent restaurant and private functions. Officers consider that this use would be acceptable on its planning merits.

It is therefore recommended that no further action be taken at this time and that the enforcement case be closed. This does not preclude further enforcement action in the future should circumstances change, or complaints be received, providing the use has not been in effect for more than 10 years.

Meeting: Development Management Committee
Date: 29 February 2012
Subject: Addition of a Public Footpath to the Definitive Map and Statement for the Parish of Harlington
Report of: Paul Cook – Head of Countryside Services and Transport Strategy
Summary: The report proposes that Central Bedfordshire Council makes a Definitive Map Modification Order under Section 53 of the Wildlife and Countryside Act 1981 to add a Public Footpath onto the Definitive Map between points A-B-C as shown on the plan at Appendix A.

Advising Officer: Greg Alderson – Director of Sustainable Communities
Contact Officer: Gemma Harrison
Public/Exempt: Public
Wards Affected: Harlington – Cllr. Tom Nicols and Cllr. Norman Costin
Function of: Council

CORPORATE IMPLICATIONS

Council Priorities:

Statutory Duty under the Wildlife and Countryside Act 1981. Promoting Healthier Lifestyles - by protecting and promoting access to the countryside for leisure and recreation.

Financial:

1. The costs of advertising the making and confirmation of the order is estimated at £500. If the order is opposed it is likely to result in a Public Inquiry which would cost the Council approximately £400. All costs would be met out of existing Definitive Map Team budgets and no growth is requested.

Legal:

2. If an order is made, a notice is advertised and posted on-site. By virtue of paragraph (3) (1) C of Schedule 15 to the Wildlife and Countryside Act 1981 there then follows a statutory objection period of not less than 42 days. If any objections are received and not withdrawn the Council cannot confirm the order itself and would have to forward it to the Secretary of State for the Environment, Food and Rural Affairs who appoints an independent Inspector to determine whether the order should be confirmed or not.

3. The Council has received a representation to the proposal from the affected landowner and so therefore an objection being received at the next stage is likely, and a Public Inquiry to look into the merits of the order should be expected.

Risk Management:

4. Not Applicable.

Staffing (including Trades Unions):

5. Not Applicable.

Equalities/Human Rights:

6. The claimed route offers users with push chairs or restricted mobility a preferred alternative route to Harlington Footpath No.1 due to the shallow gradient of the path.

The claimed route dissects a private garden and therefore the landowner's privacy and security will be affected, however the statutory duty which is placed on the Council by the Wildlife and Countryside Act 1981 supersedes the Human Rights Act 1998 in this instance.

Community Safety:

7. Not Applicable.

Sustainability:

8. Not Applicable.

Procurement:

9. Not applicable.

RECOMMENDATION(S):

that the Committee approve the making of an order under Section 53 of the Wildlife and Countryside Act 1981 to add a Public Footpath between Churchill's and Bunyan's Walk to the Definitive Map between points A-B-C as shown on the plan at Appendix A.

Introduction

1. On 3 January 2011 a joint application was received from Mrs. Moriondo and Mr. McCartney to add a Restricted Byway onto the Definitive Map in Harlington. The route connects Churhills to Bunyan's Walk as shown between the points A-B-C on the plan at Appendix A.

2. The application was made to add a restricted byway to the Definitive Map because the applicants believed cyclists used the path as well as pedestrians. A restricted byway is a public right of way for non mechanically – propelled vehicles. After discussion with the applicants, it was established that the only cycle use was occasional use by very young children; this was reflected later from the evidence submitted.
3. The proposed path runs from Harlington Public Footpath No. 1 in a westerly direction along a wide driveway until it crosses through the front garden of No.3 Churchills, where it narrows between two garages before exiting onto Bunyan's Walk.
4. On 4 January 2011 a fence was erected across the path where it exited the garden of No.3 Churchills towards Bunyan's Walk. The fence was only erected for a few hours before local walkers took it down.
5. No.3 Churchills was up for sale as the owner, Mrs. Clarke had recently been put into a care home. Mr. Steven Nicholls was interested in the property and erected the fence, prior to his purchase of the bungalow earlier this year.
6. The erection of the fence is the calling into question on whether the path is a public right of way. A number of locals contacted the Council to find out why a fence had been erected. They were told the route was not recorded as a public right of way on the Definitive Map and given user evidence forms. To date 45 local users have submitted user evidence forms and several have agreed to be interviewed in order to help the Council investigate whether a public right subsists along the claimed path.

Legal and Policy Considerations

7. Central Bedfordshire Council, as the Surveying Authority, has a statutory duty under Section 53 of the Wildlife and Countryside Act 1981 to maintain a public record of public rights of way. This is known as the Definitive Map and Statement. The Council also has a duty to make such modifications as are required to keep the Map and Statement up-to-date and accurate.
8. Section 53(5) of the Wildlife and Countryside Act 1981 allows any person to apply to Central Bedfordshire Council to modify the Definitive Map and Statement by order if they believe it to be wrong.
9. When an application is submitted, the Council has a statutory duty to investigate the matter, taking into account all relevant evidence - not just that supplied by the applicant - when coming to its decision. If the evidence shows on the balance of probability, or on a reasonable allegation - which is a far more lenient appraisal of the evidence, that a public right of way is not shown on the Definitive Map this error should be corrected by the making of a Definitive Map Modification Order.
10. Under Section 31 of The Highways Act 1980 a route can be deemed to be dedicated where a way over any land has been enjoyed by the public as of right and without interruption for a full period of 20 years, unless there is sufficient evidence that there was no intention during that period to dedicate it.

11. In this case a sign was erected by the previous landowner; the sign can still be seen today on Churchills, (Appendix B). The sign has fallen into disrepair and hasn't been maintained in recent years; however it was the previous landowner's intention (Mr Nimrod Clarke) to make local walkers aware that the route connecting Bunyan's Walk to Churchills was a private footpath. No other signs are present.
12. A right of way can also be added to the Definitive Map under Common Law. Under Common Law two things need to happen, implied dedication and implied acceptance. The route must be open to the public at large and follow a defined route and the public have to be using the route as a right, without permission, force or secrecy.
13. If a Modification Order is made and objected to, the Council cannot confirm it but must forward it to the Secretary of State for the Environment, Food and Rural Affairs. The Secretary of State appoints an Inspector to decide whether the evidence, when weighed on the stricter evidential test of balance of probability, allows the Modification Order to be confirmed. If the evidence does not meet the stricter test the Modification Order is not confirmed.
14. The Development Management Committee under the Central Bedfordshire Council's Constitution (E2 at Annex C) is the appropriate body to determine an application made under Section 53 of the 1981 Act. When determining the application, committee members should evaluate the evidence contained within the report to decide whether the alleged public right of way subsists, or can reasonably be alleged to subsist. Ancillary matters, such as the need for a path, or issues of privacy, convenience, nuisance or safety are irrelevant to the issue of whether a right of way does, or does not, exist and are things to be addressed as part of the management strategy of any path added by a Modification Order.

Evidence – Bunyan's Walk Residents

15. The Council received 14 user evidence forms, one from every property in Bunyan's Walk. Council officers interviewed six of the residents on Wednesday 14th June 2011. The interviews are summarised in Appendix C.
16. It became clear after speaking with the residents of Bunyan's Walk that users were using the claimed route on foot and not on a bicycle.
17. However, the Bunyan's Walk residents, whether they realised it or not may have had a private right to use the path in question. Mr. Braybrooke was the only resident interviewed who stated he had used the path before becoming a resident of Bunyan's Walk. Having a private right means the residents are using the route by legal entitlement and not as a public right as needed in order to add the path onto the map under Section 53 of the Wildlife and Countryside Act 1981.

18. However Mr McCartney has been informed by Land Registry that the private rights have not been passed onto the current deeds held by Bunyan's Walk residents. This is still unclear as the Council has been shown deeds where the private rights along the claimed route are clearly stated, therefore it seems some of the properties have the private access right, where as others do not. For the purposes of this report all user evidence provided by Bunyan's Walk residents will be put to one side, as there is not 100% certainty that private access rights exist for all Bunyan's Walk residents.

Evidence – Other Users

19. The Council has received twenty five user evidence forms, supporting the addition of a public footpath from users living outside of Bunyan's Walk. Four of these users were interviewed by the Council on Thursday 7th July 2011 and one Mrs Moriondo was interviewed on Wednesday 14th June and these are summarised in Appendix D.
20. Mr. Steven Nicholls the current landowner of No.3 Churchills, submitted a user evidence form stating that he did not believe the claimed route to be public. He has stated that he attempted to use the path in 2007 but was told it was a private footpath and so did not use the path again. Mr. Nicholls also stated that he remembers seeing a sign stating the footpath was private. This sign can still be seen today and is located on the corner of Churchills. The sign reads "private footpath Bunyan's Walk Residents "and a photo of the sign can be seen at Appendix B. Mr Nicholls believes there was also a private sign located at the Bunyan's Walk end of the path; this sign is not present today.
21. Mr Steven Nicholls was the only user evidence form submitted which does not support the addition of a footpath to the Definitive Map.

User Evidence Summarised

22. In order for a path to be added to the Definitive map through deemed dedication, there needs to be sufficient evidence that the path has been used continuously without interruption for 20 years.

23.

	Bunyan's Walk Residents	Other users	Total
0-19 yrs of use	5	10	20
20 years +	10	15	25
		Total No. of evidence forms submitted:	45

24. Out of the 45 evidence forms submitted, 25 users have stated they have used the whole of the claimed route on foot for 20 years or over. 15 users live outside Bunyan's' Walk and used the route as a right and without permission for over 20 years.
25. The user evidence has shown that the route is used on foot and not by bicycle, horse or car. Therefore if an order was going to be made it would be made to add a Public Footpath on to the map and not a Restricted Byway as first applied for. The applicant is happy with this decision.

Consultations

26. Harlington Parish Council were consulted on the proposal and stated in an e-mail dated 19th April 2011, that... “that it is used regularly, and has been for a number of years. Parents use this route as a short cut when taking children to the Lower School and other walkers and dog walkers use it too...”
27. The Ramblers Association were consulted and replied on 18th May 2011, stating that they could not give any opinion on the status of the claimed route.
28. The current ownership of the land between points B-C is uncertain. The Land Registry describes the land as unregistered. Permission would therefore have to be sought from the Secretary of State for Environment, Food and Rural Affairs for Notice of the orders to be served on the land.

Conclusions

29. The path has been surveyed and the route is currently used by local school children, dog walkers and families.
30. This route is shown on the deeds of the residents of Bunyan’s walk as a private right of way, showing it was always intended to be a private access path when the development was first laid out.
31. The previous landowner erected a sign at Churchills which can still be seen today, this sign was erected to show users of Harlington Footpath No.1 that the claimed route was for private use for Bunyan’s Walk residents only.
32. Some users whilst being interviewed remembered the landowner Nimrod Clarke in the 70’s turning people back, he died in the mid eighties, but his sons continued to live in the bungalow. According to the user evidence gathered his sons did not turn users away, and allowed users including non Bunyan’s Walk residents to use the path.
33. The calling into question occurred in January 2011, therefore in order to add a path onto the Definitive Map using deemed dedication the 20 year period where use must have been continuous and uninterrupted is from January 1991 – 2011. Fifteen users have submitted evidence which shows this to be the case.
34. Under Common Law the route needs to be laid out and accepted by the public, Central Bedfordshire Council has received 25 user evidence forms which shows this to be the case.

35. The test that needs to be met for an order to be made is that public rights have to exist under reasonable allegation; the stricter test of balance of probability has to be met at the confirmation stage. In the last 20 years non Bunyan's Walk residents have walked the route regularly; the private sign previously erected by Nimrod Clarke, has fallen into disrepair, and only existed on one entrance to the route. Therefore there is enough evidence to suggest a reasonable allegation that public rights do exist through use from the last 20 years, and an order should be made to add a Public Footpath onto the Definitive Map from Points A-B-C- as shown on the plan at Appendix A.

Appendices:

Appendix A – Plan of claimed route

Appendix B – Photo of the private sign

Appendix C - Summary of evidence from Bunyan's Walk Residents

Appendix D – Summary of evidence from other users

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APPENDIX C – Bunyans's Walk Interviews

1. Mr William McCartney (one of the two applicants) from 1 Bunyans Walk has always regarded the claimed route to be public, he believes it should a restricted byway as users cycle along the route. Mr McCartney first used the route in 1964 with the only break in use being when he moved to Flitwick from 1990-1999. He uses the route to access the local shops and schools. Mr McCartney was aware of the private sign located on Churchills. He also has provided a copy of his Title Deeds for the council to inspect, and these state that he has permission in his deeds to walk the route. He had never met the landowner or ever been approached or stopped whilst using the route.
2. Mrs Kay Tapping from No.8 Bunyans walk stated that she has lived in Bunyans walk for 13 years and uses the claimed route every day. She only uses the route on foot but did state that children do use the route on their bicycles. She believes that the users of the path are mainly Bunyans Walk residents and their friends. She pointed out that there was a sign at Churchills (close to point C on the plan) which says "*For residents of Bunyans Walk only*", a photo of this sign can be seen at Appendix C. Mrs Tapping stated that she doesn't object to the claimed path being added to the Definitive Map as she doesn't think this would increase its use.
3. Mr Brian Braybrooke from No.9 Bunyan's Walk showed the Council the Title Deeds to his property which indicated that he had a private right of access along the narrowest section of the path from Bunyans Walk to Churchills (Point A-B). Mr Braybrooke has lived in Bunyans Walk since 2000 but has used the claimed route for almost 30 years. Before living in Bunyans Walk he used the route to access his friend's houses in Bunyans Walk but also to access Westoning Road. Mr Braybrooke had assumed the route was public as lots of people use the route from Wingate Road with school children. Mr Braybrooke stated that there are more than 20 non residents using the path on an average day.
4. Mr and Mrs Greene from No.4 Bunyans Walk stated that they have lived in Bunyans Walk since 1971. He knew Nimrod Clarke who lived at No.3 Churchills as he had stopped him when he first used the path telling him it was for Bunyans Walk residents only. Mr Greene explained he was a new resident and was allowed to continue using the path; however he often heard Nimrod shouting at walkers who tried to use the route and did not live in Bunyans Walk. Mr Nimrod Clarke died in the mid 1980's and his two sons, Richard and David remained in the house. According to Mr and Mrs Greene the two sons didn't challenge the use of the path. Mr Greene stated he had never seen any signs along the path and that he considers it to be Public.

5. Mr and Mrs Firth from No.6 Bunyans Walk stated that they have lived at No.6 since 1993 and have used the claimed route on foot only. Their youngest daughter did occasionally cycle along the route, as did other young children. They stated they use the route to access the shops in Lincoln Way, to go to school and to go to the hairdressers. They do not recall seeing any signs along the claimed route. Mr and Mrs Firth showed the Council a plan taken from their Title Deeds which shows the claimed route. They were told when they bought their property that this route was private for the residents of Bunyans Walk; however they stated that everybody uses the path nowadays. Especially residents in Wingate Road as it is easy access to the Lower and Middle Schools. Mr and Mrs Firth knew of Mr Clarke (one of the sons) and he never stopped them or anyone else from using the route.

6. Mr and Mrs Drake live at No.14 Bunyans Walk and have done so for 34 years and have used the claim route every day as a footpath. When their children were small there was a cycle barrier on the path from Foster Road and so they used to use the claimed path instead. Mr and Mrs. Drake state they use the path to go to the shop, station, the church and the pub. Mr and Mrs Drake stated they were aware of the private sign which was put up along Churchills but believe it was put up at least 35 years ago. None of the Clarke family to their knowledge stopped people from using the route. Mr and Mrs Drake believe the route is used by the residents of Bunyans Walk aswell as mums taking their children to school.

7. Other User Evidence forms were received from Mr Readings from No.12 Bunyans Walk who stated he had always believed the route was there for Bunyans Walk residents only due to the sign which is displayed on Churchills. He had used the route for 27 years. Mr Mackenzie-Skea from No.2 Bunyans Walk has used the claimed route for 9 years and believes it to be public, stating that school children use the route regularly. Mrs Kingham from No.11 and Mr Mead from No. 10A Bunyans Walk both state that they believe the claimed route to be a public footpath and that they have never seen any signs on the path. Mrs Meakins from No.3 Bunyans Walk has only lived in the property 18 months but states she uses the claimed route and thought it was a public footpath. Mr and Mrs Flewers from No.7 Bunyans Walk filled in separate forms stating that they believe the claimed route was a public right of way and Mr Flewers stated he knew Mr Clark well and he had accepted that it was a public right of way. He had never seen any signs on the route in the 20 years he had been using it.

APPENDIX D – User Evidence from users living outside of Bunyan’s Walk

1. Mr Preston of 16 Foster Road stated that he has lived in Harlington since 1963 and has always used the claimed route. Harlington Public Footpath No.1 runs adjacent to his property but it wasn’t metalled in the early days and due to the poor surface and the steep slope, he always chose to walk the claimed route. The claimed route is used as a route to school. The only time Mr Preston believes the route to be closed was earlier this year when the landowner erected a fence across the path. He has always considered the route to be public. Mr Preston is a member of the Parish Council and when this item was discussed, a lot of the members believed it was already on the Definitive Map as a Public Footpath. Mr Preston had lived briefly in Bunyan’s Walk in 1974 but before this time had used the claimed route. Mr Preston has never seen any notices on the route apart from one located on Churchills which he believed to say “*private drive*”.
2. Mr and Mrs Hull of 20 Wingate Road and Mr Stone of 10 Robinson Crescent were interviewed together. Mrs Hull stated that she lived at No.20 Wingate Road for 53 years, since July 1958. All three have walked the claimed route since living in the village. Mr Stone use to walk the route when there was a dairy in the village for 3-4 years before leaving school; it was a good cut through on his delivery round. All there interviewees knew Nimrod Clarke and would see him regularly when walking the claimed route, they never got stopped. They have never seen any private signs erected along the route and all three have believed the route is public. They all believed that prior to Bunyan’s Walk being built there was no access along the route as the field was full of green houses. The land now known as Churchills was just a drive way down to the Clarke’s bungalow.
3. Mrs Moriondo (one of the applicants) lives at No. 4 Churchills and has been using the claimed route for 15 years since she moved into her house in 1997. She has used the route both on foot and on her bicycle with her children. She uses the route regularly to go to the lower school, doctors, shops, pre-school and visiting friends. Mrs Moriondo is aware of the sign erected on Churchills stating “for residents of Bunyan’s Walk”. She has never been stopped when trying to use the way and used to speak to the landowners regularly as they were neighbours.

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Meeting: Development Management Committee

Date: 29 February 2012

Subject: Creation and extinguishment of public rights of way at Poppy Hill Lakes in Henlow and Langford

Report of: Head of Service for Transport Strategy and Countryside Services

Summary:

1. Members are asked to consider the making of public path orders to extinguish Langford Bridleway No. 5 which is obstructed by a fishing lake and to create a new bridleway to connect Langford with Henlow.
2. Members are also asked to approve the making of a public path order to create a new public footpath to run between two of the Poppy Hill Lakes and across the River Ivel to the Millennium Field in Henlow.

The proposals would require the construction of a new footbridge over the River Ivel and significant surfacing works to enable the new bridleway to be utilised as a cycle route.

Advising Officer: Trevor Saunders, Assistant Director of Planning

Contact Officer: Adam Maciejewski - Definitive Map Officer - Countryside Access Team - 0300 300 6530

Public/Exempt: Public

Wards Affected: Arlesey and Stotfold & Langford wards

Function of: Council

CORPORATE IMPLICATIONS

Council Priorities:

The proposals reflect the statutory duty of Council as Highway Authority to assert and protect the rights of the public to use public highways.

The proposals also will facilitate sustainable transport links between Langford and Henlow Middle School which will help with educating, protecting and providing opportunities for children and young people. The proposal will provide a better surfaced cycle route between Henlow and Langford with improved visibility thus providing a safer community and will promote use of a variety of circular routes leading to healthier lifestyles.

Financial:

1. The Council has a legal duty to assert and protect the rights of the public to enjoy a right of way. Currently the route of Langford Bridleway No. 5 is obstructed by a fishing lake and other minor obstructions. The cost of taking enforcement action against minor obstructions would be recoverable from the obstructers. It would be unreasonable to expect the reinstatement of the path across the lake, which could cost at least £100,000, and would involve a pontoon bridge or draining the lake. The Angling Club have stated that draining the lake may be an option, but it this is not supported by officers and other environmental organisations as it would severely impact on the biodiversity of the area.
2. The advertising of legal orders, counsel's representation and potential public inquiry costs for the proposal are likely to be in the region of £4000 - £5000.
3. Whilst potential compensation payable to the landowners is envisaged to be comparatively minor and, (at the time of writing – February 2012) estimated to be in the region of £10,000, it is likely that any initial claim would be far higher. Any resolution of a disputed compensation claim will have to be resolved through the Lands Tribunal with its associated costs. The Council is commissioning an independent valuation to be presented verbally to the committee.
4. The level of works associated with the proposal is significant and includes: vegetation clearance, ground-works, surfacing, and the construction of a new river bridge. The total cost for the works is anticipated to be £100,300 – £112,300 + 10% contingency. A full breakdown of this cost can be found at Appendix C.
5. Funding for the works will be provided from a number of internal and external sources. It is hoped that 50% of the costs will be found from external sources. The following figures are indicative only.

Central Bedfordshire Council funding will include:

- CBC Capital (from 2012/13 and 2013/14 Rights of Way and Countryside Sites £250k Health and Safety works allocation – or a separate capital bid) of £60,000
- CBC Rights of Way 2012/13 revenue budgets of £ 20,000

External sources to make up the shortfall will include:

- Section 106 funding
- Parish Council
- Local P3 groups

Legal:

6. The Council has a legal duty under Section 130 of the Highways Act 1980 to assert and protect the right of the public to use and enjoy any highway for which they are the highway authority,. Currently the route of Langford Bridleway No. 5 is obstructed by a fishing lake and other minor obstructions.

7. Whilst the removal of minor obstructions is a reasonable activity for the Council to undertake, the removal (by infilling or by construction of a pontoon bridge) of the fishing lake is considered unreasonable and financially disproportionate due to the availability of alternative routes around the lake. Moreover, infilling of the lake would require consents for landfilling from both the Council and external bodies, including the Environment Agency.
8. External Counsel's opinion indicates that the extinguishment of the bridleway without provision of alternative public access to the lakes area would be contrary to the Council's duty under Section 130 of the Highways Act 1980. The use of Section 26 of the Highways Act 1980 by the Council to compulsorily create alternative public access over the lakes area, and thence by a new river bridge to the Millennium Field, is therefore justified although the Council must have regard to the effects of the new path on the land owners.
9. The owner of the affected fishing lakes has, until recently not consented to the creation of any public access over the lakes area. However, the route that has been suggested by the owners is unacceptable to the Council due to its proximity to an existing right of way, lack of connectivity and lack of compensation for the lake views lost. Any objection to the proposed creation orders would mean that the Council could not confirm the orders as unopposed orders, and would have to forward them to the Secretary of State for Environment, Food, and Rural Affairs to confirm - providing they met the legislative tests. To be successful, any challenge to the Council's actions by way of judicial review by the High Court would have to demonstrate that the Council's actions are unreasonable or outside of the Council's legal powers. Generally, the court is not concerned with the merits of the decision but rather with the lawfulness of the decision-making process, that is, how the decision was made and the fairness of it.
10. Section 28 of the Highways Act 1980 gives any land owner or person with a legal interest in the land the right to claim compensation from the Council if a public path order is confirmed. However, the level of compensation should take into consideration any gain to that person by the extinguishment of any existing public rights of way.
11. If the Council does not assert the public's right to use the obstructed bridleway Henlow Parish Council will serve notice on the Council under Section 130A of the Highways Act 1980 requiring the Council to act to remove the obstructions. If the Council does not remove the obstructions the Parish Council can make an application to the Magistrates Court for an order for the Council to remove the obstructions.

Risk Management:

12. The proposals will be managed under the PRINCE 2 procedure for project management in order to minimise any issues arising from delivery of the works needed for the project.

13. Specific risks which have been identified include:

Reputational Risk.

The proposals seek to resolve a long-standing standoff between local Parish Council and the land owners which has so far resulted in three public inquiries and significant costs being awarded against the former County Council. The proposals have local support and the support of national organisations: the British Horse Society and the Ramblers; but with opposition from the key land owner. Should the proposals go ahead the Council will receive significant press interest.

Legal challenge/Court action:

There is a risk of legal challenge and potential court action.

Failure to discharge statutory responsibilities:

Including Section 130 of the Highways Act 1980,

Financial risks:

There is a risk of not securing the funding for the project.

There is a risk of failure to deliver within the estimated cost.

There is also the risk of the level of expenditure required for the proposal being publicly scrutinised when cheaper alternatives are available.

Staffing (including Trades Unions):

14. Not Applicable

Equalities/Human Rights:

15. Under Section 6 of the Human Rights Act 1998 it is unlawful of the Council to act in a way which is incompatible with a human right - although this requirement is subject to the aims and requirements of any primary legislation. Individuals and businesses have a right to privacy and security. However, the Council has a legal duty to ensure that public rights of way are open and available for use by the public. Moreover, case law and the Highways Act 1980 dictate that the Council has only a limited amount of flexibility within which it can comply with its duties. This has been confirmed by independent legal advice.
16. The proposals seek to impact on the privacy and security of an angling association by asserting the public's right to use an alternative route to an existing public bridleway. This infringement has, however, to be balanced by the impact on the angling association by the Council enforcing the existing legal line of Bridleway No. 5 through one of its fishing lakes. The perceived disturbance of the anglers must thus be weighed against the potential removal of their fishing lake.
17. The proposals seek to create new and alternative public rights of way to those currently in existence. The new routes will have improved surfacing and all structures will be Equality Act 2010 compliant to facilitate use by mobility impaired users.

Community Safety:

18. Currently there is no recorded legal right to cycle off-road between Langford and Henlow. The proposal seeks to create a bridleway from Common Road, Langford to Church Road, Henlow thus providing an off-road cycle link between the two villages.

Sustainability:

19. The proposal seeks to create an off-road cycle link from Common Road, Langford to Church Road, Henlow which can be used as a safe route to school and will go part-way to providing a sustainable transport route between Henlow and Langford and Arlesey as well as linking in to new cycle routes within Henlow village. The proposal would also contribute to efforts to reduce congestion, especially around school drop-off time as it provides a safe route for cycling.

Procurement:

20. The requirements for this project are classified as “Works” and their estimated value is below the EU threshold. The proposal is being managed in accordance with PRINCE 2 principles - with an associated Project Initiation Document and project board. A specification and tender documents will be prepared in accordance with the procurement toolkit and an appropriate form of construction contract will be included (by agreement with Legal Services).
21. A competitive tendering exercise will be conducted (in accordance with the procurement procedure rules 2012) to select a contractor for the proposed bridge works (the project’s major cost). Evaluation will be based on the most economically advantageous tender being chosen. Other associated minor works (below £20k estimated value) may be allocated by obtaining quotations.

RECOMMENDATION(S):

The Committee is asked to:

1. **Approve the making of a Public Path Extinguishment Order under Section 118 of the Highways Act 1980 to extinguish parts of Langford Bridleway No. 5 between points C-Y-Z-E-F on the grounds that it is not needed for public use due to the concurrent creation of an alternative bridleway and footpath.**
2. **Approve the making of a Public Path Creation Order under Section 26 of the Highways Act 1980 to create new sections of Langford Bridleway No. 5 between points A-B and C-D in Langford and between points D-M-E-F and G-H-I in Henlow over existing sections of public footpath. The new bridleway would require surfacing works along various sections.**
3. **Approve the making of a Public Path Creation Order under Section 26 of the Highways Act 1980 to create a new section of public footpath between points M-N-O in Henlow to connect the new bridleway on the Haul Road with Henlow Footpath No. 26 on the Millennium Field. The new footpath would cross the River Ivel by means of a new river bridge.**

Introduction

22. Poppy Hill Lakes are situated on the Langford-Henlow parish boundary on the eastern bank of the River Ivel. The lakes are a series of old sand/gravel pits which are now used as fishing lakes – two of which are owned by the Letchworth Garden City Angling Association Ltd. (“the LGCAA”).
23. Sand and gravel extraction at the site started in c.1947. Although planning conditions required restoration of the lakes, this was never carried out. The lakes subsequently flooded after excavations had stopped.
24. Statements from officers of the LGCAA indicate that it acquired title to the land in 1978. Prior to 1978, the LGCAA had an agreement in 1952 with the previous quarry owners (Inns & Co Ltd.) to rent fishing rights at the lakes.
25. Limited public access to the lakes area appears to have been permitted or tolerated by the LGCAA up until the 1990s. After that the LGCAA stopped most access, although some trespass still occurs as the site is not securely fenced.
26. Langford Bridleway No. 5 runs through the southernmost fishing lake and is obstructed by the lake, vegetation including several mature trees, fencing. The bridleway is also obstructed by a ditch separating two of the nearby arable fields. Consequently, only a short section of the bridleway is currently useable. The former County Council and this authority have both been served with notices under Section 130A of the Highways Act 1980 (“the 1980 Act”) requiring that the obstruction be removed. To date these have not been removed as alternative solutions were sought. Furthermore, Bridleway No. 5 is legally land-locked for equestrians and cyclists as it only connects to footpaths at either end.
27. It is proposed to resolve all the above issues by extinguishing the bridleway where it crosses arable fields and where it passes through the fishing lake and surrounding LGCAA land. In its place the team proposes that a new bridleway should be created along existing public footpaths to connect Common Road in Langford with Church Road in Henlow. A new footpath would also be created across land owned by the LGCAA to connect to the Henlow Millennium Field via a proposed footbridge over the River Ivel. The proposed bridleway would be surfaced with bound aggregate to a standard suitable for use by bicycles and horses. The new footpath would be left in as natural a condition as possible whilst still being suitable for use by all walkers and pushchairs. A description of the proposed works is given at Appendix C.

History of public rights of way at Poppy Hill

28. The history of how the bridleway was recorded as passing through a fishing lake is detailed in Appendix B and summarised below.
29. The National Parks and Access to the Countryside Act 1949 required that all public rights of way be recorded. Langford Parish Council surveyed the paths in its parish and its survey map recorded the bridleway as running along what is now the current legal line. This line was transferred from map to map through the protracted drafting process of the Definitive Map. Unfortunately, none of the maps used depicted the quarries which now form the current fishing lakes.

30. When the Definitive Map was digitised in the 1990s the issue of the lakes became apparent. In 1996 and 2001 the former County Council received two applications which sought to divert the bridleway onto the nearby track, known locally as the Haul Road, and to delete it on the grounds it was recorded incorrectly on the map respectively. Orders were made which were objected to by local residents and Henlow Parish Council. Following local public inquiries, independent Inspectors determined that a diversion onto the Haul Road would deprive users of the enjoyment of the lake's environment, and that Bridleway No. 5 was correctly recorded on the Definitive Map and thus did indeed run through the southernmost fishing lake.
31. In 1999 and 2003 the former County Council received two other applications which sought to add a footpath through the lakes area, and to add a footpath along the Haul Road. The LGCAA objected to both orders. Following a public inquiry the order to add a footpath through the lakes area was not confirmed. The LGCAA withdrew its objection against the order to add a footpath along the Haul Road as part of an agreement with the former County Council to move the bridleway out of the lakes area. This Definitive Map Modification Order was subsequently confirmed.
32. In 2010 the Council proposed once again to move the bridleway onto the Haul Road. Whilst this was fully supported by the LGCAA it received objections from Henlow Parish Council and several local residents. Following a case review and the seeking of Counsel's opinion (see Section 36 below), the current proposal was put forward which includes a public footpath through LGCAA land to connect the Haul Road with the Millennium Field. This proposal has been objected to by the LGCAA and has received support from Henlow Parish Council and a number of local residents.
33. In the latter part of 2011 the LGCAA looked at options to enable the existing bridleway to be used by the public. Whilst there is still a requirement from the original 1947 planning consent to reinstate, the Council's Minerals and Waste Team considers that reinstatement to fishing lakes has already been achieved. Furthermore, restrictions on the importation of infill means that the lakes cannot be infilled without applying for a new landfill licence. Such an application would be very unlikely to be approved. Another option was to drain the lake. Whilst there does not appear to be any statutory restriction on this happening, the extinguishment of the bridleway and the provision of an alternative footpath is a much more environmentally sound solution.

Legal and Policy considerations

34. The legal and policy considerations are discussed in detail in Appendix A and summarised below. The Highways Act 1980 (“the 1980 Act”) empowers Central Bedfordshire Council to make legal orders to create, extinguish and divert public rights of way (footpaths, bridleways, and restricted byways) shown on the Definitive Map - which is the Council’s legal record of such rights. Sections 26 and 118 of the 1980 Act relate respectively to the creation and extinguishment of such rights and are paraphrased at Appendix A. Essentially a path can only be extinguished if it is not needed for public use and a new path can only be created if there is a need for it. It is possible, however, to link a creation and extinguishment together so that an alternative route can be created to compensate for the route being extinguished.
35. The Development Management Committee under the Central Bedfordshire Council’s Constitution (E2 at Annex C) is the appropriate body to determine whether the Council, as highway authority, should make orders under the 1980 Act to create, divert, or extinguish a public right of way.
36. The Council has sought independent legal opinion on the issues to hand and has been advised that any extinguishment of the Bridleway No. 5 through the lakes area would need to be compensated by the creation of additional public access through the lakes area. Ideally, this access should be as a loop around the lake allowing walkers views over the lake’s areas. The current proposal, whilst going part-way to compensating public access to the lake’s area also provides members of the public with enhanced connectivity within the local public rights of way network. The main protagonists involved in trying to gain useable public access through the lakes area are satisfied by the recommended footpath and bridge.
37. Leading Counsel advising the LGCAA has challenged the reasoning behind the proposed new footpath. As stated above, this is required to provide an alternative route to the current bridleway which retains the lake-side environment which is not present along the southern section of the Haul Road. The QC has also challenged the lack of regard that the Council has to the effect of the proposed new footpath on the LGCAA. These effects are discussed in Section 55 below. Most effects can be mitigated or disregarded as they currently should exist due to Bridleway No. 5 passing through the LGCAA’s site.
38. The Council could make and confirm an order under Section 118 of the 1980 Act to extinguish the existing line of Bridleway No. 5 between points C-Y-Z-E-F. Such an order, when considered concurrently with the creation of an alternative bridleway and footpath, would remove the threat to the current lake from being infilled and therefore would significantly benefit the LGCAA. The extinguishment would also benefit Mrs. Parrish and Mr. & Mrs. Chennells who farm the land between points C-Y and Y-Z-E respectively as they would not be under an obligation to restore the bridleway after cultivation and to ensure that no crops obstruct the path.

39. The Council could make and confirm an order under Section 26 of the 1980 Act to create a new and extended alternative route for the bridleway between points A-B, C-D-E-F, and G-H-I to create a direct bridleway and cycling route between Common Road, Langford and Church Road, Henlow. Most of the bridleway would be created over existing public footpaths with the exception of the section between points D-E. Generally the route between Common Road and Church Road is quite wide - between 3.5 and 5.0 metres, with the narrowest section being 2.0 - 2.5 metres wide near Common Road. The new bridleway will have the width of the available track (once cleared), or 4.0 metres wide where the bridleway would be more open. Between points D-E the new bridleway would lie adjacent to and abutting the Haul Road so that it lies on land in the same ownership as the existing bridleway (Chennells). Here the new bridleway would have a width of 3.0 metres as it would run adjacent to the existing public footpath. The creation of the new bridleway would facilitate sustainable transport between the villages of Langford and Henlow and would provide an off-road cycle route from Langford into Henlow Middle School which would add to the convenience of local residents. As the route would also form a link in the Sustrans Great North Cycle Route No 12 it would also add to the convenience and enjoyment of members of the public from further afield.
40. The Council could make and confirm an order under Section 26 of the 1980 Act to create a new a footpath between the Haul Road and the Henlow Millennium Field between points M-N-O. The route would run past the LGCAA car park and then along a causeway between the southernmost fishing lakes to a new bridge over the River Ivel. The new footpath would have a width of 2.0 metres between point M and the north-western corner of the anglers' car park, and then would have a width equal to the width of the angler's access track up to the bottom of the earth bund. From this point, the new footpath would again have a width of 2.0 metres to point N. Between points N-O the new footpath would have a width of 2.0 metres. The route would provide for a number of circular routes both from Henlow and from Langford which would take in the scenic views over the lakes and river. Approximately half of the new footpath would run over land not currently affected by a right of way, the other half would either run along or close to the current legal line of Bridleway No. 5.
41. The Definitive Statement for the new footpath will have a limitation relating to minor obstructions caused by angler's fishing tackle, and a condition requiring dogs to be kept on leads, consequently helping to meet some of the concerns of the LGCAA.
42. The creation orders would be made concurrently with the extinguishment order as they would provide alternative routes to those that the public are entitled to use – even if they are not legally or physically accessible.

43. Section 29 of the 1980 Act gives any body with a legal interest in the land affected by a creation order the right to claim compensation for devaluation or disturbance of that interest. This should, however, take into account any benefit caused by the extinguishment of an existing right of way. Most of the footpaths to be upgraded to bridleway run along surfaced access tracks and so the level of compensation is negligible. The bridleway to be extinguished either runs through a fishing lake or across arable farmland. The replacement route will either run across existing public footpath as aforementioned, or will run as a field-edge bridleway abutting the Haul Road. It is likely that some degree of compensation will be payable to the LGCAA and to two of the farmers affected by the proposal between points A-B-C-D and D-M. The level of compensation is being independently assessed at the time of writing (February 2012).
44. In considering whether to make orders under the 1980 Act, the Council has a duty to consider any material provisions contained within a Rights of Way Improvement Plan when determining whether or not to confirm a creation, diversion, or extinguishment order. The Council's Outdoor Access Improvement Plan is currently being redrafted and the proposal does not conflict with the aims of the old plan.
45. The 1980 Act also imposes a duty on the Council to have regard to the needs of agriculture and forestry, and the desirability of conserving flora, fauna and geological and physiographical features when determining whether to make and confirm creation, extinguishment and diversion orders. The extinguishment of the current bridleway would remove the threat to the fishing lake from infilling as a means of opening up the legal line of the bridleway. The creation of the alternative bridleway and footpath would necessitate some degree of vegetation clearance and the removal of a small number of small hawthorn, elder, willow and blackthorn. The creation of the new bridge would have negligible impact on the river and the western earthen approach ramp would be on land which is currently mown grass. In my opinion, the effects of the proposal on the environment would therefore be relatively minor.

Alternatives considered

46. Enforcement of the legal line of Bridleway No. 5 by infilling the fishing lake was considered and rejected owing to the ecological damage to the County Wildlife Site. An option to bridge the lake by means of a floating pontoon bridge was also rejected due to the potential costs involved and likely impact on the fish in the lake. Moreover, both options can be considered last resorts when it is possible to provide alternative public access on solid ground around the lake.
47. Having received Counsel's opinion which clearly indicates that the Council should promote the interests of those who are entitled to enjoy the right of way, and should not act in the interests of the land owners against the users, a total of eight alternative routes across the LGCAA's land were investigated, see Appendix 2. Six of these options were rejected on grounds of: landownership considerations; the span (and thus cost) of any required bridge; river dynamics precluding certain bridge locations; and the actual benefit to the public. All the options were put to Henlow Parish Council for its comment.

48. Henlow Parish Council and the Countryside Access Team have both chosen the current proposal with its river bridge as their preferred option. The second preference for both was the creation of a bridleway along the Haul Road and the creation of a public footpath leading from the Haul Road around the western side of the fishing lake and back to the Haul Road. Both the Parish Council and the Countryside Access Team consider that the current proposal would add greatly to the footpath network and open up new routes that could be enjoyed by walkers.

Consultations and responses

49. Mrs. C Parrish, who owns the northernmost two fishing lakes and the Haul Road between points A-B-C-D was consulted on the proposal and has agreed to the creation of a bridleway over her land as long as, by way of compensation, the existing hedge separating the new bridleway from her fishing lake is replenished and thickened.
50. Mr. G Brady of the Whiteman Waters Fishing Syndicate which fishes from Mrs. Parrish's lakes was consulted on the proposal and has agreed to the creation of a bridleway subject to Mrs Parrish's hedge being replenished and thickened.
51. Mr. Wells owns some of the land to the east of the Haul Road was consulted on the proposal but has not responded at the time of writing (February 2012).
52. Messrs. P and S Smith own some of the land to the east of the Haul Road was consulted on the proposal but has not responded at the time of writing (February 2012).
53. Mr. and Mrs Chennells own some of the land to the east of the Haul Road between points D-G as well as land to the north of point H. Currently Mrs. Chennells does not want a wide field edge bridleway between points D-E as "...it would mean the loss of much more land than the present bridleway occupies [across the field] and would mean the loss of this area permanently. The proposal of a 4m bridleway plus a ditch combined with the fact that we would be restricted by [Good Agricultural and Environmental Condition regulations] from making full use of a further 2m would result in a loss of at least a 7m strip ...". At the time of writing (February 2012) a narrower alternative was being negotiated.
54. The Letchworth and Garden City Angling Association Ltd. (LGCAA) owns the southernmost two fishing lakes and the section of the Haul Road between points D-E-F-G. The LGCAA has been consulted via its agent (Mrs. Sue Rumfitt of Rumfitt & Assoc.) and would allow an alternative footpath through the woods between points R-S-E on the plan at Appendix 2. This option was discounted by the Countryside Access Team and Henlow Parish Council as not providing sufficient compensation for the loss of the existing bridleway by failing to provide views over the lake.
55. The LGCAA maintains its opposition to public access to the fishing lakes and their environs for the reasons paraphrased below, and would expect to receive compensation for any detrimental effect arising from any order.

- (a) “The proposal would bisect the site making it more difficult for the LGCAA to manage the site as a whole”. In response, the current site encompasses approximately 0.112 km² of which approximately 0.021 (~19%) is within the loop of Bridleway No. 5. If the new footpath were fenced with access gates for the anglers I cannot envisage the site would be significantly less secure than it currently is.
- (b) “The new footpath would permanently lose 11 “swims” (fishing positions) on the lakes as the use of long angling poles would obstruct the footpath and expensive poles could be subject to damage by walkers”. In response, the swims along the proposed footpath make up a small number of the total swims within the site. Furthermore, half of the effected swims are already effected by the existing bridleway. It would be possible to still use some of these swims from platforms if so desired. Other angling clubs use poles on towpaths and bank-side walks, apparently without undue concern for damage to their tackle. It is also possible to record within the legal statement for the new footpath that use of the way is subject to minor obstructions from fishing activities.
- (c) “The LGCAA’s members currently enjoy security and freedom of movement. The imposition of a footpath will allow members of the public to legitimately enter the heart of the site”. In response, Bridleway No. 5 currently runs through the site, although this is unavailable due to obstructions. Furthermore, the site is not completely secure, allowing members of the public to wander through the plantation area to the south of the lakes.
- (d) “In order to prevent trespass through the site the LGCAA would have to fence either side of the route. If this were not possible the LGCAA anticipates continual trespass and would have to increase bailiff patrols”. In response, the Countryside Access Team has tried to choose a route that limits the options open to the public for trespass. Additionally, the Council could fence the new footpath to prevent trespass and the straying of children and dogs as part of any compensation package to LGCAA. This cost has been included in the overall costs of the project.
- (e) “It would be impossible to prevent members of the public using the footpath from introducing alien species – such as Koi carp, goldfish, and terrapins to the controlled waters of the lake. Invasive plant species may also be introduced”. In response, the lakes are not completely secured and have, on occasion, been overwhelmed by floodwaters from the adjoining river during very wet periods. Notices can be erected regarding not introducing new animals.

- (f) “The LGCAA introduced a dog ban for its members in about c.2000. It is concerned that members of the public would allow dogs to foul on the new footpath”. In response, members of the public are currently entitled to bring dogs onto the site along the route of the bridleway. The provision of a dog-waste bin on the Millennium Field would help alleviate any concerns. Additionally, the requirement for dogs to be kept on leads on the new footpath can be included as a condition in the new footpath’s statement.
 - (g) “The LGCAA is also very concerned about dogs entering the water and disturbing the fish and damaging the banks of the lake. Such damage is already evident on the western bank of the River Ivel since the bank-side vegetation was cut back in 2010”. In response, the route of the new footpath could be fenced to prevent dogs straying and entering the water. The provision and installation of fencing and anglers’ gates could cost approximately £2000 - £2500 as part of any compensation package.
 - (h) “The LGCAA is also concerned about the possible nuisance caused by dogs trying to eat anglers’ bait”. In response, if the footpath is fenced off from the lakes area neither this, nor the issue of dogs swimming, would be possible.
 - (i) “The LGCAA is also concerned about the possible detrimental effects to the habitats for water voles, kingfisher, and badgers and to the fish-spawning riffles in the river”. In response, the footings to the proposed bridge will not be constructed in the river bank or river base, but would be set back by about 1 metre and so would not impact on fish spawning grounds. Similarly, the bridge footings and eastern approach would have a negligible effect on the local environment. The main portion of the footpath would either follow existing track or would run in a new cutting through an existing earth bund. Works to excavate the cutting would effect the environment in that vegetation (low brush, grass and nettles) would have to be removed. The Environmental Agency will be consulted regarding works to be carried on or near to any water courses.
56. The main issue, in my opinion, is not the issues highlighted above as these are all potentially possible at the moment due to Bridleway No. 5 passing through the site. The issue is that members of the public have not been able to use the bridleway due to the obstructions on it, and thus even a return to what ought to be the normal situation for the bridleway would be a massive increase in the levels of public access as viewed through the eyes of the LGCAA.
57. Champneys Henlow Ltd. run a health retreat at the nearby Henlow Grange and own a large area of land, including the tracks on the west side of the River Ivel containing the footpaths that are proposed to be upgraded to bridleway as part of the proposal. Champneys is concerned about unlawful motorcycle use on the new bridleway. It should be noted that its guests do occasionally cycle along the current footpaths using the bicycles provided by the resort.

58. Mr. S. Purdew owns the property on Poppy Hill Road and was consulted on the proposal but has not responded at the time of writing (February 2012).
59. Mrs. A Rowland, Central Bedfordshire Council's Sustainable Transport Team Leader has stated that she is fully supportive of the proposals as they will help create important links for cyclists between Langford, Henlow and Arlesey.
60. Henlow Parish Council has stated that it supports the proposal and that the Parish Council's preferred route across LGCAA land is M-N-O with a route around the western side of the lake as its second choice.
61. Langford Parish Council was consulted on the proposal but decided "...not to comment..." on the proposal.
62. Mr. R Payne, the headmaster at Henlow V.G. Middle School has stated he fully supports the proposed creation of a cycle link between Langford and Henlow.
63. The British Horse Society was consulted and its local access officer stated "...I am pleased a cycle route has also been included but would welcome some signs along the way to indicate to cyclists that there could well be horses in the area. As you will be aware, cyclists are quite silent in their approach behind horses and some are spooked by them. This route is well used by riders, cyclists and parents/children in the summer months...".
64. The Bedfordshire Rights of Way Association was consulted on the proposal but has not responded at the time of writing (February 2012). In a response to an earlier consultation relating solely to the extinguishment of the bridleway through the lake and the creation of an alternative route along the Haul Road it stated that it "...We do however know that an Inspector found earlier that because the haul road was used by the cars of anglers it was not as convenient as the definitive line. We have not seen any change of circumstance which would alter that conclusion....".
65. The Ramblers were consulted on the proposal but has not responded at the time of writing (February 2012) "...fully supports the proposals as it will satisfy all who walked through the 'Lakes'...".
66. Mr. M Knight of the Henlow Heritage and P3 Group is an interested party in that he has been very active in campaigning for public access through the LGCAA land. Mr. Knight fully supports the proposal.
67. Mr. D Grummitt is an interested party in that he has been very active in campaigning for public access through the LGCAA land, but has not responded at the time of writing (February 2012). In a response to an earlier consultation relating solely to the extinguishment of the bridleway through the lake and the creation of an alternative route along the Haul Road Mr. Grummitt stated that he did not approve of the proposal to move the bridleway onto the Haul Road and "...where its natural public beauty should be retained for the public pleasure without causing any encumbrance to those persons who are anglers...".

68. A number of unsolicited letters were submitted in response to an earlier consultation relating solely to the extinguishment of the bridleway through the lake and the creation of an alternative route along the Haul Road. These responses all condemned the proposal for not providing public access through the lakes areas.

Conclusions

69. Public use of the majority of Langford Bridleway No. 5 is not possible due to a number of obstructions - most notable by the fishing lake belonging to the Letchworth Garden City Angling Association ("LGCAA"). Moreover, the bridleway is legally inaccessible to equestrians and cyclists as it connects to footpaths at either end. A number of previous orders to move the bridleway out of the angling area and on to the nearby Haul Road were not confirmed following public inquiries.
70. The proposal seeks to extinguish the majority of the current bridleway and to create two replacement routes in its stead. A new footpath for walkers would be created to cross from the Haul Road over LGCAA land and the River Ivel to join Footpath No. 26 on the Henlow Millennium Fields which is public open space. A new bridleway for cyclists and equestrians would be created to run, mainly over existing public footpaths, from Common Road in Langford along the Haul Road and along Poppy Hill Road to connect with Church Road in Henlow.
71. The proposal would therefore create a new sustainable cycle route to connect the villages of Langford and Henlow thus providing a safe off-road route to Henlow VG Middle School and would provide a new crossing over the River Ivel allowing local residents to access and use a number of circular walks.
72. Most of the land owners and consultees either accept or support the proposal. The LGCAA, however, totally opposes the creation of the proposed public footpath over its land on fishing and environmental grounds. Most of the grounds for objection however already exist due to the presence of the bridleway. Some mitigation measures would be required to control unauthorised access and dogs. Any LGCAA expenditure to do this could legitimately be claimed as compensation.
73. The opposition by the LGCAA means that an order could not be confirmed by the Council but would have to be forwarded to the Secretary of State for Environment, Food, and Rural Affairs for confirmation – potentially at a public inquiry with legal representation.
74. The proposals would require a significant level of ground works to be undertaken and the construction of a large pedestrian bridge. The costs of works for the proposal are likely to be £100,300 – £112,300 + 10%. The combined cost for: the making and advertising of orders; any public inquiry; legal representation and advice; proposed works; and any compensation is estimated to be in the region of £114,000 - £127,000.

75. Funding for the project has yet to be secured but would be met from a mixture of internal and external sources including Section 106 levy, Capital Programme funding and green infrastructure charitable funding.

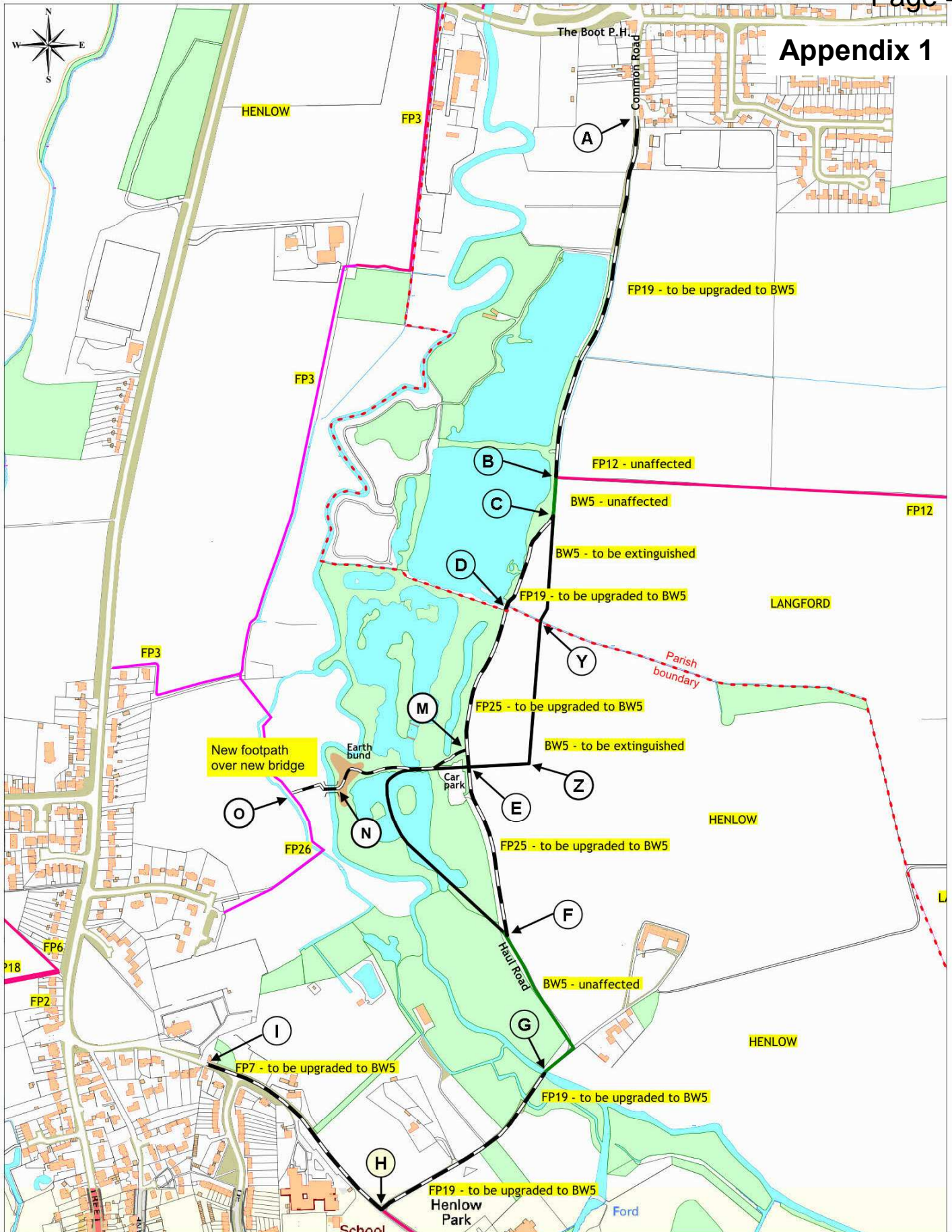
Appendices:

- Appendix 1 – Plan of proposed rights of way
- Appendix 2 – Options considered
- Appendix A – Legal and policy considerations
- Appendix B – Rights of way background
- Appendix C – Works and Finance

Background Papers: (open to public inspection)

- BP1. Poppy Hill Works Project Initiation Document.
Held with the Countryside Access Team, Central Bedfordshire Council
Technology House, 239 Ampthill Road, Bedford, MK42 9BD.

Appendix 1



PROPOSED EXTINGUISHMENT AND CREATION OF BRIDLEWAYS AND THE CREATION OF A FOOTPATH IN LANGFORD AND HENLOW

Scale 1: 7500@A3
Date : DEC 2011
Based on the Ordnance Survey Map with the permission of the Controller of HMSO.
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Bridleways to be stopped up
Langford **C Y**
Henlow **Y Z E F**

Bridleways to be created over existing footpaths
Langford **A B** and **C D**
Henlow **D E F** and **G H I**

New footpath to be created **M N O**
Unaffected footpaths (magenta line)
Unaffected bridleways (green line)

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Appendix 2

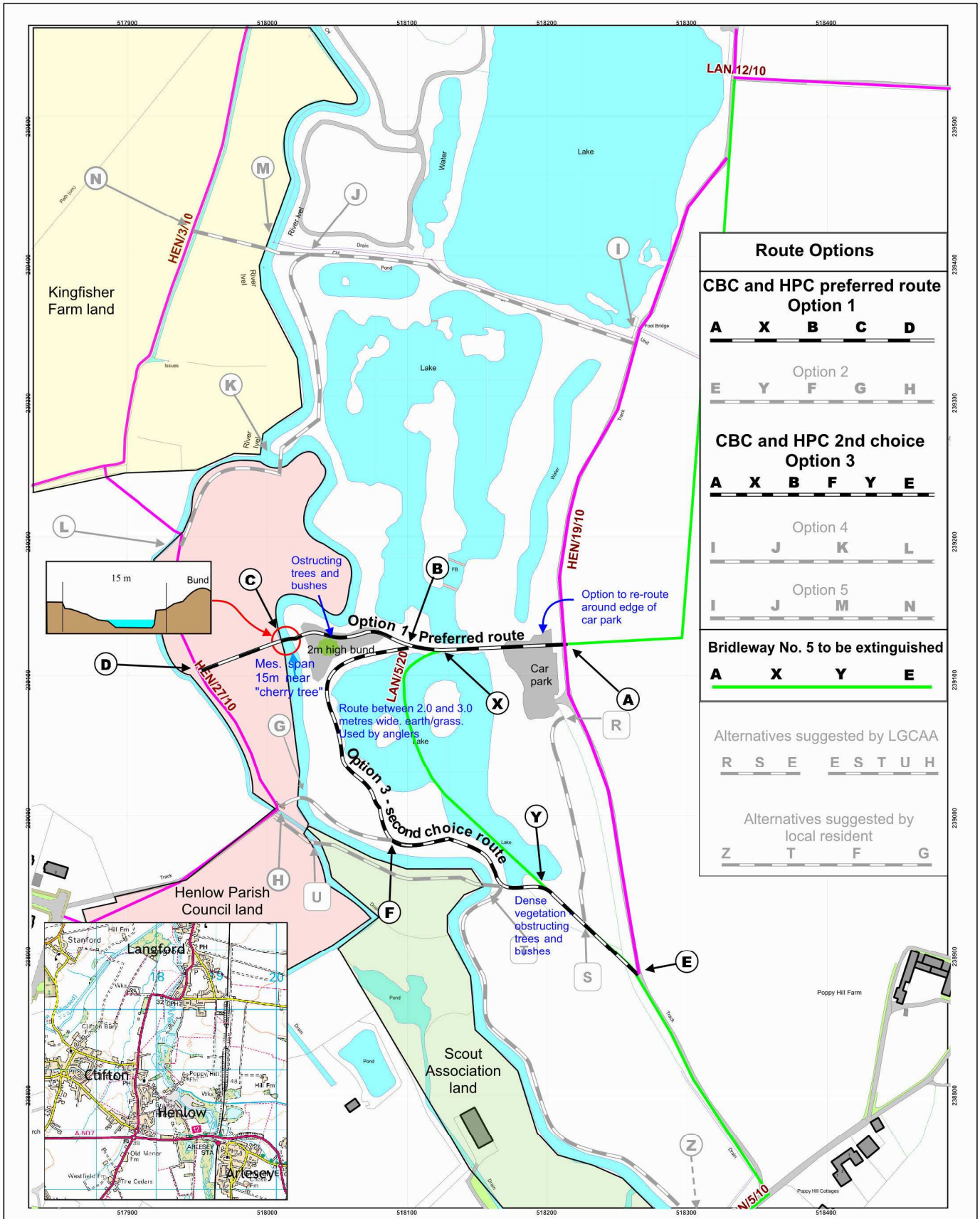
Options for Creating a Public Footpath over Poppyhill Lakes

First and second preferences of CBC and HPC- subject to survey



Central Bedfordshire Council
Technology House
239 Amphill Road
Bedford
MK42 9BD

Scale 1:2500



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Appendix A – Legal and Policy Implications

Legislation

- A.1. The Highways Act 1980 (“the 1980 Act”) empowers Central Bedfordshire Council to make legal orders to create, extinguish and divert public rights of way (footpaths, bridleways, and restricted byways) shown on the Definitive Map, which is the Council’s legal record of such rights. Sections 26 and 118 of the 1980 Act relate to the creation and extinguishment of such rights and are paraphrased respectively at Sections A11 and A5 below.
- A.2. The Development Management Committee under the Central Bedfordshire Council’s Constitution (E2 at Annex C) is the appropriate body to determine whether the Council, as highway authority, should make orders under the 1980 Act to create, divert, or extinguish a public right of way.
- A.3. It is the normal practice to move a public right of way by diverting it using Section 119 of the 1980 Act. However, Langford Bridleway No. 5 terminates at a footpath at points A and G making this legally a dead-end path for riders and cyclists. Consequently it is my opinion that a diversion could not meet the legislative tests of Section 119 and could not be diverted. In such situations it is possible to extinguish the existing paths and to create new alternatives.
- A.4. The legislative tests for creating and extinguishing public rights of way are detailed below. Essentially a path can only be extinguished if it is not needed for public use and a new path can only be created if there is a need for it. It is possible, however, to link a creation and extinguishment together so that an alternative route can be created to compensate for the route being extinguished.

Public Path Extinguishment Order

- A.5. Section 118 of the 1980 Act enables the Highway Authority to extinguish public footpaths, bridleways, and restricted byways and is detailed below:
- (1) *Where it appears to a council as respects a footpath, bridleway, or restricted byway in their area... ..that it is expedient that the path or way should be stopped up on the ground that it is no longer needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, extinguish the public right of way over the path or way...*
 - (2) *The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such*

an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient to do so having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way...

(3) - (4) (omitted)

(5) *Where... ..proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a... public path diversion order... then, in considering-*

(a) *under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use; or*

(b) *under subsection (2) above to what extent (if any) that the path or way would apart from the order be likely to be used by the public;*

the council or secretary of state, as the case may be, may have regard to the extent to which the... .. public path diversion order... ..would provide an alternative path or way.

(6) *For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of the path or way by the public shall be disregarded.*

A.6. Langford Bridleway No. 5 currently runs from its junction with Footpath Nos. 12 and 19 (point B on the plan at Appendix 1) due south for a short distance along the Haul Road before crossing an arable field to a drain on the boundary between the parishes of Langford and Henlow (point Y). The bridleway continues over the drain in a southwards direction across a second arable field before turning due west at point Y to cross the Haul Road at point E. West of the Haul Road the legal line of the bridleway heads westwards before turning south-south-eastwards through the southernmost fishing lake belonging to the Letchworth Garden City Angling Association Ltd ("the LGCAA") before rejoining the Haul Road at point F to then follow this to its junction with Henlow Footpath No. 19 at the Poppy Hill river bridge where the bridleway terminates.

A.7. The bridleway has been obstructed by the fishing lake since its formation in c.1950- 1951 and by numerous trees within the

adjoining plantation. The bridleway is also obstructed by a number of structures on the LGCAA land as well as by the drain at point Y which does not have a bridge or culvert. With the exception of the lake, these obstructions can be considered temporary and must be disregarded under Section 118(6) of the 1980 Act. It is arguable that the fishing lake could also be considered temporary feature in that it is small enough to be drained and infilled if the right consents and approval were granted.

- A.8. The numerous representations made against previous orders to either delete the bridleway or divert it on to the Haul Road indicate that, were it open and available for public use, it would be used. The representations also demonstrate the local residents' desire for public access through the lakes area. This could be perceived as a need, not necessarily for a direct route between Langford and Henlow, but for a local route to enjoy the local County Wildlife Site. Based upon these representations, it is my opinion that the Council could not make an order solely to extinguish Bridleway No. 5, nor could it confirm it as an unopposed order on the ground that the bridleway would not be used in the future if it were possible to do so.
- A.9. It is possible, however, to make a concurrent extinguishment and creation order where the needs of the users are accommodated by the alternative path to be created. In my opinion, an order extinguishing the bridleway could be made and confirmed if considered concurrently with an order creating both an alternative bridleway along the Haul Road, and a new footpath between the southernmost two lakes linking to the Millennium Field.
- A.10. In my opinion it would be expedient for the Council to make such an extinguishment order as it would remove the fishing lake, which forms part of a County Wildlife Site from the threat of infilling or draining as a means of opening up the bridleway through its middle. The extinguishment of the bridleway would therefore have a significant beneficial effect on the land held by the LGCAA.

Public Path Creation Order

- A.11. Section 26 of the Highways Act 1980 enables the Highway Authority to create public footpaths, bridleways and restricted byways and is detailed below:

(1) Where it appears to a local authority that there is a need for a footpath, bridleway or restricted byway over land in their area and they are satisfied that, having regard to-

- (a) The extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and*

(b) The effect that the creation of the path or way would have on the rights of persons interested in the land...

It is expedient that the path or way should be created, the authority may by order made by them... ..create a footpath, bridleway or restricted byway over the land, account being taken of the provisions o as to compensation contained in Section 28 below...

(2) - (3A) (omitted)

(4) A right of way created by a public path creation order may be either unconditional or subject to such limitations and conditions as specified in the order.

(5) - (6) (omitted)

- A.12. Henlow Bridleway No. 5 connects only to public footpaths at both its northern and southern ends and consequently cannot be legally accessed by equestrians and cyclists. However, it can legally be used by pedestrians – even if it is physically impassable due to the obstructions along it.
- A.13. The Haul Road has been identified in the local parish Green Infrastructure Plans as a regional cycling route. This view is reinforced by its inclusion in the 2008 Mid-Beds Green Infrastructure Plan. Even though the Haul Road is designated as footpath for most of its length, it currently enjoys a degree of informal cycle and equestrian use. The Haul Road has also been identified as a “Safe Route to School” as it avoids the A6001 and would provide an almost traffic free route to Henlow Middle School.
- A.14. The land over which the new bridleway would pass is either surfaced or unsurfaced access track which already has a public footpath; or arable field-edge (between points D-E). Consequently the majority of the route of the new bridleway would see little change beyond surfacing improvements and impact would be generally minimal. The section of arable field between points D-E is subject to periodic standing water and so drainage and surfacing improvements would not significantly detract from agricultural productivity once the existing bridleway between points Y-Z-E had been extinguished.
- A.15. The proposed bridleway along the Haul Road between points A-B and C-D-E-F, in conjunction with the proposed bridleway along Poppy Hill Road between points G-H and thence on to Church Road at point I will provide a sustainable transport link between Langford and Henlow and will add to the enjoyment and convenience of a substantial section of the public and to the convenience of local residents, especially pupils of the Middle School. Consequently it is my opinion that the Council could make and confirm an order to create the above sections of bridleway over the existing public

footpaths.

- A.16. The creation of the new bridleway would greatly facilitate cycling between Langford and Henlow. However, the bridleway along the Haul Road exists within an arable environment and does not have any views comparable to those available from the existing line of Bridleway No. 5 through the lakes area. Case law, and specifically *Regina v Surrey County Council ex parte Send Parish Council* set out below, and recent Counsel's opinion, also described below, indicate that the Council needs to provide the public with a route that passes through the lakes area.
- A.17. As stated, Bridleway No. 5 is not legally accessible to equestrians and cyclists as it is landlocked. The representations made by local residents and Henlow Parish Council have all related to the availability of a pedestrian route through the lakes areas. The Council has considered both these factors in deciding that it is appropriate to create a public footpath rather than a public bridleway through the lakes area.
- A.18. The proposed footpath has a junction with the proposed new bridleway on Haul Road at point M and would head in a west-south-westwards direction around the northern side of the LGCAA car park to then pass along the causeway between the two fishing lakes before climbing onto the riverside bund and crossing the River Ivel by means of a new footbridge onto the Millennium Field. The footpath would then continue westwards across the Millennium Field, which is public access land owned by the Parish Council, to terminate at its junction with Henlow Footpath No. 26.
- A.19. On the east side of the River Ivel the proposed footpath only affects LGCAA land. The LGCAA has made numerous representations to the effect that the new footpath would damage the fishing - and thus the business interests of the club, and the lakes' environment. The various grounds are detailed and addressed in the main report. The LGCAA's representations all ignore the fact that a public right of way already exists within the locality of the southernmost fishing lake. When this fact is taken into account - assuming that the bridleway not obstructed, the various grounds are significantly diminished. The creation of the new footpath would affect the running of the fishing club - but how much more this effect would be than if the bridleway were opened on its legal line is unclear.
- A.20. The new footpath would provide a number of short circular routes out of both Henlow and Langford and would give local residents a usable public right of way through the lakes area fished by the LGCAA as a replacement for the bridleway to be extinguished. Consequently, it is my opinion that the Council could make and confirm an order to create the new footpath between the Haul Road and the Millennium Field.

Case law

- A.21. The legislation contained within the 1980 Act has been the subject to scrutiny and debate within the Courts, with several judgments pertinent to this report being handed down.
- A.22. The case of *R v Lake District Special Planning Board ex parte Bernstein* [1983] addressed the diversion of a footpath onto an existing route used by the public. Hodgson J. held that such a diversion was in effect an extinguishment but without recourse to the section of the act which should be used for that purpose. The diversion of the bridleway onto the Haul Road would effectively extinguish the public footpath which currently runs over the Haul Road by subsuming it within the new bridleway with provision of an alternative pedestrian route. Furthermore, as either end of the bridleway terminates on a footpath this can, in my opinion, be considered legally a dead-end for equestrian and cyclists and thus the termination points could not be moved by a diversion order. Consequently the Council has resorted to moving the bridleway by means of concurrent creation and extinguishment orders.
- A.23. The case of *Hertfordshire County Council, R (on the application of) v Department of Environment Food & Rural Affairs* [2005] EWHC 2363 (Admin) addressed the use of concurrent extinguishments and creations to effect a diversion. Sullivan J. stated that Section 118 of the Highways Act 1980 was to be used to extinguish paths that were no longer needed and that Section 119 was to be used to extinguish paths that were needed but on a different alignment and that, accordingly, Sections 26 and 118 of the 1980 Act should not be combined to effect a diversion. Sullivan J. did recognise, however, that some paths which did not start on a highway *could* be moved by means of Sections 26 and 118 as the new path was not a direct replacement for the extinguished path. Moreover, the new section of bridleway is more than a direct replacement as it covers a greater length to connect up with public highway at either end. The current proposal moves a bridleway which terminates at a footpath at either end and therefore is only legally available to pedestrians. In my opinion, greater consideration should therefore be given to the effect of the proposal on pedestrians, rather than to equestrians and cyclists.
- A.24. The case of *Regina v Surrey County Council ex parte Send Parish Council* QBD [1979] addressed the case use of a path being effectively diverted in order for the local County Council to avoid taking enforcement action against land owners who had obstructed the original line of the path. The local Parish Council had applied under the predecessor of Section 130 of the 1980 Act for the local Highway Authority in that case to act. The court heard arguments as to whether a diversion rather than enforcement constituted 'proper proceedings' for the purposes of what is now Section 130(6) of the 1980 Act. The court held that the word 'proper' allowed for discretion

by the highway authority as long as its actions accorded with the policies and objectives of the Act. Geoffrey Lane LJ held that the Highway Authority should "...promote the interests of those who enjoy the highway or should be enjoying the right of way..." and should not act in the interests of the land owners against the users.

- A.25. The case of *Associated Provincial Picture Houses v Wednesbury Corporation* [1947] 1 KB 223 set down the legal precedent for what is known as "Wednesbury unreasonableness". In the case, Lord Greene MR stated that "...It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority...."
- A.26. In the context of the current proposal, it is my opinion that the Council has considered what is required to be considered – the effects of the proposal on the users, on those with a legal interest in the land, and on the environment in light of the legislation. The Council, in complying with its duties under the 1980 Act, as directed by case law and restricted by the geography of the site, are not, in my opinion, acting in a manner that could be seen to be "Wednesbury unreasonable".
- A.27. The Council can only act in accordance with those powers given to it by Act of Parliament, and by Statutory Instrument or Regulation. Any action beyond the scope of such powers is termed "ultra vires" and is unlawful. The Council has the power to carry out proposal under the legislation contained within the 1980 Act.
- A.28. The LGCAA submitted an application for a second Definitive Map Modification Order to delete that part of Bridleway No. 5 through the lakes area in January 2007. The LGCAA adduced some additional maps and aerial photographs in support of the application. Having taken legal advice on the matter, the former County Council's Rights of Way Team Leader wrote to the agent for the LGCAA in July 2007 stating "...the new evidence so far submitted is insufficient to re-consider the case and that there has not been an 'event' as required under s.53(3)(c) of the Wildlife and Countryside Act 1981. Unless further evidence is submitted which causes me to change my view, I shall recommend to the Council's Control Management that as no 'event' has occurred the application should be refused... ..As it is

our policy to determine these applications in strict chronological order of receipt, it will be some months before we are in a position to put the matter to committee...”.

- A.29. Unfortunately, this application was never put before the committee and the former County Council was wound up in March 2009. Due to an oversight, the case has only recently come to light as being a “live” application. As no new evidence has been submitted since 2007, it is my opinion that the former Council’s intention to refuse the application is still valid and should be carried out by being put before the Development Management Committee for formal refusal of this application later in the year.

Counsel’s Opinion

- A.30. The Council has sought independent legal opinion on the issues to hand and has been advised that any extinguishment of the Bridleway No. 5 through the lakes area would need to be compensated by the creation of additional public pedestrian access through the lakes area. This is because pedestrians currently have a right to walk either through the lakes area or along the Haul Road along either Bridleway No. 5 or Footpath No. 25 respectively. Equestrians, by contrast, theoretically only have one right of access which would be moved onto the Haul Road. This access is theoretical as only pedestrians can legally access the bridleway and thus should be given greater consideration.
- A.31. The legal opinion consequently states that the proposed creation of the bridleway along the Haul Road as the sole compensation for the bridleway to be extinguished would fail to meet the legislative tests as it would not be in the interests of pedestrian users. The *Send* case referred to above considered whether a Council’s actions in resolving an obstruction constituted “proper proceedings”. The court held that the Council did have discretion, but this was limited in that it had to promote the interests of the users and rather than those of the land owners.
- A.32. The re-routing of the public right of way out of the lake, rather than infilling, is in the interests of the public as representations indicate that they wish to enjoy the lake’s views and environs – however, any re-routing should not be a disbenefit to pedestrians. A new footpath through the lakes area - ideally as a loop around the lake allowing views over the lake’s areas, would thus provide an alternative right of way to the bridleway which only walkers can currently legitimately access. The second choice option of a footpath around the lake western side of the lake to connect to the Haul Road at either end would fulfil this role.
- A.33. The current proposal does not provide a direct alternative to the bridleway as it does not form a loop, but instead forms a link to a parallel footpath by means of a river bridge - thus providing

members of the public with enhanced network connectivity. The main protagonists involved in trying to gain useable public access through the lakes area are satisfied by the recommended footpath and bridge.

- A.34. Counsel's opinion also supports the making of concurrent creation and extinguishment orders, rather than a diversion order, to move the bridleway out of the lake onto the existing footpaths as this probably would not be affected by the *Hertfordshire* ruling.
- A.35. The LGCAA has sought its own independent Queen's Counsel's opinion which has been divulged to the Council. The main points identified by QC are as follows:
- (a) That the creation of the bridleway along the Haul Road is a satisfactory replacement for the bridleway through the lake for all classes of user (walkers, cyclists and equestrians).
 - (b) As the new bridleway would resolve the obstruction issue, the creation of the new footpath is a completely separate issue.
 - (c) Any compulsory creation under Section 26 of the 1980 Act must "have regard to the effect which the creation of the path or way would have on the rights of persons interested in the land".
 - (d) The Council have conflated the public's need for a new path with the resolution of the obstruction. Either the Haul Road will provide a satisfactory alternative to Bridleway No. 5 or it will not; the provision of a new footpath will not make the Haul Road any more satisfactory.
 - (e) The *Send* judgment has two relevant points: that the Council's primary duty is to restore an obstructed highway; and that the Council has a duty to act to restore a highway on the representations of a Parish Council – but that the Parish Council cannot dictate how the Council discharges its duty.
- A.36. (f) The *Send* judgment supports the view that the interests of the users comes before the interests of the land owners in the matter of resolving an obstruction. However, under Section 26 the Council has a duty to consider the effects on the owners of the land.
- A.37. These points have been addressed by the text above and within the main report.

Supplementary Requirements of the Highways Act 1980

- A.38. The Council and Secretary of State have a duty under Section 26(3A) of the 1980 Act to consider any material provisions contained within a Rights of Way Improvement Plan when determining whether

or not to confirm a creation, diversion, or extinguishment order. The Council's Outdoor Access Improvement Plan is currently being redrafted.

- A.39. Section 29 of the 1980 Act imposes a duty on the County Council to have regard to the needs of agriculture and forestry, and the desirability of conserving flora, fauna and geological and physiographical features when determining whether to make and confirm creation, extinguishment and diversion orders.
- A.40. The effect of the extinguishment is to preserve the LGCAA fishing lake by removing any threat to it from infilling in order to facilitate passage along the legal line of the existing bridleway. The extinguishment of the bridleway would therefore preserve not only the physiographical feature but would also preserve the lacustrine environment, the flora and fauna of which are part of a County Wildlife Site. The extinguishment of the current bridleway would also remove the duty of the adjoining farmer to reinstate the line of the bridleway across their arable field and to prevent it being obstructed by crops.
- A.41. The creation of some of the new sections of bridleway will lie on surfaced footpaths fenced out of neighbouring fields and therefore would have a negligible impact the needs of agriculture and forestry, and the desirability of conserving flora, fauna and geological and physiographical features. Some sections of the new bridleway would be created over, or immediately adjacent to, the overgrown sections of the Haul Road however. This would require some degree of brush clearance and the removal or cutting back of a limited number of hawthorn, elder, willow and blackthorn.
- A.42. The creation of the footpath would pass next to the LGCAA car park and then along the causeway between two fishing lakes and then over an area of bunded earth before crossing the River Ivel by means of a new river bridge. The footpath then crosses an open area of grassland. For about half its distance, the footpath would follow existing tracks over on LGCAA land. The new footpath would pass through a cutting in the earth bund and weave between existing trees to minimise the impact on vegetation. The bridge would have a comparatively small footprint on LGCAA land and, where a significant earth ramp is required on the Millennium Field this would be over an area of mown grass with limited ecological impact. The bridge is not envisaged to impact detrimentally on the lacustrine, riparian or fluvial environments.

Compensation Issues

- A.43. Section 28 of the 1980 Act gives any person with a legal interest in land affected by a Public Path Order the right to claim compensation from the Council, as Highway Authority. Compensation is payable where the value of interest of a person in the land is depreciated, or that the person has suffered damage as a consequence of being

disturbed in his enjoyment of the land as a consequence of the coming into operation of a Public Path Creation Order. An interest in the land includes any sporting rights.

- A.44. The LGCAA has stated that it intends to seek maximum compensation for any public rights of way created over its land, which also includes part of the Haul Road, and would claim compensation on, amongst other things, the following grounds:
1. the diminution of the value of the land,
 2. the permanent loss of income from the operation of the site (consequent upon the loss of 11 (21%) of the swims currently available),
 3. the permanent adverse effect on the economic activity of the club,
 4. the cost of the provision of secure fencing on either side of the footpath to prevent trespass and secure the lake areas,
 5. the need to provide replacement secure car parking,
 6. the increased costs of operation of the site owing to its bisection by a public footpath.
- A.45. The value of any compensation has to be weighed against any benefit to those with an interest in the land which results from the extinguishment of any pre-existing public right. In this case, the extinguishment of Bridleway No. 5 which currently passes through the LGCAA car park and across the southern fishing lake – which is an essential part of the organisation's raison d'être.
- A.46. Broadly, the value of any compensation can be calculated from the difference in area of the existing and proposed paths multiplied by the relevant value of the land. This though is complicated by the intrinsic value placed upon any potential disturbance of the owner's enjoyment in the land.
- A.47. At the time of writing (February 2012) only one other land owner, Mrs. Claire Parrish, has mentioned compensation. Mrs. Parrish has agreed to the Council replanting her boundary hedge to improve security in lieu of any direct monetary payment.
- A.48. The Council has commissioned an external company, Bidwells LLP, to undertake an independent valuation of the likely levels of compensation payable to all the parties affected by this proposal. At the time of writing (February 2012) Bidwells have yet to submit a formal valuation for the likely levels of compensation. However, based on recent compensation claims elsewhere, it is my opinion that the levels of compensation payable to other landowners on the west side of the river are likely to be minimal due to the surfacing and width of the existing footpath to be subsumed within the new

bridleway.

Rights of Way Policies

- A.49. Langford Bridleway No. 5 is recorded in the Council's anomalies database. This database lists all the issues affecting the public rights of way network. The Council seeks to resolve anomalies at its own cost to enhance and effectively manage and maintain the network. The work involved in making Bridleway No. 5 usable by those users legally entitled to use it therefore within the aims of the Council's Anomalies Policy which is currently being drafted.
- A.50. The Outdoor Access Improvement Plan 2006-11 is the Council's adopted policy on public rights of way. The plan, which is now in the process of being redrafted identified the parishes of Henlow and Langford as "Priority 1 improvement areas". The creation of the new bridleway and footpath will improve network connectivity between and within these parishes.
- A.51. The Countryside Access Team's draft Applications Policy specifies that new or diverted footpath should have a minimum width of 2.0 metres and a new bridleway should have a minimum width of 4.0 metres. For council-generated schemes, such as the current proposal, this minimum can be reduced where necessary to secure agreement.

CBC Planning Policy

- A.52. The construction of a significant structure over and adjoining the River Ivel is likely to cause concern for local residents. As a unitary authority Central Bedfordshire Council is both the Highway Authority and the Planning Authority. In such cases where bridges are constructed on the public highway it is generally accepted (as reported in "*Halsbury's Laws of England*") that planning consent can be deemed to have been granted. Consequently there is no additional requirement to consult on and submit a planning application for the construction of a footbridge over the River Ivel if on a public highway.
- A.53. If the new bridge is to be constructed prior to the footpath creation order coming into operation, then there is a possibility that planning permission may be required. Consultations with the Planning Team have not identified any issues which would affect the granting of consent for the proposed bridge.

CBC Minerals & Waste Policy

- A.54. The Combined Minerals and Waste Core Strategy is due to be submitted to the Secretary of State in mid-2012. Previously the Waste Site Allocations Plan Issues & Options Consultation Paper II set out a portfolio of potential new sites for waste facilities nominated

by waste operators and landowners. This underwent public consultation from 1st October to 30th November 2007. Following this paper, a further eight waste sites were put forward for possible inclusion within the Minerals & Waste Local Development Framework which led to additional public consultation from between 28th April and 2nd June 2008. Significant representations were received against landfill at Poppy Hill Lakes leading to the site not being adopted.

- A.55. The flooded sites of mineral extraction at Poppy Hill no longer have mineral extraction permission. This ceased to be/have effect back in c.1996 when the former County Council consulted on a number of sites to be considered as “Allocated Sites”. The Poppy Hill site was not allocated. However, the old mineral extraction permission had a separate clause for restoration which continues to be in force to-date, even though extraction permission has lapsed. This was to facilitate restoration by subsequent owners should the original extraction company disappear. However, Central Bedfordshire Council’s Minerals & Waste Team considers that the lakes site has already been “restored” to fishing lake status – rather than being infilled and brought back to arable use. Consequently the Council, as the Planning Authority, do not intend to take any action to enforce the original restoration conditions.
- A.56. Any further reinstatement (infilling) based on the old permissions could only utilise the existing spoil/overburden which is currently banded within the site’s boundaries. Any need to provide additional infill to provide a suitable level of land for use as a public highway would have to be subject to a new landfill licence application – which is, in itself, very costly and would be opposed locally.

Environmental policies

- A.57. The southernmost lakes at Poppy Hill form part of a local County Wildlife Site (“CWS”). Whilst CWS status does not offer any statutory protection for the site or right of access, however for any significant change of land use the Council, as Planning Authority, would expect the wildlife interest to be taken into account alongside other normal planning considerations.
- A.58. The Haul Road is identified as a “proposed national cycle route” within Mid-Beds Green Infrastructure Plan 2008. The route is also identified as a “strategic Footpath – the Kingfisher Way”.
- A.59. Central Bedfordshire Council’s policy document entitled “More People Cycling: A Strategy for Central Bedfordshire - May 2010” identifies a number of national indicators which this proposal would contribute to. These include: NI 175 - Access to services and facilities by public transport, walking and cycling; NI 198 - Children travelling to school – mode of travel usually used. The Strategy also includes the following local indicators: Increasing the number of

people cycling; Improving the quality of the cycling environment; and Improving the safety and perceived safety of cycling. The new bridleway will be surfaced where needed to provide a cycle route between Langford and Henlow Middle School enabling local residents to travel an almost vehicle-free route between the two villages.

- A.60. The Haul Road between Langford and Henlow is also identified as a “Regional Route” within Central Bedfordshire Council’s Strategic Cycle Network and has previously been identified as the preferred route for part of Sustrans’ Great North Cycle Route No. 12.
- A.61. The proposal also links in to the cycling indicators within Central Bedfordshire Council’s Local Transport Plan – specifically: Travel to work modal split - Increase the percentage of people regularly cycling to work across Central Bedfordshire; Children cycling to school - Increase the percentage of children regularly cycling to school across Central Bedfordshire; Accessibility of the Rights of Way Network - Increase the percentage of the Rights of Way Network which is easy to use; and Completeness of the Cycle Network - Increase the percentage of the identified network of cycle routes which are in place.

Environment Agency and Internal Drainage Board Considerations

- A.62. The Environment Agency has statutory powers to protect major watercourses and to prevent obstructions on them. As such the Council must obtain consent from the Agency before any works affecting the River Ivel. Central Bedfordshire Council has obtained an approval in principal from the Agency for the proposed river bridge. Any formal consent will only be granted after finalised plans of the proposed bridge and any connecting ramps or structures have been submitted. Such plans would be drawn up by the company chosen to construct the bridge.
- A.63. The Bedfordshire and River Ivel Internal Drainage Board (“IDB”) also have a statutory responsibility for maintaining and protecting lesser water courses within its area, which includes the floodplain of the River Ivel. Consent for any structure affecting a watercourse is required within an IDB controlled area. The replacement of the existing pedestrian footbridge with a culvert suitable for equestrian/cycle use at point D requires consent – which has already been granted by the IDB.

Parish Council policies

- A.64. The Langford Parish Green Infrastructure Plan identifies a number of key GI improvements. These include: upgrading the bridleway to cycleway – to provide access from Common Road to Henlow School and on to Arlesey station (which is identified as a “Community Priority”); and creating a circular walk incorporating the river

(although the actual route is not specified).

- A.65. The Henlow Parish Green Infrastructure Plan identifies a number of key GI improvements. These include: creating a riverside footpath at the southern end of Poppy Hill Lakes; providing a footbridge over the River Ivel to link the Millennium Meadows to Poppy Hill Lakes; providing public access within the Poppy Hill Lakes area; and creating a new section of the Great North Cycleway by upgrading footpaths to bridleway where needed. Two of these proposals are within the parish's top eight priority aspirations.

Human Rights Act 1998

- A.66. Section 6 of the Human Rights Act 1998 states it is unlawful of the Council to act in a way which is incompatible with a Convention right unless, as the result of one or more provisions of primary legislation, the authority could not have acted differently; or in the case of one or more provisions of primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.
- A.67. Currently the public have a right of way through the aforementioned fishing lake. The moving of this bridleway onto the nearby Haul Road, which is already occupied by a public footpath, would deprive the public of a scenic route they are currently entitled to use. The 1980 Act requires the Council, as Highway Authority, to assert and protect this right. Independent legal advice indicates that not providing a public right of way through the lakes area owned by the LGCAA would be in breach of this statutory duty. Consequently the Council cannot act any differently to what it is proposing to do – which is to provide public access over land owned by the LGCAA. The Council does have discretion about how it provides this access and has looked at a number of options and has chosen the one it considers best meets the needs of the public with the least impact on the land owners.
- A.68. Elsewhere the proposals seek to create new public bridleway rights over existing public footpaths. These routes are already being informally by members of the public as bridleways and the affected landowners (with the exception of the LGCAA and Mr. & Mrs. Chennells) have all consented to the proposals.
- A.69. Individuals and businesses have a right to privacy and security under Article 8 of the Human Rights Act 1988. The proposals will impact on the privacy and security of the LGCAA by asserting the public's right to use an alternative route to the existing public right of way. The infringement caused by the new rights of way has to be balanced, however, by the impact on the LGCAA caused by the Council enforcing the existing legal line of Bridleway No. 5 through the southernmost fishing lake. The perceived disturbance to the

anglers by members of the public using the new right of way must thus be weighed against the potential removal of its fishing lake to allow members of the public to use the existing legal line of the bridleway.

- A.70. The proposals seek to create new and alternative public rights of way to the ones currently in existence. The new routes will have improved surfacing and all structures will be Equalities Act 2010 legislation compliant to facilitate use by mobility impaired users.

Appendix B – Rights of Way Background

- B1. In 1949 the former Bedfordshire County Council became obliged to produce a map of public rights of way under the National Parks and Access to the Countryside Act 1949. The former County Council asked each parish/town council to survey their area between 1952-3.
- B2. In 1952 Langford Parish Council recorded Bridleway No. 5 as running from point B on the plan at Appendix 1 southwards along a “cart road” to point Z before being diverted off westwards in a loop to rejoin the track further to the south close to point G. The diversion appears to have been because the original route was "missing" according to the comments on the survey map which was out of date and did not show any of the quarries or lakes which would have been present at the time of the parish survey. The westwards loop of the bridleway passes through the southernmost fishing lake owned by the Letchworth Garden City Angling Association (“the LGCAA”) as shown on the map at Appendix 1.
- B3. The parish maps were collated and the information published on a Draft Map of Public Rights of Way in 1953. The bridleway was shown on the Modified Draft Map and Provisional Map stages. The 1964 Definitive Map of Public Rights of Way depicted the bridleway as still running through marshland (no quarries or lakes were recorded on the base map even at this time).
- B4. It may not have been until after newer maps of Bedfordshire were produced in c.1975 that the Council realised that the legal line of the bridleway ran through the southernmost lake. This anomaly in the public rights of way network became obvious when the paths were digitised in the early 1990s prior to the first consolidation of the Biggleswade area of the Definitive Map in 1997.
- B5. The northern end of Bridleway No. 5 at point B has never connected to Common Road in Langford and was legally a dead-end with no public right onwards travel until Footpath No. 12 was added to the Definitive Map in 1995. This footpath headed eastwards towards the nearby railway line.
- B6. The southern end of the bridleway currently terminates at the bridge over the River Ivel where it connects with Henlow Footpath No. 19. Consequently the bridleway is “landlocked” for equestrians and cyclists who cannot legally access it from either the north (Langford) or the south (Henlow) as the only connections are via public footpaths which only permit use by pedestrians.

- B7. Due to the presence of the bridleway through the lake, and the later restrictions on public access, the former County Council has had to deal with multiple concurrent applications to either move the bridleway or claim further public access past the fishing lakes. The following paragraphs give details of the last five applications relating to public rights of way in the Poppy Hill lakes area and to mediation talks aimed at resolving the issue of the obstructed bridleway.
- (a) In 1996 the former County Council received an application from the LGCAA to divert the bridleway under the Highways Act 1980 onto the Haul Road. The ensuing public path diversion order was objected to by local residents and Henlow Parish Council. In June 2000 the order was not confirmed by the Inspector after a public inquiry. The Inspector found that the Haul Road would not as an enjoyable a route as the existing line of the bridleway – were it available for public use. The Haul Road is a track running immediately to the east of the lakes which was the access route for the quarry lorries.
 - (b) In September 1999 the former County Council received an application under the Wildlife and Countryside Act 1981 (the 1981 Act) from a local resident to add a claimed public footpath around the western side of the southernmost fishing lake and along the eastern river bank through the nearby conifer plantation. The definitive map modification order was objected to by the LGCAA and a second public inquiry ensued in November 2001. The order to add the claimed footpath was not confirmed by an Inspector as she found that the claimed route had not been accessible and thus could not have been used by the public. This resulted in the former County Council paying some £16,000 in costs to the LGCAA.
 - (c) In January 2001 the former County Council received an application under the 1981 Act from the LGCAA to delete the bridleway through the lake on the ground that it was recorded incorrectly on the Definitive Map. A parallel application sought to add the bridleway on what was claimed to be its correct line along the Haul Road. The ensuing definitive map modification order was objected to by Henlow Parish Council and some local residents causing a third public inquiry to be held in August 2003. The Inspector determined from the evidence at hand that the bridleway did indeed exist through the lake and so did not confirm the deletion order.

- (d) In February 2003 the former County Council received an application under the 1981 Act from a local resident to add a claimed public footpath along the Haul Road between Common Road, Langford and the River Ivel bridge in Henlow. The former County Council refused to make an order but was subsequently directed to make one in October 2004 after the applicant appealed to the Secretary of State for Environment, Food, and Rural Affairs. The definitive map modification order was objected to by the LGCAA. However, in July 2008 the LGCAA agreed to withdraw its objection if the former County Council agreed to pursue the removal of the bridleway from the fishing lake.
 - (e) In January 2007 the former County Council received another application from the LGCAA under the 1981 Act to delete the bridleway through the lake on the ground that it was recorded incorrectly on the Definitive Map; no provision was made to record it on an alternative line. The former County Council's Rights of Way Team Leader had written back to the LGCAA in July 2007 informing them that the evidence they had supplied to support their application did not count as new evidence and so their application would be refused. However, as the former County Council did not formally determine the application it still stands and therefore needs to be determined by Central Bedfordshire Council.
 - (f) In July 2007 the former County Council, LGCAA, Henlow Parish Council and some of the local residents who had played an active role in the previous orders agreed to independent mediation to find a solution. One was reached involving the acquisition of land by a third party. However, when this solution was put to parishioners at a meeting of Henlow Parish Council it was rejected. The offer of land was withdrawn and the mediation was deemed to have failed.
- B8. In October 2010 Henlow Parish Council served notice on Central Bedfordshire Council ("the Council") under Section 130(A) of the Highways Act 1980 requiring it to remove obstructions on the bridleway. These included: trees and vegetation, metal fencing, and the lake itself. The Council surveyed the route in preparation of taking enforcement action but did not carry this out due to the possibility of moving the bridleway onto the nearby Haul Road.
- B9. The period in which Henlow Parish Council can apply to the Magistrates' Court for a court order to compel the Council to remove the obstructions is now expired. Henlow Parish Council has stated that it will re-serve notice if it is not satisfied with the Council's progress with the proposal which is the subject of this report.

- B10. The LGCAA met with the Council's Minerals and Waste Team on 14th November 2011 to discuss infilling the fishing lake which obstructs Bridleway No. 5 with landfill material. Whilst the original 1947 planning consent for extraction is deemed to have lapsed, the requirement to reinstate remains active. However, it probably would be impossible to comply with this requirement as the original planning conditions required that reinstatement could only take place using the existing overburden banded around the site.
- B11. The LGCAA wrote to the Countryside Access Team in December 2011 stating that it intended to drain the lake to make the legal line of the bridleway available for public use and would remove any obstructions attributable to it on the line of the bridleway. The LGCAA requested that the Council take action to remove any vegetation or trees growing on the line of the bridleway. The Council responded to the LGCAA's letter, stating that it neither required, supported nor consented to the proposed drainage of the lake and required the LGCAA to obtain all the necessary consents and permissions prior to any works being undertaken. To date (February 2012) no lake draining has occurred.
- B12. In mid-February the Council instructed contractors to clear the legal line of the bridleway of any obstructing vegetation. The Council will also be requiring the LGCAA to remove any structures on the legal line of the bridleway.

Appendix C – Works and Finance

Works required

1. Between points A-B and C-D on the plan at Appendix 1 the new bridleway will lie on the old substrate of the Haul Road which has been overgrown with grass, brambles, and scrub. Between points D-E the new bridleway will be built onto what is currently boggy arable land. Between points E-F and G-H the new bridleway will run along the LGCAA's vehicular access track which ranges from tarmac to compacted aggregate. Between points H-I the new bridleway will run on compacted aggregate and then on tarmac through the grounds of Henlow Middle School.
2. The sections of the route between points A-B-C-D will be scraped back to reveal the original Haul Road substrate and this will have road planings rolled over it and "blinded" with granite dust. Between points D-E a new substrate will have to be laid, which may include drainage pipes, before the aggregate is rolled over it. The surfaced section of the bridleway will have a width of 3.0 metres, leaving the remainder as a natural surface. A similar treatment will be used for part of the section close to point I, although this will have a surfaced width of approximately 1.5 metres owing to the restricted width available.
3. The new bridleway will be kept as structure-free as possible. Gaps and a possibly a step-over bridle-gate will be installed halfway between points A-B and the current footbridge at point D will be replaced by a wide culvert. A gate may be installed at point I to prevent livestock escaping onto the adjacent Church Road and into the school's grounds. The gates at the entrance to the school are, the headmaster assures me, kept open. Were this situation to change in the future this issue would need to be addressed.
4. Between points M-N on the plan at Appendix 1 the new footpath will run over a new levelled surface through woodland before joining one of the anglers' main paths. The footpath will run along this track for approximately 90 metres before cutting up through an earth bund to the approach ramp to the river bridge. The useable width between points M-N will be approximately 2.0 metres adjacent to the anglers' car park and on the earth bund. Along the anglers' access track the full available width (approximately 3.0 metres) will be used where possible. Surfacing along the entire section M-N will be left as natural as possible. Between points N-O the remainder of the new footpath across the Millennium Field will be left as the mown grass.
5. The proposed bridge will have a span of approximately 17.5 metres with steel beams and wooden decking and parapets. On the western bank of the River Ivel the approach ramp will be a grassed earth bank whilst the eastern approach will be a short ramp onto the adjoining earth bund.

Financial Issues

6. The Council has a legal duty to assert and protect the rights of the public to enjoy a right of way. Currently the route of Langford Bridleway No. 5 is obstructed by a fishing lake and other minor obstructions. The cost of taking enforcement action against minor obstructions would be recoverable from the obstructers. However, the Council's view is that the costs of providing a bridging structure across the lake would have to be funded by the Council. This cost is estimated at close to £100,000 for a pontoon structure to provide pedestrian access along the legal line of the bridleway.
7. The advertising of legal orders is expected to cost, in total, around £900. Legal advice from Counsel and representation at a potential public inquiry is likely to cost in the region of £4000-5000 in total – of which some £1700 has already been spent on Counsel's opinion.
8. The estimated costs required to bring the routes of the new bridleway and footpath up to suitable standards, and for works relating to compensation, are detailed below:

	Works Element	Estimated Cost
(a)	Bridge initial costs including outline design and ground investigation	£8000
(b)	Surveying.	£500-1000
(c)	Tender advice and Outline Design Approval	£500
(d)	Detailed Design Approval	£1700
(e)	Clearance and surfacing along proposed bridleway A-E including new culvert to replace bridge	£15,000 – £20,000
(f)	Pothole repairs E-G	£1000
(g)	Pothole repairs G-H	£3000
(h)	Supply and installation of new furniture (gates/bollards) along proposed bridleway	£2000 - £3000
(i)	Re-hedging along proposed bridleway	£1600 - £2600
(j)	Clearance, structures and surfacing along proposed footpath	£2000 - 6000
(k)	Construction and installation of new bridge	£60,000
(l)	Advice for bridge approval	£500

(m)	Compensation/mitigation for damage occurring during works.	£2000
(n)	Compensatory fencing/gates on LGCAA land	£3000
(o)	Subtotal	£100,300 - £112,300
(p)	Contingency 10%	£10,030 – £11,230
(q)	Total for works	£110,330 – £123,530

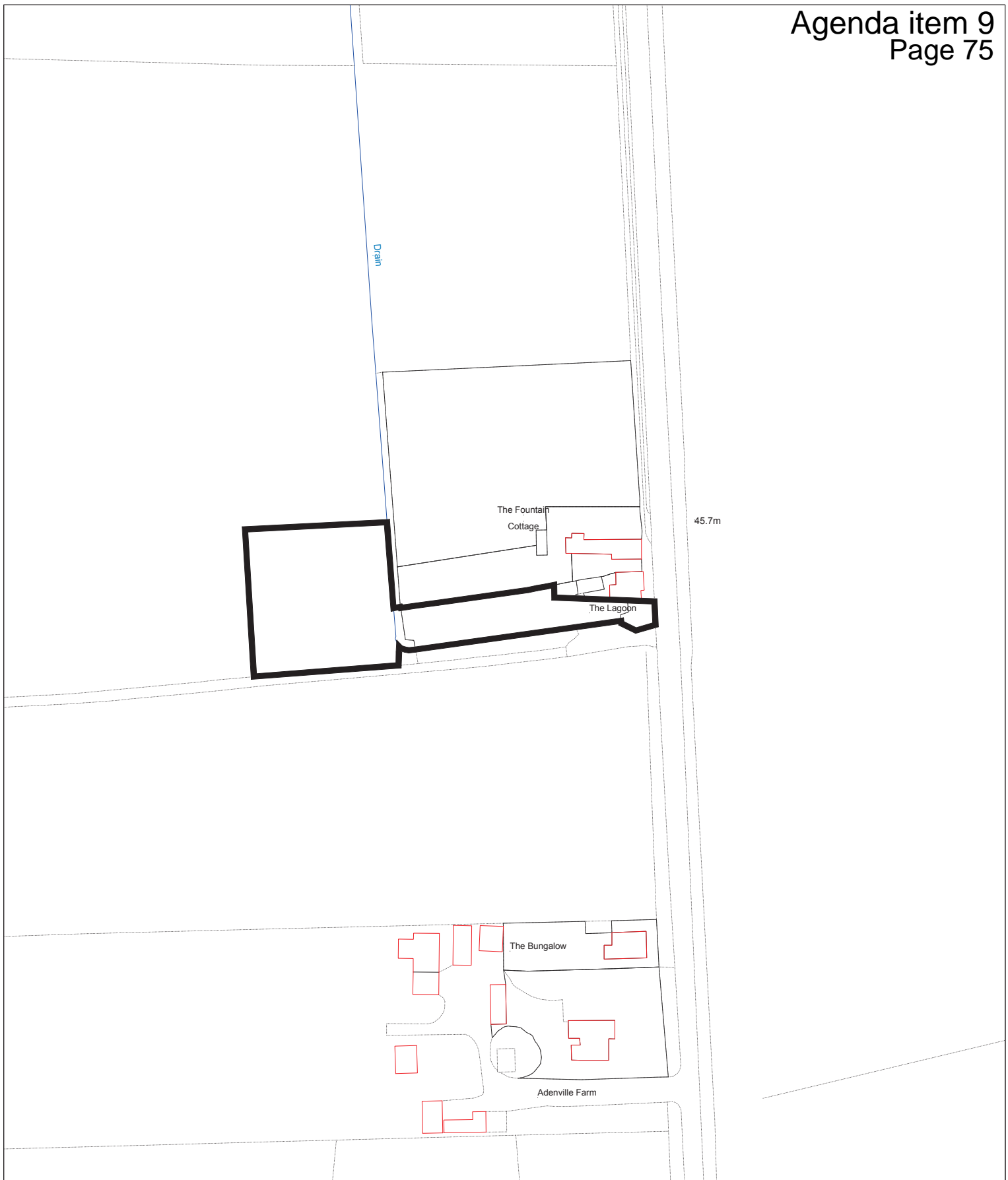
9. The Council has commissioned an external firm, Bidwells LLP, to undertake an independent valuation of the likely levels of compensation payable to all the parties affected by this proposal. At the time of writing (February 2012) Bidwells have yet to submit a formal valuation for the likely levels of compensation. However, based on recent compensation claims elsewhere, it is my opinion that the levels of compensation payable to other landowners on the west side of the river are likely to be minimal due to the surfacing and width of the existing footpath to be subsumed within the new bridleway.
10. Whilst potential compensation payable to the landowners is envisaged to be comparatively minor and in the region of £10,000, it is likely that any initial claim would be far higher necessitating independent valuation and arbitration costing in excess of £1500.
11. Overall, the total cost of the proposal is likely to be in the range of £114,000 - £127,000. Funding for the works will be provided from a number of sources. Internal sources will include: Section 106 levy, Capital programme funding and, existing Countryside Access Team budget. Contributions will be sought from external sources including Henlow Parish Council, P3 Groups, and independent Green Infrastructure funding.
12. Funding for the works will be provided from a number of internal and external sources. It is hoped that 50% of the costs will be found from external sources. The following figures are indicative only.

Central Bedfordshire Council funding will include:

- CBC Capital (from 2012/13 and 2013/14 Rights of Way and Countryside Sites £250k Health and Safety works allocation – or a separate capital bid) of £60,000
- CBC Rights of Way 2012/13 revenue budgets of £ 20,000

External sources to make up the shortfall will include:

- Section 106 funding
- Parish Council
- Local P3 groups



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	Date: 15:February:2012	
	Grid Reference: 519004, 234219	

Scale: 1:1700	Land to the Rear of 197, Hitchin Road, Arlesey
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Item No. 9

APPLICATION NUMBER	CB/11/03370/FULL
LOCATION PROPOSAL	Land To The Rear Of 197, Hitchin Road, Arlesey Retention of use of land as a residential caravan site for 6 Gypsy families, including hardstanding, utility blocks and landscaping
PARISH	Arlesey
WARD	Arlesey
WARD COUNCILLORS	Cllrs Dalgarno, Drinkwater & Wenham
CASE OFFICER	Vicki Davies
DATE REGISTERED	21 September 2011
EXPIRY DATE	16 November 2011
APPLICANT	Mr Rooney
AGENT	Philip Brown Associates
REASON FOR COMMITTEE TO DETERMINE RECOMMENDED DECISION	At the request of the Ward member, Cllr Mrs Drinkwater, due to the level of public interest
	Full Application - Granted

Site Location:

The application site is located approximately 250 metres beyond the southernmost settlement boundary of Arlesey and approximately 75 metres to the west of the East Coast mainline. The site is within the open countryside and sits to the rear of the applicant's property, 197 Hitchin Road and the neighbouring property, Fountain Cottage.

The application consists of two distinct parcels of land, the first being a narrow area of land to the south of the dwelling at 197 Hitchin Road which measures 70.4 metres long and 14.3m wide. The second parcel is a rectangular site measuring 53.9m by 42.6m. These measurements were taken on the ground by officers.

The Application & Background:

The application seeks consent for a caravan site of 6 pitches, to accommodate members of the applicant's family, in a total of 12 caravans. Each pitch would accommodate two caravans, one static and one touring. The consent would also allow the amenity blocks which currently have temporary consent to remain on the site. The amenity buildings measure 6m by 4m and are sectional in construction. The whole of the site is hard surfaced using block paving.

The application seeks to retain the existing number of caravans on the site in their current locations. The current planning permissions are temporary as set out below and this application seeks permanent consent. The application does not seek to increase the number of pitches or caravans on the site.

The application also seeks consent to extend the width of the rectangular part of the site to the north. The application made in 2009 showed the hard surfaced site measuring 45m by 42m. The application included a sewage treatment plant located

on the northern side of the site on land measuring 4.5m wide and 21m long. The hard surfaced area of the site was however extended over the whole of the approved site and the treatment plant has been installed outside of the boundary of the 2009 site. The current application site therefore seeks consent to extend the site to the north by 4.4m to incorporate the treatment plant and additional hard surfacing which has been undertaken.

Access to the site would be via the existing entrance to 197 Hitchin Road.

Temporary planning permission was granted on the narrow site south of the dwelling on appeal in September 2008 for 2 pitches with a maximum of 4 caravans, with no more than 2 static caravans. The temporary consent was granted for a period of three years to allow the Council to complete the site allocations DPD process. The consent expired in September 2011. The appeal decision is attached to the report for information.

Temporary consent was granted on the larger site to the rear in November 2009 for 4 pitches with a maximum of 8 caravans with no more than 4 static caravans. The temporary consent was granted for three years to allow time for the completion of the DPD. The consent will expire in November 2012. The planning application for the rear site set out that the existing two pitches on the narrow site would be relocated to the rear site. This did not take place and the site currently therefore accommodates 6 pitches, 12 caravans.

The application was put before the Development Management Committee on 9th November 2011. Members raised concern that the plans submitted with the application did not reflect the size of the site as it exists on the ground. To address this matter the case officer visited the site and took measurements of the developed as it exists on the ground. Revised plans have been submitted which now accurately reflect the size and arrangement of the area of the site to the rear of the dwelling. The revised plans were subject to reconsultation.

RELEVANT POLICIES:

National Policies (PPG & PPS)

PPS1: Delivering Sustainable Development

PPS3: Housing

PPS4: Planning for Sustainable Economic Growth

PPS7: Sustainable Development in Rural Areas

Circular 01/2006 - Planning for Gypsy and Traveller Sites

Draft Planning Policy Statement - Planning for Traveller Sites

Regional Spatial Strategy East of England Plan (May 2008)

SS1 Achieving Sustainable Development

H3 Provision for Gypsies and Travellers

ENV7 Quality in the Built Environment

Bedfordshire Structure Plan 2011

No relevant policies

Central Bedfordshire Council (North Area) Core Strategy and Development Management Policies 2009

CS1 Settlement Hierarchy
CS14 High Quality Development
DM3 High Quality Development
DM4 Development Within and Beyond Settlement Envelopes.

Mid Beds Local Plan First Review Adopted December 2005 - Saved Policies

HO12 Gypsies

Supplementary Planning Guidance

Design in Central Bedfordshire: A Guide for Development

Draft Submission Gypsy and Traveller DPD - policy GT3 - endorsed for the purposes of Development Management by Executive 4/10/11

Planning History

CB/09/05914/FULL	Change of use of land to use as residential caravan site for four gypsy families with a total of 8 caravans, erection of amenity blocks and landscaping. Approved 2/11/09, temporary consent for 3 years
CB/09/00639/FULL	Change of use of land to use as residential caravan site for four gypsy families with a total of 8 caravans, erection of amenity blocks and landscaping - Refused 24/6/09
MB07/01654/FULL	Change of use from dwelling to mixed use of dwelling and caravan site - Appeal allowed 11/9/08, temporary consent for 3 years
MB/04/02146/FULL	Change of use of land to private gypsy transit site and construction of hard standing for a maximum of 15 pitches - Refused 17/3/05

**Representations:
(Parish & Neighbours)**

Arlesey Town Council	Strongly object to the proposal on the same grounds as the previous planning application, which were <ul style="list-style-type: none">- serious concerns for highway safety as proposals would lead to an increase in use of an access on a stretch of classified road- inappropriate development outside of the settlement envelope- accommodation not used for the purposes set out in the application- the water table is high and there is a risk of flooding. The Town Council fundamentally opposes any further
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expansion on the site, due to past inconsistencies and breaches of condition. The Town Council also needs more detailed information of the proposal.

Neighbours

In response to the revised plans the Town Council reiterated previous concerns and added that it has been noted that there are residents living at the address other than the Rooney family.

A response from Arlesley Residents Association and 3 responses from nearby residents have been received setting out objections for the following reasons.

- it is not clear from the plans how many caravans the application is for
- the applicant has flouted planning laws with the introduction of several caravans
- retrospective applications have been made on the site
- the applicant owns the land up to the cemetery and it is not doubt his plan to extend the site
- need assurances that this application does not set a precedent for future expansion authorised or otherwise
- a caravan site (gypsy or leisure) next to the cemetery would not lend itself to the dignity of interments
- the Council has failed to take enforcement action over the conversion of the workshop into living accommodation
- the Stockmans House at Etonbury Farm had to be demolished as it did not have planning permission, all applications should be treated equally
- some parts of the application forms are not completed or are completed incorrectly
- the members of the applicants family could live in the house he owns
- the site occupiers show no consideration to other road users when exiting the site
- the proposal would increase the fear of crime
- businesses are run from the site
- the increase in the number of people on the site would place additional strain on services
- the applicant has workers living on the site who are not part of his family
- a noise assessment should be required unless the rules are different for gypsies and travellers

A further 9 responses were received following the reconsultation on the amended plans. These responses raised the following issues:

- the number of people in each gypsy family should be limited
- the access to the site is dangerous
- the proposal would increase traffic through Arlesley
- it is not clear what the hardstanding would be used for
- it is not clear how many utility blocks there would be or what their use is
- what landscaping would be planted

- the new plans do not look any different
- the enforcement investigations should be completed before this application is determined
- the additional hard surfacing and run-off will add to flooding problems

Consultations/Publicity responses

Highways Development Control No objection.

Highways comments on the previous application on the site were that the site is located away from the town facilities and the proposal would require reliance on the car, thus increasing the use of the junction. No objection subject to conditions relating to visibility splays and on site parking.

Public Protection

Noise

The proposed residential caravan site is located between 75m and 135m from the mainline London to Edinburgh railway to the west of the site. I note that the applicant proposes to install a 1m high earth mound around the North West and South boundary of the site. To act as an effective noise barrier the mound would need to block line of sight to the residential caravans. Therefore a suitable acoustic bund or barrier of 2 - 2.5m height would be required to provide suitable mitigation to the future residents. This could be achieved by increasing the height of the earth mound or installing an acoustic fence of suitable height on top or next to the mound. In view of the temporary nature of the application I would request that the following informative is attached to any approval;
Informative: The Council is concerned that Noise from the mainline railway may cause detriment to the residents of this development. Further information may be obtained from Public Protection on 0300 300 8000.

Caravan Site Licence

Informative: All mobile home sites are required to obtain a Site Licence under the provisions of the Caravan Sites and Control of Development Act 1960. Further information may be obtained from the Private Sector Housing Team, Central Bedfordshire 0300 300 8000.

Land Contamination

As an informative please can you consider the following; Any material used for earth bunding should be suitable for safe and secure occupancy which is the developer's responsibility to ensure.

Private Sector Housing The spacing between the caravans may not be sufficient for the purposes of complying with the site licensing. The officer also states that we need to be satisfied that the foul sewage disposal system is adequate including the package sewage treatment plant. The amenity buildings may be subject to Building Regulations.

Building Control No comment

Internal Drainage Board No response received

Determining Issues

The main considerations of the application are;

1. Principle of Development
2. Impact on the Character and Appearance of the Area
3. Impact on Amenities of Neighbours and Future Occupiers
4. Highways and Parking Issues
5. Other Issues

Considerations

1. Principle of Development

Circular 01/2006 is specifically designed to provide guidance on determining Gypsy applications with the intention of increasing the number of sites. One of the main aims of this circular is for Local Authorities and Gypsies and Travellers to work together and increase the number of sites made available in the next few years. The Circular also recognises the importance of the extended family to the Gypsy and Traveller way of life.

As a result of that legislation and guidance Local Planning Authorities are required to carry out a full assessment of the need of Gypsies and Travellers in their area in liaison with neighbouring authorities to determine the need for sites and then to locate suitable land for the occupation of the gypsies who have no lawful base to occupy.

The Council, in partnership with the Bedfordshire local authorities, undertook a sub regional study to assess the accommodation needs of Gypsies and Travellers in Bedfordshire and Luton in 2006. The Gypsy and Traveller Accommodation Assessment (GTAA) made projections of Gypsy and Traveller pitch needs for five years. The assessment found the need for 74 (15 per year) total extra pitches between 2006 and 2011, across Bedfordshire and Luton. Using this recommendation to determine needs to 2011 and then applying a 3% compound growth rate to the pitch growth for the following five years enabled CBC to determine their level of need to 2016. It has been agreed that 30 should be provided in the former Mid Bedfordshire area and 55 in the former South Bedfordshire area.

The draft submission of the Gypsy and Traveller DPD includes 23 pitches which would be provided by expanding existing sites or providing new sites as 3 pitches had been provided prior to the document being prepared. This would

leave an unmet need of 4 pitches within the former Mid Beds Council area. recent appeal decision regarding the gypsy site known as Woodside Caravan Park, Hatch allowed the 3 pitches on the site to remain permanently. In addition an additional pitch has also been granted planning permission on the existing site at Little Acre, Langford Road, Biggleswade. The need for the additional 4 pitches not included within the DPD have therefore been provided.

Executive determined at a meeting on 4th October 2011 that significant work on the identification of Gypsy and Traveller sites has already been undertaken in the north of Central Bedfordshire and rather than discard these advances in the provision of sites it is proposed that this work is banked and helps to underpin the new document for the whole of Central Bedfordshire Council. To further provide assurance in the north of Central Bedfordshire it was considered appropriate to endorse the work undertaken to date on the preparation of the Development Plan Document for development management purposes until such time as the new district wide document is in place. Members agreed to support the preparation of a Central Bedfordshire-wide Gypsy and Traveller plan to deliver the combined pitch requirement for the northern and southern parts of Central Bedfordshire to 2031.

The draft Gypsy and Traveller DPD has therefore been endorsed for the purposes of Development Management but will not be submitted for examination and subsequent formal adoption. A DPD for Gypsy and Travellers will be prepared for the whole of the Central Bedfordshire area with the aim of submitting the document to the Secretary of State in September 2013 and adopting it in June 2014. The endorsed DPD included this site for a total of 10 pitches.

Local Planning Authorities must give substantial weight to unmet needs when considering whether a temporary permission is justified. In an application for temporary permission - this application does not state that a temporary period is being requested - the relevant policy guidance is found in para 45 of Circular 01/2006. This states that temporary permission should be granted where there is an unmet need but no alternative Gypsy and Traveller provision in the area and where there is a reasonable expectation that new sites are likely to become available at the end of that period in an area which will meet that need.

The previous planning permissions were granted on a temporary basis to allow time for the DPD to be completed. A temporary consent can only be justified however where it is expected that planning circumstances would change at the end of the temporary period. The draft DPD has been endorsed for the purposes of development management however it is unlikely that the new Authority-wide DPD will be adopted before June 2014 and consideration should therefore be given to a temporary consent if a permanent consent is not considered appropriate.

Notwithstanding the above, Circular 11/95 advises that temporary permissions should not be imposed where a proposal involves a building, which would require removal at the end of the period. There are two amenity buildings on the site which are of sectional construction allowing for their removal on the expiry of a temporary consent.

Overall it is not considered that a further temporary consent would be necessary as the draft DPD is a material consideration and there is unlikely to be any

significant change in planning circumstances in the foreseeable future.

Where new sites are to be allocated, Circular 01/2006 supports a sequential test by stating that in deciding where to provide Gypsy and Traveller sites, local planning authorities should first consider locations in or near existing settlements with access to local services, eg shops, doctors and schools. However, it is acknowledged that Gypsy and travellers have historically located themselves in countryside locations. The Circular (paragraph 54) says sites may be found in rural or semi rural areas. Rural areas which are not subject to special planning constraints can be acceptable in principle.

As with any other form of housing, well located sites, with easy access to major roads or public transport services, will have a positive effect on the ability of residents to: attend school, further education or training; have access to health services and shopping facilities; and seek or retain employment.

The application site lies outside the settlement envelope of Arlesey within the open countryside. Policy HO12 accepts that it is not essential that sites are within settlement envelopes but that they should relate well to existing built development, community facilities and public transport.

The narrow part of the site to the south of the dwelling is not included in the DPD site allocation however the site to the rear is part of the site identified in the DPD. The whole of the site is allocated in the DPD for a total of 10 pitches. The application would provide 4 pitches on the allocated site leaving the remainder of the allocated site for up to 6 additional pitches.

The area shown in the DPD as allocated for a gypsy and traveller site is purely indicative and was based on the extent of the ownership of the land at that time. The majority of the application site falls within the indicative area shown in the DPD. However the most northerly part of the site measuring approximately 6m in width falls outside of the indicative areas shown in the DPD. This 6m wide strip accommodates the sewage treatment plant at its eastern end which falls outside of the fenced area of the site and a small area of hard surfacing which falls within the fenced area of the site and is used as part of the gypsy site.

Overall the proposal when judged against national and local planning policy is considered acceptable in principle.

2. Impact on the Character and Appearance of the Area

Both parts of the application site are well screened from the road, being located beyond the rear of 197 Hitchin Road and Fountain Cottage. The sites are also well screened by trees to the south of the proposed access and to the east of the site at the rear of Fountain Cottage. 1.8m high timber close boarded fencing exists along the northern and western boundaries and restricts views from properties in Ramerick Gardens to the south and the mainline railway to the west.

The proposed amenity blocks are of a functional but acceptable design and relatively modest size. The blocks are 6m by 4m with pitched roofs measuring 3.9m to the ridgeline. The blocks are cream in colour with brown roof tiles. Each building accommodates a bathroom and laundry/utility area with a washing machine. Whilst in the context of a caravan site the amenity buildings are

considered acceptable it is judged that on their own they would be out keeping in the open fields.

In determining the appeal for the narrow part of the site the Inspector stated that the site is relatively well screened with the only views from public vantage points being through the gate from the road. These views would generally be fleeting as Hitchin Road is straight and derestricted outside the site. A condition requiring landscaping to be planting was attached to both temporary planning consents and sufficient screening is achieved by the planting.

The additional hard surfacing which was not previously subject to a planning application is a small area which would not be visible from outside of the site. It is not considered that the small extension to the site would have any adverse impact on the character or appearance of the area.

The site do not have any significant adverse impact on the character and appearance of the area and therefore comply with saved Mid Beds Local Plan policy HO12 part (i) and draft DPD policy GT3.

3. Impact on Amenities of Neighbours and Future Occupiers

The Inspector in the appeal relating to the site closer to the neighbouring property considered that with appropriate boundary fencing the level of activity on the site would not cause unacceptable harm to residential amenity. The larger site to the rear is located at the end of the rear garden of Fountain Cottage but due to the distance from the dwelling and the boundary treatment it is not considered that there is any significant adverse impact on the amenities of neighbouring residents.

The caravans along the side of the site are around 2m from the boundary fence with the neighbouring property. The boundary is demarcated by fencing and planting. No clear views into the neighbouring property are possible from these caravans or the hard standing area around them due to the boundary treatment. The caravans to the rear of the site are mainly located on the western side of the site furthest from the residential property. One of the static caravans is located on the eastern side around 3m from the boundary. The boundary is demarcated by fencing in addition there is a hedgerow on the opposite side of the fence within the ownership of the residential property. It is not considered that there would be any adverse impact on privacy from the caravan closest to the fence due to the boundary treatment or those further away due to the distance.

Some concerns have been raised regarding noise from the site, however it is not possible to restrict how people choose to use their homes and land around it. People living in a house could use their gardens for long periods of time and create a level of noise their neighbours did not find acceptable. It is not considered that the number of people living on the site results in a level of noise and disturbance which would justify refusing this application.

It is not considered that the proposal would have any significant adverse impact on the amenities of residents of Ramerick Gardens as they would be over 600 metres away.

The additional hard surfacing to the northern edge of the site extends further along the rear boundary of the neighbouring dwelling than the site previously

consented. The eastern part of this area accommodates a sewage treatment plant and as such would not have any adverse impact on the amenities of neighbours in terms of privacy, overlooking, noise etc. It is understood that the treatment plant should not give rise to any odour if operated properly.

In respect of the amenities of the future occupants of the proposed site it has been recommended by the Environmental Health Officer that due to the proximity of the site to the railway that an acoustic bund or barrier of 2 to 2.5 metres in height would be required to mitigate noise from the railway. The officer does however recognise that the site is not permanently occupied and recommends an informative is attached to any planning permission granted highlighting the noise issue.

The Environmental Health Officer also requests an informative regarding the material used for the earth bunds.

External lighting has been installed and has been checked to ensure that it does not have any significant adverse impact on neighbours. It is considered that a condition requiring that no additional lighting is installed without the details of such lighting previously being submitted to and approved by the Local Planning Authority.

Neither part of the application site is considered to have such a significant adverse impact on residential amenity on neighbouring residents to warrant refusing planning permission. The proposal is therefore considered to comply with saved Mid Beds Local Plan policy HO12, part (iii) and draft DPD policy GT3.

4. Highways and Parking Issues

The access to the site is from Hitchin Road which is subject to the national speed limit for which a visibility splay of 2.4m x 215m is required each side of the access. Highways Development Control confirmed in relation to the previous application on the site that the visibility splays can be achieved in both directions, however towards the southern direction the visibility splay is currently restricted by the boundary hedge of the neighbouring field. Whilst the trimming of the hedge is outside of the applicant's control he can request that the Highway Authority cut it back.

It is a matter of concern to objectors that vehicles particularly those with a caravan attached cannot pull clear of the highway whilst waiting for the gates on the access to the site to open. It is therefore recommended that a condition be added to any planning permission granted requiring the gates to be set back 13m from the highway to enable vehicles to pull off the road.

One objector states that the proposal would result in additional traffic travelling through Arlesey. It is not clear why the objector considers allowing the caravans to remain on the site on a permanent rather than temporary basis would increase the level of traffic.

As Highways Development Control had no objection to the previous application proposal subject to appropriate conditions it is considered that this application is acceptable in terms of highway safety.

5. Other Issues

The supporting statement details that the proposed caravan site would be for two of the applicant's married sons, three of his married daughters and his first cousin, together with their children. The statement also sets out that the applicant's family are Irish travellers by descent and continue to travel to make their living carrying out block-paving work. The application site would provide a settled base for their travelling lifestyle allowing the family to be registered for local healthcare and for the children to attend local schools. No confirmation of the status of the people for whom the accommodation is sought has been provided and therefore it is not possible to confirm whether or not they are gypsies in terms of the definition in paragraph 15 of Circular 1/2006, however the Inspector saw evidence to support their status as gypsies and was satisfied in this regard.

The applicant has advised that he would not object to a condition limiting the occupancy of the caravan site to gypsies as defined in Circular 1/2006 and members of his immediate family. As the site is identified in the DPD it is not considered that there is a need to make the permission personal to the applicant and his family. The site is acceptable in its own right and therefore a condition limiting the use of the site to gypsies as defined in Circular 1/2006 is considered sufficient.

One objector commented that the number of people in each family should be limited. The conditions would limit the number of caravans on each pitch and therefore in turn would restrict the number of people that could be accommodated.

Concerns have been raised regarding flooding due to the increased area of hard surfacing however the site is not within any flood protection zones and the Bedfordshire and River Ivel Internal Drainage Board have not objected to the proposal in the past, although no response was received to consultation on this application.

Recommendation

That Planning Permission be granted subject to the following:

- 1 This permission does not authorise use of the land as a caravan site by any persons other than gypsies and travellers, as defined in paragraph 15 of ODPM Circular 01/2006.

Reason: To limit the use of the site to gypsies and travellers.

- 2 No more than 12 caravans (of which no more than 6 shall be static caravans) shall be stationed on the site at any one time.

Reason: To control the level of development in the interests of visual and residential amenity.

- 3 Within three months of the date of this permission the gates to the site shall open away from the highway and be set back a distance of at least 13m from the nearside edge of the carriageway of the adjoining highway.

Reason: To enable vehicles towing a caravan to draw off the highway before

the gates are opened.

- 4 No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

Reason: In order to protect the amenities of local residents.

- 5 No commercial activities shall take place on the land, including the storage of materials.

Reason: In order to protect the amenities of local residents.

- 6 No additional external lighting to be installed on the site unless and until a scheme has been submitted to and approved in writing by the Local Planning Authority, the scheme shall include the design of the lighting unit, any supporting structure and the extent of the area to be illuminated, the lighting shall then be installed and operated in accordance with the approved scheme.

Reason: To protect the visual amenities of the site and its surrounding area.

- 7 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers CBC/001, CBC/002, CBC/003 & PBA1.

Reason: For the avoidance of doubt.

Reasons for Granting

The proposal is in conformity with Policy HO12 of the Mid Bedford shire Local Plan First Review 2005 and policy GT3 of the draft Gypsy and Traveller DPD as there is no unacceptable impact upon the character and appearance of the surrounding countryside, the amenities of nearby residential properties are not unacceptably harmed and a safe, convenient and adequate standard of access can be provided. The proposal also meets an identified need as set out in the draft Gypsy and Traveller DPD. It is also in conformity with Planning Policy Guidance: PPS1 Delivering Sustainable Development, PPS3 Housing and Circular 1/2006.

Notes to Applicant

1. The Council is concerned that Noise from the mainline railway may cause detriment to the residents of this development. Further information may be obtained from Public Protection on 0300 300 8000.
2. Any material used for earth bunding should be suitable for safe and secure occupancy which is the developer's responsibility to ensure.
3. All mobile home sites are required to obtain a Site Licence under the provisions of the Caravan Sites and Control of Development Act 1960. Further information may be obtained from the Private Sector Housing Team, Central Bedford shire 0300 300 8000.

4. Please note that the unnumbered drawings submitted in connection with this application have been given unique numbers by the Local Planning Authority. The numbers can be sourced by examining the plans on the View a Planning Application pages of the Council's website www.centralbedfordshire.gov.uk.

DECISION

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Appeal Decision

Hearing held on 2 September 2008

Site visit made on 2 September 2008

by **Elizabeth Fieldhouse** DipTP DipUD
MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
11 September 2008

Appeal Ref: APP/J0215/A/08/2071409

197 Hitchin Road, Arlesey, Bedfordshire SG15 6SE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr P Rooney against the decision of Mid-Bedfordshire District Council.
- The application Ref 07/01654/FULL, dated 17 September 2007, was refused by notice dated 15 January 2008.
- The development proposed is the change of use from dwelling to mixed use of dwelling and caravan site.

Decision

1. I allow the appeal, and grant planning permission for the change of use from dwelling to mixed use of dwelling and caravan site at 197 Hitchin Road, Arlesey, Bedfordshire SG15 6SE in accordance with the terms of the application, Ref 07/01654/FULL, dated 17 September 2007, and the plans submitted with it, subject to the conditions at the end of this decision.

Main issues

2. I consider the main issues in this appeal are whether Mr Rooney and his immediate family have gypsy status as defined in ODPM Circular 01/2006; the effect of the proposed development on the character and appearance of the surrounding area; and the effect on neighbouring occupiers' amenities, particularly with regard to noise and general disturbance.

Reasons

Gypsy status

3. At the time the application was considered by the Council, no detailed information on the appellant's nomadic lifestyle or on the status of the appellant's family was provided. As Mr Rooney now lives in the two storey house and appeared to have ceased travelling for none of the reason identified in ODPM Circular 01/2006, the Council concluded that his gypsy status within the terms of the Circular had lapsed. Therefore the proposal would not fall within the provisions of policy HO12 of the Mid Bedfordshire Local Plan First Review 2005 (LP).
4. At the hearing, Mr Rooney indicated that he normally travelled away for work for roughly six months each year, mainly undertaking block paving or building

work. Three of Mr Rooney's children and their families have been using the site for their touring caravans in the past four years but only two families are resident at any one time. At other times the families have been living on unauthorised sites or occupying a pitch on an authorised site while the normal occupants were away. The appellant stated that the three families are registered with the doctor in Arlesey and the school age grandchild has attended school in Arlesey on and off for the past two years but there was no written confirmation. As the Council pointed out, it was not possible to verify these points as the information was not provided before the hearing.

5. From what I heard, unless proven otherwise, I consider that the appellant and his immediate family should be considered to have gypsy status within the terms of ODPM Circular 01/2006 and therefore the proposal would fall to be considered under LP policy HO12. Nevertheless, in view of the lack of opportunity for the Council to verify the information provided to demonstrate gypsy status, I consider that any planning permission should be temporary for three years, a period mentioned in the appellant's statement in relation to the consideration of sites to meet the identified need.

Character and appearance

6. The appeal site is outside the development limit of Arlesey and LP policy CS19 states that, other than when provided for in the Local Plan, development will only exceptionally be permitted in the countryside. LP policy HO12 provides that new gypsy sites should conform to the criteria that, among other points, require proposals to not be detrimental to the character and appearance of the area nor should the amenities of neighbouring residential property be unacceptably harmed. Sites should relate well to existing built development, although a location within a defined settlement envelope is not deemed essential. Sites should also not be poorly related to community facilities and public transport. As gypsy sites are provided for in LP policy HO12, I do not consider that the exception test in policy CS19 needs to be met.
7. The appeal site lies on a bus route close to the development limit of Arlesey that is a settlement with community facilities. Therefore the appeal site meets the provisos after the criteria in LP policy HO12. The appeal site lies outside any nationally recognised countryside designation and is hard surfaced. At the time of my visit, there were no mobile homes and only one small touring caravan on the site although the appellant acknowledges, and as evidenced in representations, in the past caravans have been sited on the land.
8. The Council accepts that the site is relatively well screened with the only views from public vantage points being through the gate from the road. These views would generally be fleeting as the Hitchin Road is straight and derestricted outside the appeal site. Nevertheless, I consider that the site could become more visible if trees, particularly conifer trees or fruit trees within the neighbouring properties were lost. Both of these areas are outside the appellant's control. The proposed siting of the caravans would leave sufficient space for some planting along the boundaries of the appeal site so that glimpses of caravans would be broken up if other screening were lost. I am satisfied that this could be required by condition.

9. The proposed siting of the caravans would intensify and increase the apparent development in the countryside but, in view of the lack of public visibility and the existing hard surfacing, I consider that the character would essentially remain the same if the development becomes authorised. The proposed use would not extend outside the domestic curtilage of 197 Hitchin Road, although there is access through the curtilage to an open field that the appellant owns. Subject to appropriate landscaping, I consider that the proposal would not be detrimental to the character and appearance of the surrounding countryside and LP policy HO12(i) would be met.

Neighbouring occupiers' amenities

10. The appeal property is a detached house but the curtilage adjoins that of Fountain Cottage. Although parts of the neighbouring rear curtilage appeared to be directly linked to the field, I am not convinced that the use of the rear part of the garden was no longer part of the domestic curtilage. The caravans would replace an existing brick built shed near the boundary with Fountain Cottage and would occupy roughly half of the rear garden to no.197. The caravans would be sited about 3m from the mutual boundary with Fountain Cottage and door openings would be away from that boundary. As shown on the site layout plan, I consider that the proposed caravans would screen much of the activity associated with the use from neighbouring occupiers.
11. There is activity associated with accessing the field and the storage of vehicles in connection with the appellant's business and domestic uses that extends into the rear of the domestic curtilage. I consider that the use would change the activity near the rear of the neighbouring curtilage. Nevertheless, in view of the existing level of activity, the proposed siting of the caravans and providing boundary fencing and planting is adequate, in my opinion, the change would not be so great as to unacceptably harm neighbouring occupiers' amenities. Nonetheless, I saw that part of the boundary fencing is of insufficient height to prevent some overlooking but adequate boundary fencing/walling strengthened by planting would prevent overlooking and could be required by conditions. Subject to adequate boundary treatment and planting, I consider that the provisions of LP policy HO12(iii) would be met.
12. The Council do not find harm from the proposal in relation to any of the other criteria in LP policy HO12 and I heard and saw nothing to make me take a different view. For the reasons given, I conclude that the provisions of LP policy HO12 would be met and the appeal should be allowed.

Other material considerations

13. LP policy HO12 does not require a need to be proven to justify the grant of planning permission although explanatory paragraph 13.13 3 indicates that the Council has experienced some pressures for small scale development of land for gypsy sites usually to serve the needs of the individual family. In this case it is the needs of Mr Rooney's family that have been put forward to justify the siting of caravans and would be met by the proposal. Therefore I consider that the use should be tied to the justification for the development.
14. The Council are preparing the Gypsy and Traveller Development Plan Document to address the needs identified in Bedfordshire and Luton Gypsy and Traveller Needs Assessment and identified in the East of England Plan. Five sites for 22

pitches are being taken forward into the draft submission document to be consulted upon. One of the sites is in Arlesey fairly near the appeal site. While I note the contents of the emerging plan, it is at an early stage and does not alter my view on the acceptability of the proposal in relation to the development plan policy that is currently saved, LP policy HO12.

Conditions

15. I have considered the conditions discussed at the hearing in the light of the advice in Circular 11/95. As indicated in paragraph 5, I consider a temporary planning permission would be appropriate. To prevent harm to the character and appearance of the area and neighbouring occupiers' amenities and to fall within the provisions of LP policy HO12, I consider the number of caravans should be restricted and occupied only by gypsies, there should be no commercial or industrial activity on the land or materials stored outside, external lighting should be controlled, boundary fencing and planting agreed and the caravans sited in accordance with the site layout plan. To ensure that the site is properly drained, details should be agreed with the Council. As indicated in paragraph 13, the use should be restricted to Mr Rooney's immediate family. Nevertheless, as the use has commenced, no commencement condition is necessary.

Elizabeth Fieldhouse

INSPECTOR

Conditions:

- 1) The use hereby permitted shall be discontinued and the land restored to its former condition on or before 3 years from the date of this decision in accordance with a scheme of work submitted to and approved in writing by the local planning authority.
- 2) No more than four caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites 1968 (of which no more than two shall be a static caravan or mobile home), shall be stationed on the site at any time.
- 3) The caravans shall only be occupied by members of Mr Rooney's immediate family and their dependants.
- 4) This permission does not authorise use of the land as a caravan site by any persons other than gypsies and travellers, as defined in paragraph 15 of ODPM Circular 01/2006.
- 5) No commercial or industrial activities shall take place on the land, including the storage of external materials.
- 6) Within 3 months of the date of this decision, details of foul and surface water drainage, including a timetable for its implementation, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved timetable.

- 7) Within three months of the date of this decision, details of all external lighting shall be submitted to and approved in writing by the local planning authority. All external lighting shall be in accordance with the approved scheme.
- 8) Within 3 months of the date of this decision, a scheme of landscaping shall be submitted to and approved in writing by the local planning authority, which shall include details of boundary treatment and planting, including a timetable for implementation. Boundary treatment and planting shall be implemented in accordance with the approved timetable. Any trees or plants which within a period of 3 years from implementation die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 9) The caravans shall be sited in accordance with the submitted site layout plan unless otherwise agreed in writing with the local planning authority.

APPEARANCES

FOR THE APPELLANT:

Philip Brown BA(Hons) MRTPI Agent
Mr Rooney Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mark Spragg BA(Hons) MRTPI Mid Beds District Council

DOCUMENTS

- 1 Notification letter of time and venue of hearing

PLANS

- A Application plans
- B Local Plan Proposals Map of Arlesley and surrounding area



The Planning Inspectorate

v7.3

An Executive Agency in the Department for Communities
& Local Government and the Welsh Assembly Government

Our Complaints Procedures

Introduction

We can:

- review your complaint and identify any areas where our service has not met the high standards we set ourselves.
- correct some minor slips and errors provided we are notified within the relevant High Court challenge period (see below).

We cannot:

- change the Inspector's decision.
- re-open the appeal once the decision has been issued.
- resolve any issues you may have with the local planning authority about the planning system or the implementation of a planning permission.; we can only deal with planning appeal decisions.

The High Court is the only authority that can ask for the Inspector's decision to be reconsidered. Applications to the High Court must be made within 6 weeks from the date of the decision letter for planning appeals, and in most instances 28 days for enforcement appeals.

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly-held.

The Quality Assurance Unit works independently of all of our casework teams. It ensures that all complaints are investigated thoroughly and impartially, and that we reply in clear,

straightforward language, avoiding jargon and complicated legal terms.

We aim to give a full reply within three weeks wherever possible. To assist our investigations we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future.

Who checks our work?

The Government has said that 99% of our decisions should be free from error. An independent body called the Advisory Panel on Standards (APOS) monitors this and regularly examines the way we deal with complaints. We must satisfy it that our procedures are fair, thorough and prompt.



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Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary and Health Service Ombudsman, who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Can the decision be reviewed if a mistake has happened?" – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision or change the decision reached. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"So what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

"Why did an appeal succeed when local residents were all against it?" – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds on all of the evidence whether these views justify refusing planning permission.

"What do the terms 'Allowed' and 'Dismissed' mean on the decision?" – 'Allowed' means that Planning Permission has been granted, 'Dismissed' means that it has not. In enforcement appeals (s.174), 'Upheld' means that the Inspector has rejected the grounds of appeal and the enforcement notice must be complied with; 'Quashed' means that the Inspector has agreed with the grounds of appeal and cancelled the enforcement notice.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have made on the appeal.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

"I've just lost my appeal, is there anything else I can do to get my permission?" – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to its planning officer about this might help you explore your options.

"What can I do if someone is ignoring a planning condition?" – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. You could contact the council as it has discretionary powers to take action if a condition is being ignored.

Further information

Each year we publish our Annual Report and Accounts, setting out details of our performance against the targets set for us by Ministers and how we have spent the funds the Government gives us for our work. We publish full statistics of the number of cases dealt with during the preceding year on our website, together with other useful information (see 'Contacting us'). You can also obtain booklets which give details about the appeal process by telephoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or at www.apos.gov.uk

Contacting us

Complaints & Queries in England
Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone: 0117 372 8252
E-mail: complaints@pins.qsi.gov.uk

Website: www.planning-inspectorate.gov.uk

Enquiries

Phone: 0117 372 6372
E-mail: enquiries@pins.qsi.gov.uk

Complaints & Queries in Wales

The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ

Phone: 0292 082 3866
E-mail: Wales@pins.qsi.gov.uk

The Parliamentary & Health Service Ombudsman

Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0845 0154033
Website: www.ombudsman.org.uk
E-mail: phso.enquiries@ombudsman.org.uk

Please see Wales leaflet for information on how to contact the Wales Public Services Ombudsman.



The Planning Inspectorate

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An Executive Agency in the Department for Communities
& Local Government and the National Assembly for Wales

Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" - In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this - see Further Information).

"How much is it likely to cost me?" - An administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees - see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Contacting us

High Court Section
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Phone: 0117 372 8962

Website

www.planning-inspectorate.gov.uk

General Enquiries

Phone: 0117 372 6372

E-mail: enquiries@pins.gsi.gov.uk

Complaints

Phone: 0117 372 8252

E-mail: complaints@pins.gsi.gov.uk

Cardiff Office

The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ
Phone: 0292 082 3866

E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman

Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0845 0154033

Website: www.ombudsman.org.uk

Email: phso.enquiries@ombudsman.org.uk

Further information about challenging the decision

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: www.courtservice.gov.uk

Inspection of appeal documents

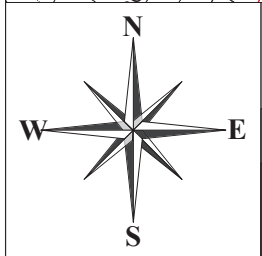
We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Administrative Justice & Tribunals Council

If you have any comments on appeal procedures you can contact the Administrative Justice & Tribunals Council, 81 Chancery Lane, London WC2A 1BQ. Telephone 0207 855 5200; website: <http://www.ajtc.gov.uk/>. However, it cannot become involved with the merits of individual appeals or change an appeal decision.



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Central Bedfordshire Council
Licence No. 100049029 (2009)
Date: 14:February:2012
Grid Ref 503438 m 232710m

Application No.
CB/11/04549/Full

Scale: 1:1250

The Bell, High Street, Westoning, MK45 5JH

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Three detached dwelling houses, each measuring some 9 metres in depth, by 10.6 metres in width, with a maximum height of 7.8 metres to the ridge, and 8.2 metres to the chimney. Each dwelling would have off street parking provision for 3 cars, and a minimum rear garden area of 108 sqm.

RELEVANT POLICIES:

National Policies (PPG + PPS)

- PPS 1 Delivering Sustainable Development (2005)
- PPS 3 Housing (2006)
- PPS 5 Planning for the Historic Environment (2010)

Core Strategy and Development Management Policies, November 2009

- Policy CS1- Development Strategy
- Policy CS2 - Developer Contributions
- Policy CS5 - Providing Housing
- Policy CS15- Heritage
- Policy DM3 - High Quality Development
- Policy DM4- Development Within and Beyond Settlement Envelopes
- Policy DM13- Heritage in Development

South Bedfordshire Local Plan Review Policies

Not applicable

Supplementary Planning Guidance

- Design in Central Bedfordshire: A Guide for Development 2010
- Planning Obligations Supplementary Planning Document: 2008

Planning History

Recent:

An application for alterations to the public house and the erection of 3 dwelling houses was recently submitted, this was withdrawn by the applicant on the advice of the planning officer. This was reference CB/11/03239/FULL.

Historical:

- MB/04/00440/ADV - Advertisement Consent: House name letters, facility signs, replacement pictorial post sign, siting of new pictorial post sign. Granted 18/06/04
- MB/91/01378/FA - Full: Retention of timber building in car park. Granted 18/11/91
- MB/90/01232/FA - Full: Ladies toilet and conservatory extension. Refused 09/10/90
- MB/90/01243/LB - Listed Building Consent: Ladies toilet and conservatory extension. Refused 09.10.90
- MB/88/00933/FA - Full: Retention of timber building in car park. Granted 30.09.88
- MB/84/00857/ADV - Advertisement Consent: Pictorial sign within frame on post. Granted 18/12/84

Representations:
(Parish & Neighbours)

Westoning Parish Council: Object.

- *Style of Houses* - Inconsistent and unsympathetic to the existing dwellings in Bell Close. Concern residents will face a brick wall. Concern that the loft will be used as a bedroom. Rear dormers giving a "town house" impression within a village location. Too many houses in Westoning in this style, no more are needed.
- *Car Park* - Insufficient space for the clientele of the pub. Believes that the number of spaces currently available is 40.
- *Impact upon Greenfield Road* - A busy road, concern that the road will be used as "over spill" when the pub car park is full. Concern that the dray lorry will not be able to get into the site. Insufficient room for cars to turn within Bell Close. The drop off point for the school bus is close, at certain times there will be a large number of children around the site.
- *Noted not planning issues but wish the committee to be aware of* - Disappointed in loss of pub garden area, and petanque facility. The Council produced a Parish Plan in 2009, 70% of those responding to questionnaire indicated they wished to see no further development in the village. If houses are approved, the Parish Council would like to see a condition requiring the works to the pub to be carried out prior to the construction of the dwelling houses.

Neighbours:

17 letters of objection received:

- *Highway/Parking Issues*. Largely relating to Bell Close being used by people using the pub, the lower school and recreation ground and the pub car park being able to accommodate more than the stated "22 existing spaces". Bell Close being too narrow to accommodate additional houses and potential additional visitor parking spaces. Concern that emergency vehicles would not be able to get through to the existing houses. School bus movements and school pick up/drop off congestion.
- *Design of houses*. *inconsistent* with village style, considered too large, possibly be 5 bedrooms, not 4 bedrooms. Design not appropriate or sympathetic with other dwellings within Bell Close.
- *Over development of the site*. Historically the site has been open, and this would be more land built on.

- *Issues over levels within Bell Close*, due to sloping nature of site. The site section shows houses of a similar height.
- *Detriment of the village*. Westoning is large enough, it needs the parking more than the houses. The houses would have a negative impact upon the character and appearance of the area.
- *Houses and car park would have a detrimental impact upon Public House*. People will no longer want to visit the pub because of parking problems around the site.
- *Loss of garden area for the Public House*. Also impact upon the trees.
- *Loss of bottle bank and clothing bin*.
- *There are other 4 bed family homes within Westoning unsold*, therefore no need for further development.
- *Issues relating to the Section 106 monies*. Suggestions were made that they are used for improvements to the highway close to the site.
- *The housing would be used as a money making scheme*.
- *General support for the improvement to the Public House*.

Consultations and Publicity responses

Site Notice Posted on 19.01.12:	17 letters were received these have been represented above
Advertised on 20.01.12	17 letters were received these have been represented above
Conservation and Design	No objections, recommended conditions
Highways	No objections, recommended conditions
Trees and Landscape	No objections, in accordance with site plan 2527-02g
Archaeology	No objections, recommended condition
Public Protection	No objections, recommended conditions
Waste	No comments received
Internal Drainage Board	No comments received

Determining Issues

The main considerations of the application are;

1. The principle of development
2. The effect on the character of the local area
3. The impact that the proposal will have on the residential amenity of neighbouring properties
4. The highway safety implications
5. The planning obligations strategy
6. Impact upon Listed Building

7. Issues relating to Trees and Landscaping
8. Any other implications

Considerations

1. Principle of Development

Principle of extending the Bell Public House:

Extensions to Listed Buildings and Public Houses are considered appropriate should the merit of the design and scale of development be considered appropriate within the setting, using Core Strategy and Design Guide Policies, it is judged that the principle of extending the Public House is acceptable.

Principle of additional housing within Westoning:

As Westoning is considered a Large Village in the Central Bedfordshire Core Strategy, "within the settlement envelopes in Large Villages, small scale housing and employment uses, together with new retail and service facilities to serve the village and its catchment will be permitted." This is dependant upon ensuring that there would be no adverse impact upon the character of the area or on the residential amenity of neighbouring properties and that satisfactory access can be achieved. In addition PPS 3 encourages the use of previously developed land and maximising the use of land in urban areas.

It is considered that in principle the residential development in this location is acceptable, as it is judged that a development of 3 dwellings would be considered a small scale housing scheme. The pub site is previous developed land considered brownfield in accordance with PPS 3.

2. Character and Appearance of the Local Area

The alterations to the Public House:

It is considered that the alterations to the Public House building would not have a significant impact upon the character or appearance of the area, it would involve the removal of an existing small side extension. The development would be relatively prominent, but it is judged that the scale and design would be in keeping with the existing building and therefore the design would appear complimentary within the setting.

The three additional dwelling houses:

Currently the site is used as informal car parking associated with the Public House, part of the site is bounded by high conifer trees, there is a belt of mature trees to the west of the site. The car park is unlaidd out, currently in a state of dilapidation. The area of land to be redeveloped for the dwellings would be approximately 673m², this would amount to approximately 44 dph, in accordance with the Central Bedfordshire Design Guide, new residential development within villages should be between 30-45dph.

Design of dwellings:

The houses would form three large detached family homes, each with four bedrooms, a rear garden, space for three cars to park off street. The dwellings would front Bell Close and the rear gardens would be bounded by a brick wall to the laid out pub car park. Each plot would measure approximately 12 metres in width by 22 metres in length.

The houses appear to have been designed with local influences, it is considered that brick dwellings with gable ended slate roofs would be similar in materials to those properties opposite. The small front bay windows and the stone heads above the fenestration echo other properties within Bell Close. The scale of the rear gardens in relation to the size of the properties is considered to be in accordance with the Central Bedfordshire Design Guide which requires approximately 100m². It is accepted that the scale of the properties is larger than other adjacent houses but it is judged that the scale of the dwellings is acceptable in relation to the plots which they would occupy. To ensure the quality of the materials to be used a condition would be attached to see the materials prior to the properties being constructed.

In terms of the impact of the dwellings on the character and appearance of the area:

When viewed from the north looking down Greenfield Road it is considered that this development would be an enhancement to the character of the area, the corner where there are existing conifer trees screening views to The Bell Public House, would be opened up with low level soft landscaping allowing improved views of the building.

When viewed from the south looking up Greenfield Road it is considered that the boundary treatment including a 1.8 metre brick wall with stone copings to the rear of the car park, and picket style low level fencing and soft landscaping to the side of the properties would appear visually appropriate.

When viewed from The High Street, the side and rear aspect of plot 3 is considered to be of a suitable design standard for the area. The belt of mature trees within the triangle of important open space to the west would also be retained to soften the houses from this aspect.

When viewed from Bell Close, the conifer trees would be removed and three dwellings set back some 5 metres from the road measuring some 7.8 metres would be erected, the dwellings would be of a typical simplistic appearance with wide frontages. It is relatively common to have dwelling houses along both sides of residential roads, the dwellings are considered to be of a reasonable design standard in accordance with the Central Bedfordshire Design Guide. It is considered that there would not be significant harm to the character and appearance of Bell Close.

It is judged that the design of the dwellings and the alterations to the Public House in this location would be acceptable and in accordance with policies DM3 and DM13 of the Core Strategy and Development Management Policies, 2009.

3. Residential Amenity of Neighbouring Properties

The Bell Public House is situated on a cross road with The High Street and Greenfield Road. To the south east is Westoning Lower School, Recreation Ground and Recreation Club. To the east is De Sanford Court which are relatively modern residential flats. To the north are numbers 2, 4, 6, 8, 10, 12, 14 Bell Close. To the west is the High Street, properties within this immediate area do not front the High Street. It is considered that the alterations to the Public House and the addition of the three additional dwellings would not significantly impact upon the residential amenity of any neighbouring property in terms of:

Loss of light:

Alterations to the Public House:

The extensions, though visible due to the location on the side of the public house, would be approximately 33 metres from any residential property, and as the extensions are to be of single storey, it is considered that this distance is sufficient to safeguard residential amenities with no harmful loss of light.

Additional three dwellings:

The dwellings would replace an existing tall conifer hedge of approximately 6 metres in height, which is currently adjacent to the edge of the site. It is considered that the dwellings set back some 5 metres into the site at a height of 7.8 metres would not constitute a significant reduction in the light to the frontages of the properties in Bell Close. It is considered that no other properties would be close enough to the proposed houses to have a reduction in residential light amenity.

Overbearing impact:

Alterations to the Public House:

The extensions though would be visible due to the location on the side of the public house, would be approximately 33 metres from any residential property, and as the extensions are to be of single storey, it is considered that this distance is sufficient to ensure the addition would not cause a significant overbearing impact to any residential property.

Additional three dwellings:

The width of Bell Close is reasonably typical for a residential side street, which commonly serve dwellings on both sides of the road in a traditional frontage facing frontage design. It is considered that the spacing between the proposed and existing dwellings and the scale of the development would be suitable to ensure no significant overbearing impact. The distance of some 18 metres between the frontages of the properties are considered suitable to ensure no significant overbearing impact to adjacent residential properties.

Loss of privacy:

Alterations to the Public House:

It is considered due to the orientation of windows and the design of the proposed extension, the views from the Public House would not be significantly different to the existing property.

Additional three dwellings:

The location of the windows within the dwellings has been designed to minimise impact upon the adjacent properties, the first floor windows are predominately front and rear facing. There is some 18 metres between the front facing 1st floor windows, it is considered that this distance is reasonable to ensure no significant loss of privacy. The rear facing windows would over look the Public House car park, it is considered that this would lead to a satisfactory level of natural surveillance for this area, leading to enhanced levels of community safety in a meeting place.

Loss of outlook:

Alterations to the Public House:

Due to the scale and location of the alteration to the Public House it is considered it would not significantly impact upon the outlook of any adjacent residential property.

Additional three dwellings:

Currently the area is in an untidy condition, it is judged that a new dwellings providing they were of suitable materials would improve the appearance of the site, and that it would not result in a loss of outlook for any residential properties. The boundary treatment and landscaping would soften the development, creating a new small residential area.

17 letters of objection received from residents within Westoning, the Parish Council also objected:

- Highway/Parking Issues. Largely relating to Bell Close being used by people using the pub, the lower school and recreation ground and the pub car park being able to accommodate more than the stated "22 existing spaces". Bell Close being too narrow to accommodate additional houses and potential additional visitor parking spaces. Concern that emergency vehicles would not be able to get through to the existing houses. School bus movements and school pick up/drop off congestion.

This matter will be addressed in detail within the Highways Section of this report.

- Design of houses. inconsistent with village style, considered too large, possibly be used as 5 bedrooms, not 4 bedrooms. Design not appropriate or sympathetic with other dwellings within Bell Close.

The loft area is not considered inappropriate, in general rear facing dormer windows do not require planning permission, these are of moderate size and scale. It is not unreasonable to have a storage area, or play room within a property of this size. Detailed consideration of the design of these properties has been made within the Character and Appearance of the Local Area Section.

- Over development of the site. Historically the site has been open, and this would be more land built on.

This development is not considered to be over development of the site, the dwellings would not have a cramped appearance, they have been designed with suitable parking standard area, and garden (amenity land) provision. The site parking area associated with the Public House is deemed to be large enough for the capacity of the pub.

- Issues over levels within Bell Close, due to sloping nature of site. The site section shows houses of a similar height.

A levels condition could be imposed to ensure the houses are not constructed on a significantly raised ground level. It is considered that dwellings of 7.8 metres are not unduly high. The site levels have been submitted as part of the site plan 2527-02g, these show the ground levels within Bell Close being slightly higher on the southern side of the road (approximately 40cm higher).

- Detriment of the village. Westoning is large enough; it needs the parking more than the houses. The houses would have a negative impact upon the character and appearance of the area.

In accordance with the Central Bedfordshire Core Strategy Westoning is designated as a "Large Village" which is grouped within the "Rural Areas" provision. The number of new allocations required within these areas is 400 new dwellings. It is considered that a development of 3 new dwellings would not be to the detriment of the character of Westoning Village.

- Houses and car park would have a detrimental impact upon Public House. People will no longer want to visit the pub because of parking problems around the site.

The development is in general considered to be an enhancement to the Public House, the amenity area around the frontage would be more in keeping with the style of the building. Views of the Bell Public House would be opened up from Greenfield Road, to the benefit of the street scene. Parking issues will be detailed within the Highway Section.

- Loss of garden area for the Public House. Also impact upon the trees.

A landscaping condition would be recommended to any permission, to ensure the quality of the soft and hard landscaping. The Tree and Landscaping Officer has given no objection to the proposal. The pub would still have provision for a garden area.

- Loss of bottle bank and clothing bin.

This facility could be accommodated elsewhere within the site, or elsewhere within the village. Although this type of recycling is encouraged should the facilities be lost, it would not be strong enough justification for refusing the planning permission.

- There are other 4 bed family homes within Westoning unsold, therefore no need for further development.

Market conditions are not a material planning consideration. Westoning is a desirable village to live within and in accordance with Central Bedfordshire Council Core Strategy policies within the village envelope small scale housing developments will be supported.

- Issues relating to the Section 106 monies. Suggestions were made that they are used for improvements to the highway close to the site.

A Unilateral Undertaking was submitted with this application. The monies within this document are allocated for specific community facilities. The monies can not be redistributed to individual projects.

- The housing would be used as a money making scheme.

The housing would facilitate the improvements to the Listed Building, the profitability of the development is not a material planning consideration.

- General support for the improvement to the Public House.

Many resident letters did support the improvements to the Public House, as this is a well used community facility.

4. Highways Implications

The Central Bedfordshire Council Highway Section does not object to this development, they have recommended a number of conditions.

Existing provision for the Public House and proposed lay out:

The existing car park for the Bell Public House is privately owned land, and therefore not considered to be a public car park. It is parking associated with the Bell Public House. Should the owner of the Bell wish to close the car park off when the pub is not open then this would be at their own discretion. Currently the area is unlaid out, and therefore has a disorderly appearance. Within the Design and Access Statement it states there is currently a provision for 22 cars to park within the car park. It is accepted that this figure is open to interpretation, due to the unlaid out nature of the car park, it is a possibility that more than this number could park within the car park. Although the existing figure could possibly be more than the stated 22, the Central Bedfordshire Council Highway Section has stated that the required number that a pub of this capacity needs is 20 spaces. The proposed lay out would provide 20 spaces, with one disabled bay located as close to the front access as possible without significantly impacting on the setting of the Listed Building. It is considered that the car parking layout for the Public House would be acceptable and in accordance with the Central Bedfordshire Council Design Guide and detailed technical advice.

Parking provision for the three dwelling houses:

These are four bedroom properties and in accordance with Central Bedfordshire Council Design Guidance three off street parking spaces should be provided. The garages are deemed an acceptable size to be considered a parking space. The Highways Section were satisfied that adequate parking would be provided for the three additional dwellings.

Parking problems around Bell Close:

A number of photographs were provided by nearby residents and many of these show parking currently within the street, and also relate to the narrow nature of the residential road. The Highway Section was satisfied that the road is of a suitable width to accommodate the additional dwellings. The loss of the conifer hedge would improve visibility within the section of the highway, whilst the replacement fencing on the corner would be low level picket fencing, which would allow better inter-visibility on this corner. The lower school is located in close proximity to the site. The Highways Section is satisfied that the proposal meets adopted parking standards and that there would be no loss of parking for the school. Parents should be considerate to local residents when parking. It is considered that the three additional dwelling would not exacerbate the issue to such a degree that the application be refused.

Suggested Highway Conditions:

The Highway Section was satisfied that the development would be safe and appropriate in highway terms, and have suggested conditions relating to increase the depth of the footpath, vehicular area surfacing, retention of garage accommodation for the parking of vehicles, the layout of the pub car park, construction worker parking and construction traffic. It is considered that the access for the existing pub car park is of a reasonable standard, therefore it is judged that construction traffic could use this access without impeding highway safety.

5. Planning Obligation Strategy

The proposed dwellings would comprise three number four bedroom houses which falls within the criteria of the Planning Obligation Strategy therefore contributions for Local Infrastructure are required and a Unilateral Undertaking submitted by the applicant.

The Planning Obligation Strategy is an adopted Supplementary Planning Document and is therefore a material consideration in the determination of the planning applications. A Unilateral Undertaking has been submitted with this application, the draft Unilateral Undertaking has been accepted, the legal department have requested a signed copy, an update on this matter will be represented verbally or on the late sheet. There is willingness from the applicant to comply with the information requested therefore once the undertaking is considered acceptable the development is deemed to be in accordance with the Supplementary Planning Document: Planning Obligation Strategy (2008).

6. Impact upon Listed Building

This matter will be more thoroughly detailed within the accompanying application CB/11/04550/LB. In general terms it is considered that this development would be an enhancement for the Grade II Listed Building. The works to the Public House would improve the heritage asset and the immediate setting. It is considered that the houses would not significantly or detrimentally impact upon the setting of the Listed Building. Currently the parking area and untidy garden are negatively impacting upon the Listed Building and therefore the enhancement in the quality of landscaping and materials would ensure the future of the Listed Building. It is considered that the proposal is in accordance with PPS 5 (Planning for the Historic Environment) as the Listed Building and setting would be enhanced by the development. The Council Conservation Officer supports this development, providing the quality of materials and detail are conditioned.

7. Issues relating to Trees and Landscaping

Originally there were concerns regarding possible loss of mature trees, which can be seen from the High Street, and form part of a soft landscaping belt on this section of the road. The original block plan showed the loss of three maple trees. The applicant has been working with the Council Tree and Landscaping Officer who has accepted that one of the Maple trees has been damaged by a

vehicle, therefore there is no objection to its removal. A revised site plan showing one Maple tree removed and its replacement with a semi mature tree has been submitted, this is plan 2527-02g. It is now considered acceptable as a landscaping plan. The removal of the other trees within this plan are considered to not be to the detriment of the streetscene, or locality. A condition requiring landscaping timing would be recommended to ensure the scheme is carried out in accordance with the approved plan.

8. Other Implications

Public Protection:

The Public Protection Section have suggested a condition relating to sound proofing the dwelling houses to guard against disturbance from the Public House for future occupiers.

Archaeology:

The area is within an archaeologically sensitive site, it is considered appropriate to attach a condition requiring a written scheme of archaeological investigation, to protect any remains that may be on the site.

Recommendation

That Planning Permission be granted subject to the following:

- 1 The development hereby approved shall be commenced within three years of the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 which is designed to ensure that a planning permission does not continue in existence indefinitely if the development to which it relates is not carried out.

- 2 **Prior to commencement a scheme shall be submitted for written approval by the Local Planning Authority setting out the details of the materials to be used for the extensions external walls and roof of the Bell Public House. The development shall be carried out in accordance with the approved scheme.**

Reason: To protect the visual amenities of the building and of the area generally.

- 3 **Prior to commencement a scheme shall be submitted for written approval by the Local Planning Authority setting out the details of the materials to be used for the extensions external walls and roof of the new dwelling houses. The development shall be carried out in accordance with the approved scheme.**

Reason: To protect the visual amenities of the building and of the area generally.

- 4 **Prior to commencement a scheme shall be submitted for written approval by the Local Planning Authority setting out the materials and details of the boundary treatment for the development. The development shall be carried out in accordance with the approved scheme.**

Reason: To protect the visual amenities of the building and of the area generally.

- 5 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the 1st dwelling or the completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years of completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority give written consent to any variation.

Reason: In the interests of the visual amenities of the site and the area generally.

- 6 **The development shall not begin until a scheme for protecting the proposed dwellings from noise generated by the use of public house adjacent to the proposed development has been submitted and approved by the Local Planning Authority. Any works that form part of the scheme approved by the local authority shall be completed and the effectiveness of the scheme shall be demonstrated through validation noise monitoring with the results reported to the Local Planning authority in writing, before any permitted dwelling is occupied unless an alternative period is approved in writing by the Authority.**

Reason: To protect the amenity of the future occupiers of the proposed dwellings hereby permitted.

- 7 **No development shall take place until the applicant or developer has secured the implementation of a Written Scheme of Archaeological Investigation which has been submitted to and approved in writing by the Local Planning Authority. The said development shall only be implemented in accordance with the scheme thereby approved."**

Reason: To record and advance understanding of the significance of the heritage asset in accordance with Policy HE12.3 of PPS5: *Planning for the Historic Environment*.

- 8 **Prior to any building works being first commenced, detailed drawings of all proposed new doors & windows to a scale of 1:10 or 1:20, together with a detailed specification of the materials, construction & finishes, shall be submitted to & approved in writing by the Local Planning Authority.**

Reason: To ensure that the new development is sympathetic to the character & appearance of the listed building and its setting, in accordance with PPS5 and Policies CS15 and DM13 of the Council's Core Strategy.

- 9 The proposed vehicular accesses shall be constructed and surfaced in accordance with details to be approved in writing by the Local Planning Authority for a distance of 6m into the site, measured from the highway boundary, before the premises are occupied. Arrangements shall be made for surface water drainage from the site to be intercepted and disposed of separately so that it does not discharge into the highway.

Reason: To avoid the carriage of mud or other extraneous material or surface water from the site into the highway so as to safeguard the interest of the highway

- 10 Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995, or any amendments thereto, the garage accommodation on the site shall not be used for any purpose, other than as garage accommodation, unless permission has been granted by the Local Planning Authority on an application made for that purpose.

Reason: To retain off-street parking provision and thereby minimise the potential for on-street parking which could adversely affect the convenience of road users.

- 11 **Development shall not commence until a scheme detailing provision for on site parking for construction workers for the duration of the construction period has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented throughout the construction period.**

Reason: To ensure adequate off street parking during construction in the interests of road safety.

- 12 No dwelling shall be occupied until a 2.0m wide footway has been constructed on the south-western side of Bell Close between the access to Plot 3 and the access to Plot 1 in accordance with details of a scheme to be submitted to and approved by the Local Planning Authority. Any Statutory Undertakers equipment or street furniture shall be re-sited to provide an unobstructed footway.

Reason: In the interests of road safety and pedestrian movement.

- 13 Details of bin storage and collection points shall be submitted to and approved by the Local Planning Authority prior to the occupation of any dwelling. The development shall be carried out in accordance with the submitted details.

Reason: In the interest of amenity.

- 14 Prior to the occupation of any of the dwelling houses the works to the Listed Building and the construction of the approved car park shall be completed in accordance with the approved plans.

Reason: To ensure the enhancements to the Listed Building are complete prior to the completion of the development and to ensure a satisfactory level of parking for the Public House.

- 15 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers 2527-06a, 2527-04b, 2527-07, 2527-03, 2527-01, 2527-05d, 2527-02e, 2527-02g, CBC/001 (site location plan).

Reason: For the avoidance of doubt.

Reasons for Granting

The proposal to extend and alter the Bell Public House, relaying out of car park and erection of three number four bedroom dwelling houses would not have a negative impact on the visual amenity of the surrounding area, and would preserve the character and appearance of the Listed Building. It would not have an adverse impact on the residential amenity of neighbouring properties and is acceptable in terms of highway safety. Therefore, by reason of its site, design and location, the proposal is in conformity with Policies CS1, CS2, CS5, CS14, CS15, DM3, DM4, and DM13 of the Core Strategy and Management Policies, November 2009; Planning Policy Statement 1, Planning Policy Statement 3, Planning Policy Statement 5. It is further in conformity with the technical guidance Design in Central Bedfordshire, a Guide for Development, 2010, the Council's Planning Obligations Strategy.



Application No
CB/11/04550/LB

The Bell, High Street, Westoning, Bedford, MK45 5JH

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Item No. 11

SCHEDULE B

APPLICATION NUMBER	CB/11/04550/LB
LOCATION	The Bell, High Street, Westoning, Bedford, MK45 5JH
PROPOSAL	Listed Building: alterations and extensions to premises revised application to CB/11/03626/LB
PARISH	Westoning
WARD	Westoning, Flitton & Greenfield
WARD COUNCILLORS	Cllr Jamieson
CASE OFFICER	Annabel Gammell
DATE REGISTERED	09 January 2012
EXPIRY DATE	05 March 2012
APPLICANT	Oak Tree Management Service
AGENT	Paul Lambert Associates Ltd
REASON FOR COMMITTEE TO DETERMINE	Cllr Jamieson called to committee
RECOMMENDED DECISION	Listed Building - Granted

Reason for Committee to determine - Cllr Jamieson called the application to committee.

Site Location:

The application site is the Bell public house which is a Grade II early C17th building with a timber frame structure, red brick infill which has been cream colour washed, with red clay plain tiles.

The site is roughly triangular with the Public House situated within the southern corner, a large children's play area central, and an unlaidd out car park partially surrounded by a row of high conifer hedges. The surrounding area is characterised by residential dwellings that vary in age and style, the site is north central within Westoning located adjacent to the intersection of High Street and Greenfield Road, Westoning Lower School is to the south east of the site. The property is entirely enclosed within the defined settlement envelope of Westoning.

The Application:

Listed Building Consent for:

Alterations and extensions to the Public House including a single storey side and

rear extension measuring some 12.5 metres by 7.5 metres with a height of 3.8 metres (note maximum dimensions). This would follow the removal of an existing side extension.

RELEVANT POLICIES:

National Policies (PPG + PPS)

- PPS 1 Delivering Sustainable Development (2005)
- PPS 5 Planning for the Historic Environment (2010)

Core Strategy and Development Management Policies, November 2009

Policy CS15- Heritage
Policy DM3 - High Quality Development
Policy DM13- Heritage in Development

South Bedfordshire Local Plan Review Policies

Not applicable

Supplementary Planning Guidance

Design in Central Bedfordshire: A Guide for Development 2010

Planning History

Recent:

An application for alterations to the public house was recently submitted, this was withdrawn by the applicant on the advice of the planning officer. This was reference CB/11/03626/LB.

Historical:

MB/04/00440/ADV - Advertisement Consent: House name letters, facility signs, replacement pictorial post sign, siting of new pictorial post sign. Granted 18/06/04
MB/91/01378/FA - Full: Retention of timber building in car park. Granted 18/11/91
MB/90/01232/FA - Full: Ladies toilet and conservatory extension. Refused 09/10/90
MB/90/01243/LB - Listed Building Consent: Ladies toilet and conservatory extension. Refused 09.10.90
MB/88/00933/FA - Full: Retention of timber building in car park. Granted 30.09.88
MB/84/00857/ADV - Advertisement Consent: Pictorial sign within frame on post. Granted 18/12/84

Representations:

(Parish & Neighbours)

Westoning Parish Council:

Object.

- *Style of Houses* - Inconsistent and unsympathetic to the existing dwellings in Bell Close. Concern residents will face a brick wall. Concern that the loft will be used as a bedroom. Rear dormers giving a "town house" impression within a village location. Too many houses in Westoning in this style, no more are needed.
- *Car Park* - Insufficient space for the cliental of the pub. Believes that the number of spaces currently available is 40.
- *Impact upon Greenfield Road* - A busy road, concern that the road will be used as "over spill" when the pub car park is full. Concern that the dray lorry will not be able to get into the site. Insufficient room for cars to turn within Bell Close. The drop off point for the school bus is close, at certain times there will be a large number of children around the site.
- *Noted not planning issues but wish the committee to be aware of* - Disappointed in loss of pub garden area, and petanque facility. The Council produced a Parish Plan in 2009, 70% of those responding to questionnaire indicated they wished to see no further development in the village. If houses are approved, the Parish Council would like to see a condition requiring the works to the pub to be carried out prior to the construction of the dwelling houses.

Neighbours:

4 letters of objection received:

- *Highway/Parking Issues*. Largely relating to Bell Close being used by people using the pub, the lower school and recreation ground and the pub car park being able to accommodate more than the stated "22 existing spaces". Bell Close being too narrow to accommodate additional houses and potential additional visitor parking spaces. Concern that emergency vehicles would not be able to get through to the existing houses. School bus movements and school pick up/drop off congestion.
- *Design of houses*. Inconsistent with village style, considered too large, possibly be 5 bedrooms, not 4 bedrooms. Design not appropriate or sympathetic with other dwellings within Bell Close.
- *Over development of the site*. Historically the site

has been open, and this would be more land built on.

- *Issues over levels within Bell Close*, due to sloping nature of site. The site section shows houses of a similar height.
- *Detriment of the village*. Westoning is large enough, it needs the parking more than the houses. The houses would have a negative impact upon the character and appearance of the area.
- *Houses and car park would have a detrimental impact upon Public House*. People will no longer want to visit the pub because of parking problems around the site.
- *Loss of garden area for the Public House*. Also impact upon the trees.
- *Loss of bottle bank and clothing bin*.
- *There are other 4 bed family homes within Westoning unsold*, therefore no need for further development.
- *Issues relating to the Section 106 monies*. Suggestions were made that they are used for improvements to the highway close to the site.
- *The housing would be used as a money making scheme*.
- *General support for the improvement to the Public House*.

Consultations and Publicity responses

Site Notice Posted on 19.01.12:	4 letters were received	theses have been represented above
Advertised on 20.01.12	4 letters were received	theses have been represented above
Conservation and Design	No objections, recommended conditions	
Archaeology	No objection	

Determining Issues

The main considerations of the application are;

1. The Impact upon the Listed Building
2. Any other implications

Considerations

- 1. The Impact upon the Listed Building**

Principle of extending the Bell Public House:

Extensions to Listed Buildings are considered appropriate should the merit of the design and scale of development be considered appropriate within the setting. Having regard to Core Strategy and Design Guide Policies, it is judged that the principle of extending the Public House is acceptable.

Impact upon the Listed Building:

It is considered that the alterations to the Public House building would not have a significant impact upon the character or appearance of the Listed Building. The proposal would involve the removal of an existing small side extension, which is of no specific heritage merit. The development would be relatively prominent, but it is judged that the scale and design would be in keeping with the existing building and therefore the design would appear complimentary within the setting.

The Council Conservation Officer commented:

The applicant has satisfied concerns highlighted in the previous listed building consent application in relation to the fussiness of the proposed extension. On the whole, as stated in application CB/11/03626/LB, proposals are considered acceptable, particularly the proposed extension as this will be an enhancement on the present flat roof side extension.

It is therefore considered that the proposal is in accordance with PPS 5 (Planning for the Historic Environment) as the Listed Building and setting would be enhanced by the development. The Council Conservation Officer supports this development, providing the quality of materials and details are conditioned.

2. Any Other Implications

Objections received:

A number of objections were received from the Parish Council and local residents. The only material planning consideration when determining an application for Listed Building Consent is the impact upon the Listed Building. Therefore any objections received not relating to the impact of the extension and alteration of the Listed Building have been considered in the associated FULL planning application reference CB/04549/FULL.

Recommendation

That Listed Building Consent be granted subject to the following:

- 1 The works hereby consented shall be begun within three years of the date of this permission.

Reason: To comply with Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to ensure that this consent does not continue in existence indefinitely if the development to which it relates is not carried out.

- 2 **Prior to any building works being first commenced, samples of materials to be used in the construction of the walls and roof of the extension and porch including a sample panel of brickwork, details of the face bond and details of the pointing mortar mix and finish profile. All new brickwork shall be painted to match the existing in terms of colour.**

Reason: To ensure that the special architectural & historic interest, character, appearance & integrity of the listed building is properly maintained and preserved in accordance with PPS 5 & standard conservation good practise.

- 3 **Prior to any building works being first commenced, detailed drawings of all proposed new external and internal doors & windows, together with a detailed specification of the materials, construction & finishes, shall be submitted to & approved in writing by the Local Planning Authority. Details shall be provided which clearly show (as appropriate)- a section of the glazing bars, frame mouldings, door panels, the position of the door or window frame in relation to the face of the wall, depth of reveal, arch & sill detail.**

Reason: To ensure that the special architectural & historic interest, character, appearance & integrity of the listed building is properly maintained and preserved in accordance with PPS 5 & standard conservation good practise.

- 4 All rainwater goods shall be cast iron. As an alternative, cast aluminium may be acceptable, in certain circumstances, though this is to be specifically justified & agreed in writing by the Local Planning Authority if it is proposed to specify cast aluminium. Plastic or uPVC rainwater goods are not acceptable.

Reason: To ensure that the special architectural & historic interest, character, appearance & integrity of the listed building is properly maintained and preserved in accordance with PPS 5 & standard conservation good

practise.

- 5 This consent relates only to the details shown on plans CBC/001 (site location plan), 2527-01, 2527-04b, 2527-03, 2527-02g

Reason: To identify the approved plan/s and to avoid doubt.

Reasons for Granting

The proposal is in conformity with Policies CS15 and DM13 of the Development Management Policies of the Core Strategy Adopted 2009, as it preserves the special interest of the Grade II Listed building. It is also in accordance with Planning Policy Statement 5: Planning for the Historic Environment and Adopted Technical Guidance, Design Supplement 5: The Historic Environment.

Notes to Applicant

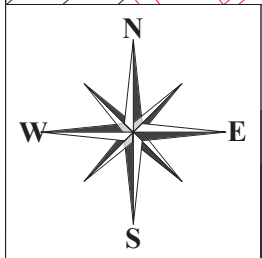
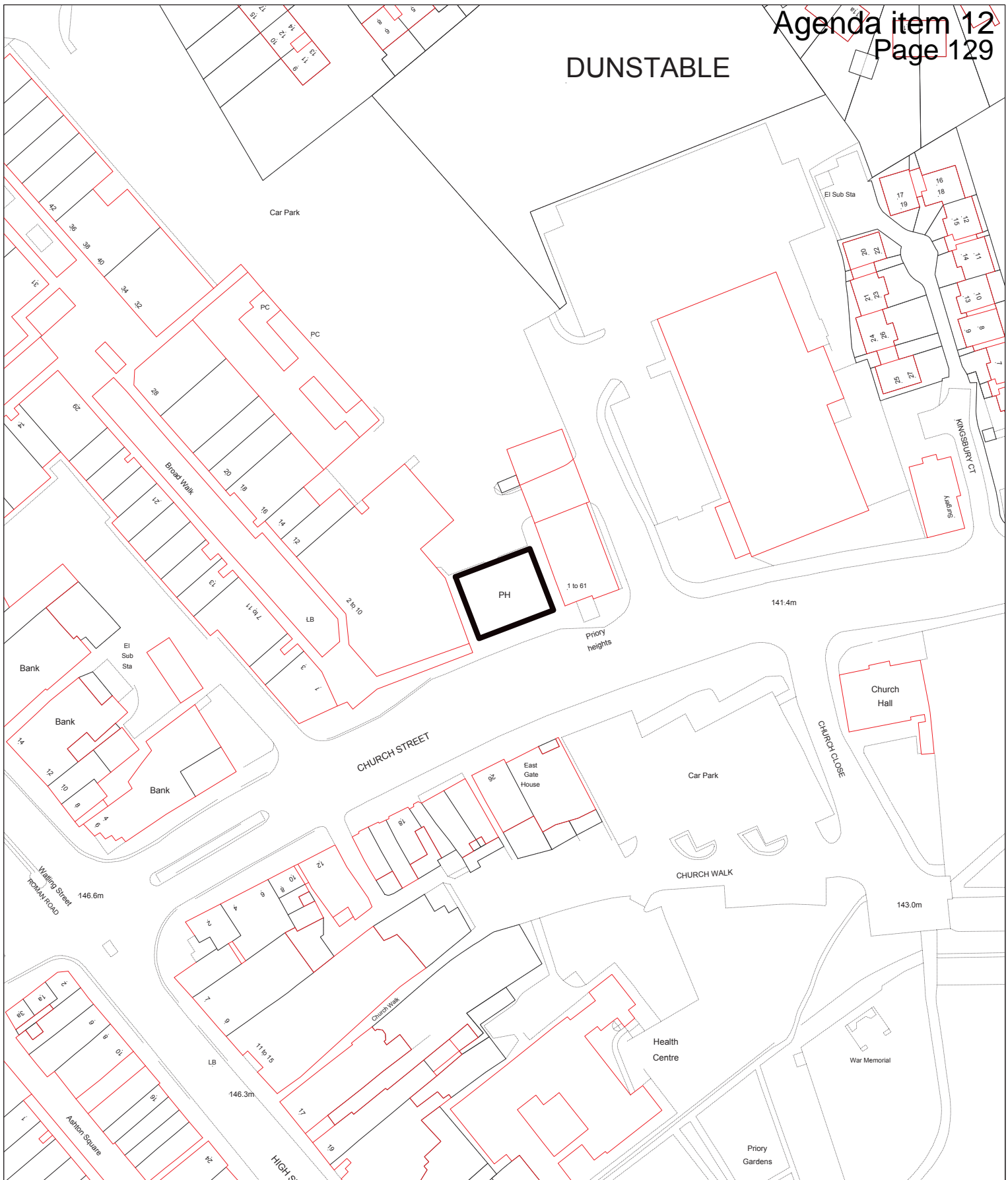
DECISION

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Central Bedfordshire Council
Licence No. 100049029 (2009)
Date: 10:February:2012
Grid Reference: 501988; 221936

Application No.
CB/11/04175/FULL

Scale: 1:1250

The Winston Churchill, Church Street, Dunstable, LU5 4RP

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National Policies (PPG & PPS)

PPS1 - Delivering Sustainable Development

South Bedfordshire Local Plan Review Policies

TCS1 - District Town Centres
BE8 - Design Considerations
T10 - Parking - New Development

Supplementary Planning Guidance

Design in Central Bedfordshire, a Guide for Development

Planning History

CB/11/1612/FULL Internal alterations to the vacant pub to convert it into a restaurant with a new glass facade on the front right corner. - granted
SB/ADV/96/0041 - Consent for the display of various externally illuminated static advert signs.
SB/ADV/92/0060 - Consent for the display of externally illuminated signage.

**Representations:
(Parish & Neighbours)**

Dunstable Town Council	Object: Development incongruous be way of its size and bulk and in relation to the rest of the street scene. Development should be of high quality design in town centre to enhance the street scene not be detrimental to it.
Neighbours	4 letters of objection from residents of Priory Heights: The objections relate to issues concerning possible noise from air conditioning units, lighting, loss of light, bin storage, noise from bins, opening hours, extraction of cooking fumes, possibility of a fire escape, impact upon privacy.

Consultations/Publicity responses

Archaeology	No objection.
Highways	No objection.
Public Protection	Has not objected but raised concerns over noise and odours from the building, possible concern over means of ventilation for the extension.
Environment Agency	No comments received.
Disability Discrimination Officer	Commented that as there is no lift to 1st floor, this could impede accessibility to first floor.

Determining Issues

The main considerations of the application are:

1. **Principle**
2. **Impact upon character and appearance of the area**
3. **Impact upon residential amenity**
4. **Any other issues**

Considerations

1. Principle

The conversion of a public house (A4) has a permitted change of use to a restaurant (A3). There is no restriction on the type of pub or restaurant that can be converted. The only development that requires planning permission are the external alterations, the extension to the roof, which is of large flat roof conservatory design. The alterations to the building which include the previously consented large glass panel on the frontage.

2. Impact upon character and appearance of the area

The Winston Churchill holds a prominent position within the streetscene of Church Street. It is not within the Dunstable Conservation Area, but it is adjacent to it and opposite it. Also on the opposite side of the road are a number of attractive buildings including a Listed Building (26 Church Road). It is judged that subject to suitable materials being used the changes would improve the appearance of the building.

The building is currently in a very poor external condition. It is considered that the alterations would enhance the appearance of the building and the street scene and the setting of the adjoining Conservation Area. This is in accordance with the Central Bedfordshire Design Guidance document. The Dunstable Town Centre Master plan supports the regeneration of vacant buildings for commercial use. It is considered that the alterations to the buildings frontage to facilitate the vacant pub to open as a restaurant would be also in accordance with this document.

The extension would be an additional 3 metres in height, to create the additional floor, this would be some 2.2 metres additional over the existing parapet wall that surrounds the Winston Churchill. Although a relatively unorthodox design it is considered that it would be appropriate for the building, as the building already has a flat roof. The extension would be subservient by nature of being set in some 2 metres from the sides of the existing building. The materials proposed are predominantly glass from the frontage, and it is considered that this would be an appropriate use of glass to modernize and update the existing building.

The Winston Churchill would remain lower in height than The Quadrant Shopping Centre and Priory Heights, it is considered in this commercial centre the 2nd floor would not appear out of character.

3. Impact upon residential amenity

The application has been made for the external changes to the building, including a second floor extension, the desired result being the renovation of this

dilapidated pub into a restaurant, with an increased floor space. The second floor would be used for storage and a seating area. The only adjacent residential properties are within Priory Heights, the block of flats to the east of the application site.

Loss of light: The increase in height over the existing parapet wall would be some 2.2 metres, the proposed extension would be approximately 3.9 metres from the side elevation of Priory Heights. It is considered that 3.9 metres is sufficient spacing to ensure there would not be a significant impact upon the light into any other residential property.

Loss of outlook/causing an overbearing impact: It is considered that the appearance of the building would be improved by the development and therefore there would not be any significant loss of outlook or the causing of an overbearing impact. The additional 2.2 metres in height would when viewed from the properties within Priory Heights, be at a distance of some 3.9 metres, the wall would be a light coloured render finish. The roof would remain flat which would help to reduce the impact of the extension on the windows of these properties.

Loss of privacy: To ensure no significant impact to the privacy of the residents of Priory Heights, a wall is proposed within the eastern facing elevation, opposed to glazing. It is considered that with appropriate conditions there would not be a significant impact upon the privacy to any residential properties.

No other residential properties would be affected by this development.

A number of concerns have been raised by the residents of Priory Heights, these include concerns relating to:

Loss of light - It is considered that with the extension being significantly set off the boundary of the existing building, that it would not lead to a significant reduction in the light provision for the flats.

Noise and odour - The change of use is permitted and any undue noise or odour would have to be controlled by Public Protections legislation. A condition is recommended to be imposed to control the provision of any new extract system. The noise to the flats would be reduced by the storage area being on the eastern side of the building, this would provide a level of sound insulation between the restaurant area and the flats.

Bin Area - The refuse arrangements would be similar to those of the functioning public house, at the rear of the building. The location of the bin area can be controlled by the imposition of a suitable planning condition.

Privacy concerns - This issue has been covered in detail above, a condition requiring some of the glazing to be obscured to protect the privacy of the flats is recommended.

Times of Business - Looking at the history of the site, it does not appear that this has been controlled in the past. It is considered unreasonable to condition the times on business as part of this application in this town centre location adjoining the main A505, Church Street.

Fire Evacuation - There are no plans showing a fire escape, there is both a front and rear door which is considered suitable means of escape for the building.

The building would need to comply with the relevant Building Control legislation. Should the applicant wish to install a permanent means of fire escape from the building this would require planning permission and a further application would be required.

It is considered that the 2nd floor extension of the building and additional glazed sections to the frontage would be acceptable in terms of residential amenity.

4. Any other issues

Time of consent:

Due to the poor condition of the current building, the very negative impact upon the streetscene and adjacent Conservation Area, it is judged appropriate to grant consent for works to commence within 1 year from the date of decision. The intention of reducing the amount of time in which the permission can be implemented is considered in the interest of the local area, as the works to the building would significantly improve the visual appearance of a prominent building.

Public Protection:

Concern was raised by the Council's Public Protection Officer that the development of the Winston Churchill site could lead to increased noise and odour generated from the building. The site previously achieved planning permission for the conversion of the building from pub to restaurant and external works including a large area of glazed walling. It is appropriate to attach the same conditions to control extraction of fumes and smells as the previous application. In addition to these conditions a further condition is recommended which would require the use of the storage area to remain for storage, this would help attenuate against noise from the new level of the restaurant.

Parking implications:

The Highways Section are satisfied that due to the sustainable location of the restaurant that there would not be any significant impact on highway safety.

Recommendation

That Planning Permission be granted subject to the following conditions:

- 1 The development hereby approved shall be commenced within one year of the date of this permission.

Reason: The application site currently has a significant adverse impact on visual amenity and to comply with Section 91 of the Town and Country Planning Act 1990 which is designed to ensure that a planning permission does not continue in existence indefinitely if the development to which it relates is not carried out.

- 2 **Prior to commencement a scheme shall be submitted for written approval by the Local Planning Authority setting out the details of the materials to be used for the external walls, windows, doors and roof.**

The development shall be carried out in accordance with the approved scheme.

Reason: To protect the visual amenities of the building and of the area generally.

- 3 **Details of the means of extraction of fumes and smells from the premises shall be submitted to and approved by the Local Planning Authority in writing and any equipment or arrangements made thereby approved shall be installed in the premises and be available for use before the use to which permission relates is commenced.**

Reason: To safeguard the amenities of neighbouring properties.

- 4 **Before development begins, details of the arrangements to be made for the collection, storage (including a location plan showing the bin storage area) and disposal of solid trade waste emanating from the premises shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and maintained in perpetuity.**

Reason: To ensure control over the development in the interests of amenity and public safety. (Policy BE8 S.B.L.P.R).

- 5 **The frameless double height windows within the eastern (side facing) elevation of the development as shown edged in green on plan number SE/WC/11F-OBSCURE attached to this permission hereby permitted shall be of fixed type and fitted with obscured glass of a type to substantially restrict vision through it at all times, details of which shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development and shall be carried out in accordance with the approved details and maintained in perpetuity. No further windows or other openings shall be formed in the elevation.**

Reason: To safeguard the amenities of occupiers of adjoining properties.

- 6 **The glazed window of the storage area within the 2nd floor within the northern (rear facing) elevation of the development as shown edged in green on plan number SE/WC/11F-OBSCURE attached to this permission hereby permitted shall be of fixed type and fitted with obscured glass of a type to substantially restrict vision through it at all times, details of which shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development and shall be carried out in accordance with the approved details and maintained in perpetuity. No further windows or other openings shall be formed in the elevation.**

Reason: To safeguard the amenities of occupiers of adjoining properties.

- 7 **The eastern facing window of the glazed stair case enclosure on the 2nd floor as shown edged in green on plan number SE/WC/11F-OBSCURE attached to this permission shall be of fixed type and fitted with obscured glass of a type to substantially restrict vision through it at all times, details of which shall be submitted to and approved in**

writing by the Local Planning Authority prior to the commencement of development and shall be carried out in accordance with the approved details and maintained in perpetuity. No further windows or other openings shall be formed in the elevation.

Reason: To safeguard the amenities of occupiers of adjoining properties.

- 8 The area marked on plan SE/WC/10A as storage shall be maintained as a storage facility and not used for any other purpose.

Reason: To protect the residential amenity of adjacent properties.

- 9 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers SE/WC/11, SE/WC/10, SE/WC/10A, SE/WC/11F, SE/WC/001, SE/WC/002.

Reason: For the avoidance of doubt.

Reasons for Granting

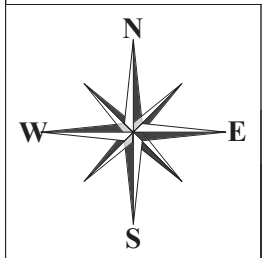
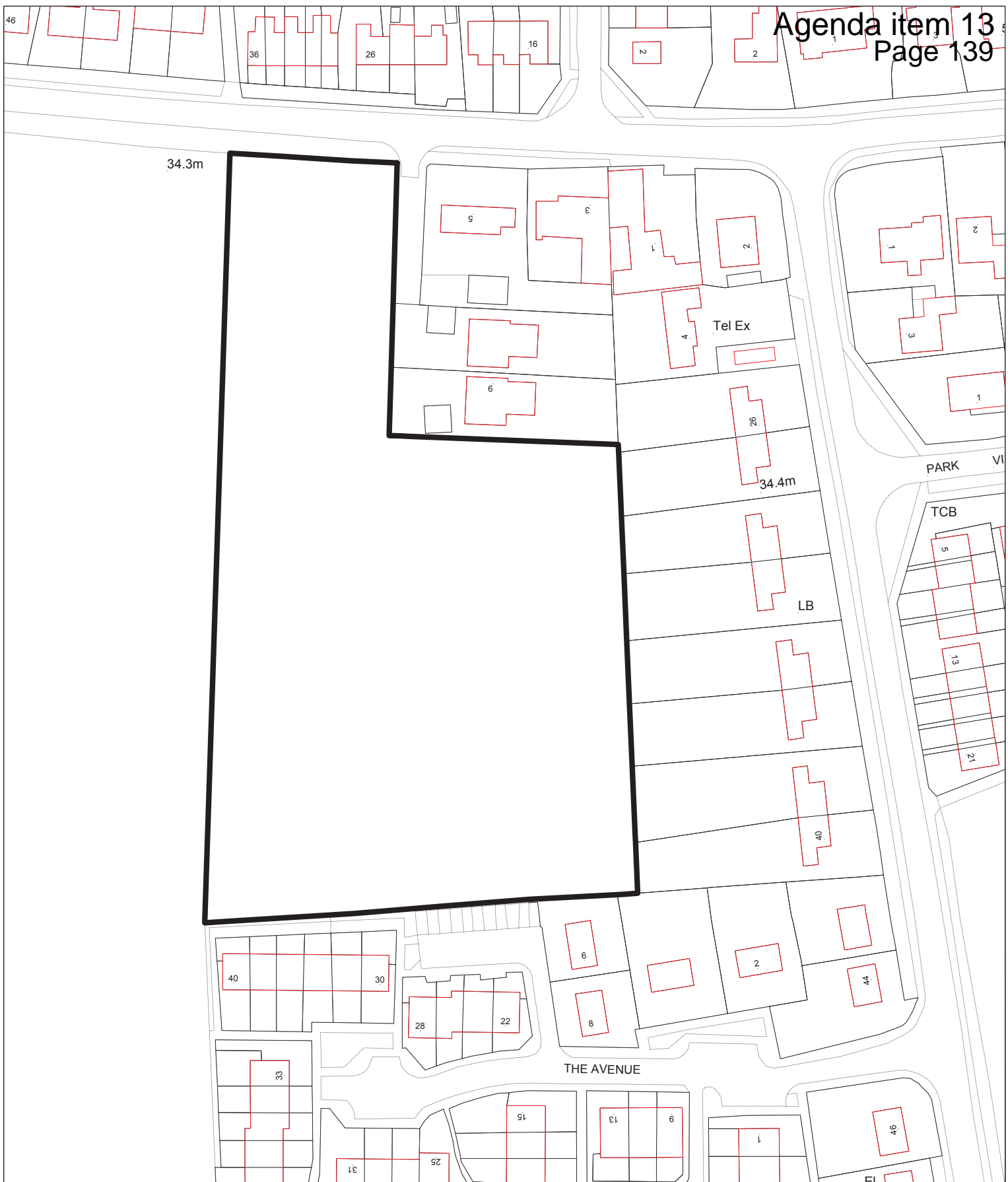
The proposal would have a positive impact on the character of the area and no significant adverse impact on the residential amenity of neighbouring properties and is acceptable in terms of highway safety therefore by reason of its site, design and location, is in conformity with Policies BE8, TSC1 and T10 of the South Bedfordshire Local Plan Review 2004; and Planning Policy Statement 1 (2005). It is further in conformity with the technical guidance Design in Central Bedfordshire, a Guide for Development, 2010.

Notes to Applicant

DECISION

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Central Bedfordshire Council
Licence No. 100049029 (2009)
Date: 14:February:2012
Grid Ref: 514859 251059

Application number:
CB/11/03412/FULL

Scale: 1:1250

Land at Barford Road, Blunham

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Item No. 13

APPLICATION NUMBER	CB/11/03412/FULL
LOCATION	Land at Barford Road, Blunham
PROPOSAL	Construction of 36 no. residential dwellings of 2, 3 & 4 bedroom with garages, associated parking, landscaping and highway
PARISH	Blunham
WARD	Sandy
WARD COUNCILLORS	Cllrs Aldis, Maudlin & Sheppard
CASE OFFICER	Lisa Newlands
DATE REGISTERED	29 September 2011
EXPIRY DATE	29 December 2011
APPLICANT	Sherwood Architects Ltd.
AGENT	Sherwood Architects Ltd
REASON FOR COMMITTEE TO DETERMINE RECOMMENDED DECISION	Called in at the request of Councillor Aldis due to concerns regarding overdevelopment; lack of amenity space; inadequate mix of housing types Resolve to Grant Planning Permission subject to an acceptable S106 agreement securing the contributions set out in the report.

Site Location:

The application site is adjacent to the settlement envelope for Blunham to the west of the village. The site has been allocated within the Council's Site Allocations Development Plan Document for residential development.

The site is bounded to the north by Barford Road. There are residential dwellings to the north, east and south. To the west is open countryside.

The site is currently open field, which is fairly flat. There are a number of trees and bushes which give visual screening, particularly to the eastern boundary and a hedgerow along the western boundary.

The Application:

Planning permission is sought for the erection of 36 residential dwellings of 2, 3 and 4 bedroom with garages, associated parking, landscaping and highway.

RELEVANT POLICIES:

National Policies (PPG & PPS)

- PPS1: Delivering Sustainable Development
- PPS3: Housing
- PPS5: Planning for the Historic Environment
- PPS9: Biodiversity and Geological Conservation
- PPG17: Planning for Open Space, Sport & Recreation
- PPS25: Development and flood risk

Regional Spatial Strategy

East of England Plan (May 2008)

Core Strategy and Development Management Policies for Central Bedfordshire (North)

CS1: Development Strategy
CS2: Developer Contributions
CS3: Healthy and Sustainable Communities
CS4: Linking Communities - Accessibility and Transport
CS5: Providing Homes
CS7: Affordable Housing
CS14: High Quality Development
CS15: Heritage
CS16: Landscape and Woodland
CS17: Green Infrastructure
CS18: Biological and Geological conservation
DM3: High Quality Development
DM9: Providing a range of transport
DM10: Housing Mix
DM14: Landscape and Woodland
DM15: Biodiversity
DM16: Green Infrastructure

Supplementary Planning Guidance

Design in Central Bedfordshire - A guide for development
Planning Obligations Strategy SPD

Planning History

None

Representations: (Parish & Neighbours)

Parish/Town Council	<p>Supports a small development on this land, it should not be of a density and style of homes detailed in this application.</p> <ul style="list-style-type: none">• The scheme does not concur with the wishes of many of the current households;• does not fit in with the character of our village;• the scheme is too dense;• no green space provided;• proposed building style is not in keeping with Bedfordshire village architecture;• concern of the size of gardens;• concern regarding water and drainage issues;• References to bus services etc in the Transport
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- Statement are inaccurate and incorrect;
- concern regarding ecological issues;

Neighbours

There have been 12 letters of objection in relation to this scheme on the following grounds:

- The quantity of houses is too much for the village;
- not in character with the village;
- Problems with low water pressure;
- Concern regarding privacy - rear garden will be right on the border;
- increased traffic levels;
- concern regarding the heights of the buildings;
- inadequate public transport serving Blunham;
- increased pressure on existing local community facilities;
- Concern regarding flooding and drainage issues;
- access immediately opposite the access to the village playing fields and sports facilities;
- Plots 1-2 will front on to Barford Road and will directly overlook existing on the opposite side of the road.

Consultations/Publicity responses

LDF Team	No objection - scheme accords with policy set out in site allocations DPD
IDB	No objection subject to satisfactorily designed drainage so that there is no increase in localised flood risk to the proposed dwellings or adjacent lands.
Environment Agency	No objection subject to conditions
Council's Ecologist	No objection
Council's Archaeologist	No objection
Minerals and Waste Team	No objection
Tree and Landscape Officer	No objection subject to conditions
Highways	No objection subject to conditions

Determining Issues

The main considerations of the application are;

1. The principle of development
2. The impact of the proposal on the character and appearance of the surrounding area
3. The impact of the proposal on the residential amenities of any neighbouring properties
4. Layout and Design
5. Affordable Housing and Housing Mix
6. Highway Implications
7. Other Considerations
8. Legal Agreement

Considerations

1. The Principle of Development

Blunham is identified in Policy CS1 of Core Strategy and Development Management Policies for Central Bedfordshire (North) as a large village. The policy states that the Site Allocations DPD will make small scale allocations of new homes, jobs and community facilities that reflect the size and character of the community.

Policy DM4 of the same document states that in large villages 'small-scale housing and employment uses, together with new retail and service facilities to serve the village and its catchment will be permitted.

The application site is allocated in Policy HA15 of the Site Allocations DPD for residential development providing a minimum of 36 dwellings. The preamble to the policy states that Blunham will continue to build on its role as a Large Village. To achieve this, additional housing will be provided during the plan period.

Given the policy background, it is considered that the principle of residential development on the site is acceptable subject to the detailed layout and design. The Policy requires a minimum of 36 dwellings and the proposed development submitted is for 36 dwellings, with a site area of 1.29 hectares the density of the scheme is approximately 28 dwellings per hectare and this is considered appropriate in this area given its location on the edge of the village.

2. The impact of the proposal on the character and appearance of the surrounding area

The proposed development would be accessed from Barford Road and plots 1 and 2 of the proposed scheme would have a frontage on to Barford Road. The development would then extend to the rear of the site. The plans have been revised since submission of the application to try and address the concerns of the Parish Council and to achieve a better overall layout and design.

The character and appearance of the site is at present open field/ agricultural land, with it currently being laid to grass. The site is on the edge of the settlement envelope and therefore adjacent to open countryside. The proposed development has been designed to achieve a scheme that addresses both the countryside and the village.

There are residential properties surrounding the site on three sides, with open fields to the west. There is a mix of architectural styles within the surrounding area, however, they are predominantly two storey dwellings along Barford Road, with mainly bungalows to the south of the site within The Avenue.

The appearance of the site is that of an open field on the edge of the settlement. The erection of dwellings on this site will inevitably change the character and appearance of the site. However, the site adjoins residential development on two sides, and given the circumstances it is not considered that the proposed

development would result in a prominent or incongruous extension into the open countryside. In addition to this as it is an allocated site, these issues would also have been considered at the allocation stage and the site was considered appropriate for residential development.

The proposed dwellings provide a high quality design and achieve an acceptable mix and variation within the street scene. The dwellings are proposed to be 2 storey with varying ridge heights to provide interest. There are no 3 or 2.5 storey dwellings proposed within the scheme. This is to reflect the rural location of the site and the village itself.

It is therefore not considered that the proposed development would have a detrimental impact on the character and appearance of the surrounding area, to warrant refusal of the application.

3. The impact of the proposal on the residential amenities of any neighbouring properties

The application site is surrounded by residential properties on three sides, this includes residential properties in Station Road, Barford Road and The Avenue.

The Avenue

To the south of the site are properties within The Avenue, these are mainly bungalows with rear gardens backing on to the site. There is also a block of garages and a number of two storey properties with their side elevation facing the site. There are a number of single storey brick built shed like buildings close to the site boundary within the rear gardens of the bungalows.

The proposed dwellings (plots 27 -31) have been designed so that there is a back to back distance of 21m from the rear elevations of the bungalows to the rear elevations of the proposed two storey dwellings, with some plots achieving a greater separation distance. Plots 29 - 31 are designed to be modest cottages with a ridge height of approximately 7.8m. Plots 27 and 28 are detached properties with varying ridge heights from 8.4m (plot 28) and 8.2m (plot 27). The separation distance between plots 27 and 28 with the properties to the south is approximately 24m.

Given the separation distances achieved, it is not considered that the proposed dwellings in this area would have a detrimental impact on the residential amenities in terms of loss of light, privacy or being overbearing on the neighbouring properties within The Avenue to warrant refusal.

Station Road

To the east of the site are a number of properties within Station Road, which again have a similar relationship to the site as those in The Avenue, with rear gardens backing on to the site. However, the neighbouring properties in this area have substantial rear gardens which given the layout of the proposed scheme provide a back to back distance in excess of 40m in most areas. Concern has been raised regarding permission for a bungalow in the rear garden of one of these properties. However, even taking this into account a

separation distance of 20m can be achieved between the rear elevation of the proposed dwellings and the rear elevation of the bungalow. It is therefore considered in this area that the proposed dwellings would not have a detrimental impact on the residential amenities in terms of loss of light, privacy and appearing overbearing on the neighbouring properties within Station Road to warrant refusal.

Plots 10 - 11 have their side elevation fronting the boundary of the site with some of the neighbouring properties in Station Road. The separation distance is in excess of 25m, increasing to 30m. This is therefore considered acceptable relationship and would not result in any detrimental loss of light, privacy or appear overbearing on the residential amenities of these neighbouring properties.

Barford Road

Plot 1 will be sited adjacent to the private drive which is used to access the two chalet bungalows to the rear of 5 Barford Road. Plot 4 is orientated with its side elevation on to the boundary with the private drive. The side elevation would be approximately 18m from the front elevation of the neighbouring dwelling and would be a depth of 9m. In addition to this there is a single storey detached garage that will also break up the view. The siting of this plot would only have an impact on one of the dwellings, whereas the other dwelling would overlook the rear garden area and not the dwelling itself. It is considered that this relationship is acceptable and would not result in any detrimental loss of residential amenity to the neighbouring properties or the future occupiers of the proposed dwelling.

Plots 1 and 2 would front on to Barford Road, this will introduce two new dwellings opposite an existing row of dwellings. The separation distance between the proposed dwellings and those on the opposite side of the road would be at least 21m and it is considered that whilst the properties on the opposite side of Barford Road currently have uninterrupted views over the site, the relationship proposed would not be unacceptable and would achieve a suitable privacy separation and would not result in any detrimental loss of light or appear overbearing.

Conclusion

In light of the foregoing appraisal it is considered that the layout and design of the proposed development is such that it would not have a detrimental impact on the residential amenities of any neighbouring properties to warrant refusal of planning permission.

4. Layout and Design

The village of Blunham has a mix of dwellings and architectural styles within the area and this is acknowledged in the Planning Statement and Design and Access Statement for the application. There is no overriding character to the immediate area, whilst the majority of the dwellings in the area are 2 storey in height, they vary in age, style and form. It is evident that Blunham has grown and developed through the years from the historic core through to the Victorian area and the 20th Century

The application has been amended since the original submission and re-consultation has taken place with the neighbouring properties and the Parish Council on the revised scheme.

The revised scheme has resulted in the reduction of dwellings from 37 to 36, and the re-arrangement of the internal layout.

The proposed development has been designed to reflect the shape of the application site and to respect the character and appearance of the surrounding area, and minimise the impact on any neighbouring properties. A 21m separation distance has been maintained with all neighbouring properties and in certain areas this has been exceeded and a greater separation distance achieved.

The density of the scheme is considered appropriate and the area adjacent to the open countryside (west edge of the site) has been maintained as fairly open and lower density than the eastern and southern areas. This is to maintain the character of the area and appearance of the site adjacent to the open countryside, whilst seeking to achieve the minimum numbers of dwellings required within the site allocations policy.

The design of the dwellings has also been revised, these have taken on some of the more local features and each of the buildings have been dressed appropriately in terms of their status. The proposed cottages are of modest scale with simple features, then the more prominent formal houses have more formal porches and in some instances the addition of bay windows to add more interest to the overall design.

The siting of each of the proposed dwellings has been considered in detail, and each dwelling has an acceptable level of private amenity space meeting the guidelines set out in the Supplementary Planning Document Design in Central Bedfordshire - A Guide for Development.

A street scene has been provided for all parts of the scheme and it is considered that in all areas of the development the design and layout achieves a high quality development with interest and varying designs and roof heights. There is also a mix of parking design with garages, and on plot parking to ensure that there is adequate parking for the proposed development.

It is considered that the design and layout of the proposed development is acceptable and that the future occupiers will have a high quality development which provides an acceptable level of residential amenity in terms of privacy, light and amenity space. It is therefore considered that the proposed layout and design would be in conformity with Policy DM3 of the Core Strategy and Development Management Policies for Central Bedfordshire (North) and the Supplementary Planning Document Design in Central Bedfordshire - A guide for Development.

5. Affordable Housing and Housing Mix

Policy CS7 of the Core Strategy and Development Management Policies for Central Bedfordshire (North) requires 35% affordable housing provision on all residential schemes of 4 or more dwellings. A scheme of 36 dwellings would equate to 13 affordable housing units.

The proposed development is to provide the appropriate level of affordable housing with a mix of 1 x 2 bed flat, 5 x 3 bed houses and 7 x 2 bed houses. This mix is considered to be acceptable and there will be a mix of tenure which will be secured through the S106 legal agreement.

Policy DM10 of the same document requires all new housing types to provide a mix of housing types, tenures and sizes. The affordable housing mix has been discussed above, the market housing mix will be 21 x 4 bed dwellings and 2 x 3 bed dwellings. Overall, the housing mix across the site will comprise 21 x 4 bed, 7 x 3 bed, 7 x 2 bed and 1 x 2 bed flat. This is considered acceptable and will provide much needed affordable housing within the village.

6. Highway Implications

Highways have commented on the scheme and the overall design and layout is considered acceptable. The proposal has adequate parking for each of the dwellings and there have been a number of visitor parking spaces provided across the site. The garages are considered acceptable for car parking and met the guidance within the Design guide.

A number of conditions have been requested by the Highways Officer in terms of visibility splays, highway lighting and garage provision.

Subject to the appropriate conditions, it is considered that the proposed development is acceptable in highway terms.

7. Other Considerations

Ecology

The Council's Ecologist has commented on the application and the submitted ecological assessment, it is not considered that the proposal would have a detrimental impact on the ecology of the site.

Drainage and Flood Risk

Further information was submitted in terms of flood risk and drainage on the site, the Environment Agency and the IDB have both commented on the application. The Environment Agency have recommended a number of conditions including a condition requiring a surface water drainage scheme to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The IDB have raised no objection to the scheme although they have also requested a condition in relation to the drainage scheme to ensure there is no increase in localised flood risk to the proposed dwellings or adjacent land.

Archaeology

The Council's Archaeologist has commented on the application and the submitted Heritage Asset Assessment. An archaeological trial trench evaluation was undertaken in 2011 and the evaluation report was submitted with the application. Only one isolated archaeological feature was discovered during the evaluation and it has now been recorded. The Council's Archaeologist agrees with the conclusion of the evaluation report that no further archaeological mitigation work is required. Therefore no objection has been raised to this application on archaeological grounds.

8. Legal Agreement

The Planning Obligations Strategy SPD sets out the contributions required for developments, the contributions sought have therefore been in accordance with the strategy in the first instance and in accordance with Policy CS2 of the Core Strategy and Development Management Policies for Central Bedfordshire (North).

The application has been supported with a draft heads of terms, during the application process negotiations have taken place and the following contributions have been secured:

Sustainable Transport: £19,740
Health Care: £25,350
Libraries: £2,447
Indoor Leisure: £14,288
Informal Amenity (ROS) £8,428

These are all in accordance with the Planning Obligations Strategy.

Education

An education contribution was sought for Alban Middle School by the Council's education officer, however, the School is an academy and although is the catchment school for Blunham, it is within Bedford Borough. After seeking the contribution the applicant sought justification for this contribution and confirmation was received that Bedford Borough would not wish to seek a contribution in this instance. Therefore, due to the conflicting information and confirmation from the Schools Education Authority that they would not wish to seek a contribution in this instance, it was not considered justified to continue seeking the contribution.

The Parish Council have requested a contribution towards the Village Lower School. However, this was not requested by the Education Officer and on seeking further information it was considered that a contribution could not be justified in terms of capacity as the school currently have approximately 72 pupils on roll and a capacity of 90, therefore a 20% surplus.

Children's Play

The proposed development makes no onsite provision for children's play and therefore a full contribution of £56,086 was sought. The applicant sought further justification in terms of this contribution as there is a brand new play area

opposite the development within the recreation ground and therefore they felt that a full contribution would not be reasonable. On this basis, and with the agreement of the Council's Play and Open Space Officer a reduced contribution was agreed of £28,043 which could be used for the maintenance or the provision of additional equipment.

Outdoor Sport

The proposed development makes no onsite provision for outdoor sport and it is usually taken as a contribution to improve existing facilities. The contribution sought was £26,048. The applicant stated that given the large open play area opposite the site which would easily accommodate the needs of the development and therefore the full contribution would be unreasonable. On this basis, and with the agreement of the Council's Play and Open Space Officer a reduced contribution was agreed of £13,024 which could be used to develop the area further and with appropriate sports equipment.

Green Infrastructure and Forest of Marston Vale

A contribution of £94,000 was sought in relation to Green Infrastructure and Forest of Marston Vale, further justification for this contribution was sought from the applicant. Information was given in relation potential schemes that could be undertaken in the area, however, many of these related to improving cycle links. The applicant stated that they have agreed to pay the full contribution in terms of sustainable development which is designed to improve cycle links therefore this contribution is not justified and many of the projects identified do not have a direct relationship with the development. In terms of the Marston Vale element, there is no concrete evidence to show that the development would have an impact on the Marston vale that would require a contribution. However, based on advice from the Green Infrastructure Team a reduced contribution of £46,500 has been agreed.

The total contributions agreed for the proposed development would amount to £157,820 including the required 35% affordable housing.

Conclusion

The Parish Council have commented in detail regarding the draft heads of terms that was provided within the application. Suggesting that contributions would be better secured for alternative projects, for instances, benches around the village, zebra crossings within the village, new bus stops and improvements to the road network outside the school. However, it is not considered that these could be fully justified and are not in accordance with the Planning Obligations Strategy. In addition to this it is not considered that the proposed alternative projects would meet the tests for the use of Planning Obligations as set out in Circular 05/2005 and Regulation 122 of CIL.

It is therefore considered that the contributions secured are appropriate and fully justified. They also meet the tests set out in Circular 05/2005 in relation to being necessary and related to the development. The contributions have been agreed with the applicant, and following a committee recommendation to approve the application subject to an acceptable S106, then work will commence on finalising the S106 agreement.

Recommendation

That Planning Permission be resolved to be granted subject to an acceptable S106 agreement subject to the following:

- 1 The development hereby approved shall be commenced within three years of the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 which is designed to ensure that a planning permission does not continue in existence indefinitely if the development to which it relates is not carried out.

- 2 Details of materials to be used for the external finishes of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance therewith.

Reason: To safeguard the appearance of the completed development by ensuring that the development hereby permitted is finished externally with materials to match/complement the existing building(s) and the visual amenities of the locality.

- 3 **A scheme shall be submitted for written approval by the Local Planning Authority indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved scheme before the buildings are occupied.**

Reason: To safeguard the appearance of the completed development and the visual amenities of the locality.

- 4 Full details of both hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. These details shall include:-

- proposed finished levels or contours;
- materials to be used for any hard surfacing;
- minor structures (e.g. furniture, play equipment, signs, etc);
- proposed and existing functional services above and below ground level;
- planting plans, including schedule of size, species, positions, density and times of planting;
- cultivation details including operations required to establish new planting;
- details of existing trees and hedgerows on the site, indicating those to be retained and the method of their protection during development works.

The development shall be carried out in accordance with the approved details.

Reason: In order to ensure that the landscaping is carried out within a reasonable period in the interest of the visual amenities of the area.

- 5 The scheme approved in Condition 4 shall be carried out by a date which shall be not later than the end of the full planting season immediately following the first occupation of the building(s) hereby approved.

Thereafter the planting shall be adequately maintained for a period of five years from the date of planting. Any of the trees or shrubs or both which die or are removed, or which become severely damaged or seriously diseased (during the said period of five years) shall be replaced with trees or shrubs or both, as the case may be, of similar size and species to those originally required to be planted and the same shall be maintained until properly established.

Reason: In order to ensure that the planting is carried out within a reasonable period in the interest of the visual amenities of the area.

- 6 Development shall not begin until details of the junction between the proposed estate road and the highway have been approved by the Local Planning Authority and no building shall be occupied until that junction has been constructed in accordance with the approved details.

Reason: In order to minimise danger, obstruction and inconvenience to users of the highway and of the proposed estate road.

- 7 Visibility splays shall be provided at the junction of the access with the public highway before the development is brought into use. The minimum dimensions to provide the required splay lines shall be 2.4m measured along the centre line of the proposed access from its junction with the channel of the public highway and 70m measured from the centre line of the proposed access along the line of the channel of the public highway. The required vision splays shall, on land in the applicant's control, be kept free of any obstruction.

Reason: To provide adequate visibility between the existing highway and the proposed access, and to make the access safe and convenient for the traffic which is likely to use it

- 8 Visibility splays shall be provided at all road junctions (including private drives) within the site. The minimum dimensions to provide the required splay lines shall be 2.4m measured along the centre line of the side road from its junction with the channel to the through road and 25m measured from the centre line of the side road along the channel of the through road. The vision splays required shall be provided and defined on the site by or on behalf of the developers and be entirely free of any obstruction.

Reason: To provide adequate visibility at road junction in the interest of road safety.

- 9 Development shall not begin until the detailed plans and sections of the proposed roads, including gradients and method of surface water disposal

have been approved by the Local Planning Authority and no building shall be occupied until the section of road which provides access has been constructed (apart from final surfacing) in accordance with the approved details.

Reason: To ensure that the proposed road works are constructed to an adequate standard.

- 10 No dwelling shall be occupied until all triangular vision splays are provided on each side of the all access on to the new road and shall measure 1.8m along the fence, wall, hedge or other means of definition of the front boundary of the site, and 1.8m measured into the site at right angles to the same line along the side of the new access drive. The vision splays so described shall be maintained free of any obstruction to visibility exceeding a height of 600mm above the adjoining footway level.

Reason: To provide adequate visibility between the existing highway and the proposed accesses, and to make the accesses safe and convenient for the traffic which is likely to use them.

- 11 The maximum gradient of the vehicular access shall be 10% (1 in 10).

Reason: In the interests of the safety of persons using the access and users of the highway.

- 12 Before the premises are occupied all on site vehicular areas shall be surfaced in a manner to the Local Planning Authority's approval so as to ensure satisfactory parking of vehicles outside highway limits. Arrangements shall be made for surface water from the site to be intercepted and disposed of separately so that it does not discharge into the highway.

Reason: In order to minimise danger, obstruction, and inconvenience to users of the highway and of the premises.

- 13 Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995, or any amendments thereto, the garage accommodation on the site shall not be used for any purpose, other than as garage accommodation, unless permission has been granted by the Local Planning Authority on an application made for that purpose.

Reason: To retain off-street parking provision and thereby minimise the potential for on-street parking which could adversely affect the convenience of road users.

- 14 The driveway length in front of the garages shall be at least 6.0m as measured from the garage doors to the highway boundary.

Reason: To ensure that parked vehicles do not adversely affect the safety and convenience of road users by overhanging the adjoining public highway.

- 15 If the proposed road is not constructed to the full length and layout illustrated on the approved plan, a temporary turning space for vehicles shall be constructed within the site in a position to be approved in writing by the Local Planning Authority before any building taking access from the road is occupied.
Reason: To avoid the need for vehicles to reverse into or from the highway in the interest of road safety.
- 16 No development shall commence until a wheel cleaning facility has been provided at all site exits in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. The wheel cleaner(s) shall be removed from the site once the road works necessary to provide adequate access from the public highway have been completed (apart from final surfacing) to the satisfaction of the Local Planning Authority.
Reason: In the interests of the amenity and to prevent the deposit of mud or other extraneous material on the highway during the construction period.
- 17 Before development begins, a scheme for the parking of cycles on the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented before the development is first occupied or brought into use and thereafter retained for this purpose.
Reason: To ensure the provision of adequate cycle parking to meet the needs of occupiers of the proposed development in the interests of encouraging the use of sustainable modes of transport.
- 18 Details of bin storage/collection point shall be submitted to and approved by the Local Planning Authority prior to the occupation of any dwelling.
Reason: In the interest of amenity.
- 19 Development shall not begin until the detailed plans of the proposed highway lighting, using light emitting diodes (LED) within the development has been approved by the Local Planning Authority and no building shall be occupied until that lighting has been installed in accordance with the approved details.
Reason: To ensure that the proposed highways are adequately lit.
- 20 Development shall not begin until a scheme to restrict the speed of traffic on the estate road has been approved by the Local Planning Authority and no building shall be occupied until that scheme has been implemented in accordance with the approved details.
Reason: In the interests of road safety.

21 Development shall not commence until a scheme detailing provision for on site parking for construction workers for the duration of the construction period has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented throughout the construction period.

Reason: To ensure adequate off street parking during construction in the interests of road safety.

22 No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters.

Reason: To protect the quality of controlled waters in accordance with Groundwater Protection, Policy and Practice (GP3) P9-6 and P4-12 and Planning Policy Statement (PPS23). The infiltration of surface water through land affected by contamination can result in the pollution of controlled waters.

23 Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

The scheme shall be based upon the principles within the Flood Risk Assessment dated 13th October 2011, reference JKK6750 Rev A, compiled by RPS, as well as the information submitted thereafter, and shall contain details of the following:

- Results of a full site ground condition and soil infiltration test, carried out in accordance with the principles as set out in BRE Digest 365, and giving definitive rates of infiltration for the site;
- Full details of the proposed surface water drainage system, using the infiltration rates as defined by the on-site testing. This shall include details of location and design of all infiltration drainage facilities;
- Full details of any above-ground flooding for storm events up to and including the 1% A.E.P (100 year) storm event, with an allowance of 30% in peak rainfall intensity to allow for future climate change. This shall include depths, locations and flow routes of floodwaters. This shall demonstrate that the development remains "safe" as required by PPS25, that floodwaters do not affect proposed and existing properties, and emergency access and egress remains possible;
- Full details of the maintenance programme of the proposed drainage system.

Reason: To prevent the increased risk of flooding, and ensure future maintenance of the surface water drainage system for the lifetime of the development.

Reasons for Granting

The proposed development is allocated for residential development, therefore the principle of development is considered acceptable. The design and layout of the proposed scheme is considered acceptable and would not have a detrimental impact on the character and appearance of the surrounding area, nor the residential amenities of any neighbouring properties.

The proposed development provides a good level of private amenity space for each dwelling and the required 35% affordable housing has been secured within the scheme. The housing mix is considered to be appropriate and contributions towards local infrastructure have been secured. As such the proposed scheme is in conformity with PPS1, PPS3, PPS5, PPS7, PPS23 and Policies CS1, CS2, CS3, CS4, CS5, CS7, CS14, CS15, CS16, CS17, CS18, DM3, DM4, DM10, DM13, DM14, DM15, DM16, and DM17 of the Core Strategy and Development Management Policies for Central Bedfordshire (North). The proposal is further in conformity with the Planning Obligations Strategy SPD, Design in Central Bedfordshire - A guide for development SPD and Site Allocations DPD.

Notes to Applicant

1. The applicant is advised that the requirements of the New Roads and Street Works Act 1991 will apply to any works undertaken within the limits of the existing public highway. Further details can be obtained from the Central Bedfordshire Council's Highway Help Desk, P.O.Box 1395, Bedford, MK42 5AN.
2. The applicant is advised that if it is the intention to request the Central Bedfordshire County Council as Local Highway Authority, to adopt the proposed highways as maintainable at the public expense then details of the specification, layout and alignment, width and levels of the said highways together with all the necessary highway and drainage arrangements, including run off calculations shall be submitted to the Development Planning and Control Group, Central Bedfordshire Council's Highway Help Desk, P.O.Box 1395, Bedford, MK42 5AN. No development shall commence until the details have been approved in writing and an Agreement made under Section 38 of the Highways Act 1980 is in place.
3. The applicant is advised that in order to comply with the highway Conditions in this permission it will be necessary for the developer of the site to enter into an agreement with Central Bedfordshire Council as Highway Authority under Section 278 of the Highways Act 1980 to ensure the satisfactory completion of the access and associated road improvements. Further details can be obtained from the Development Planning and Control Group, P.O.Box 1395, Bedford, MK42 5AN

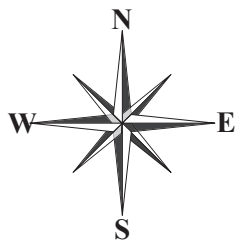
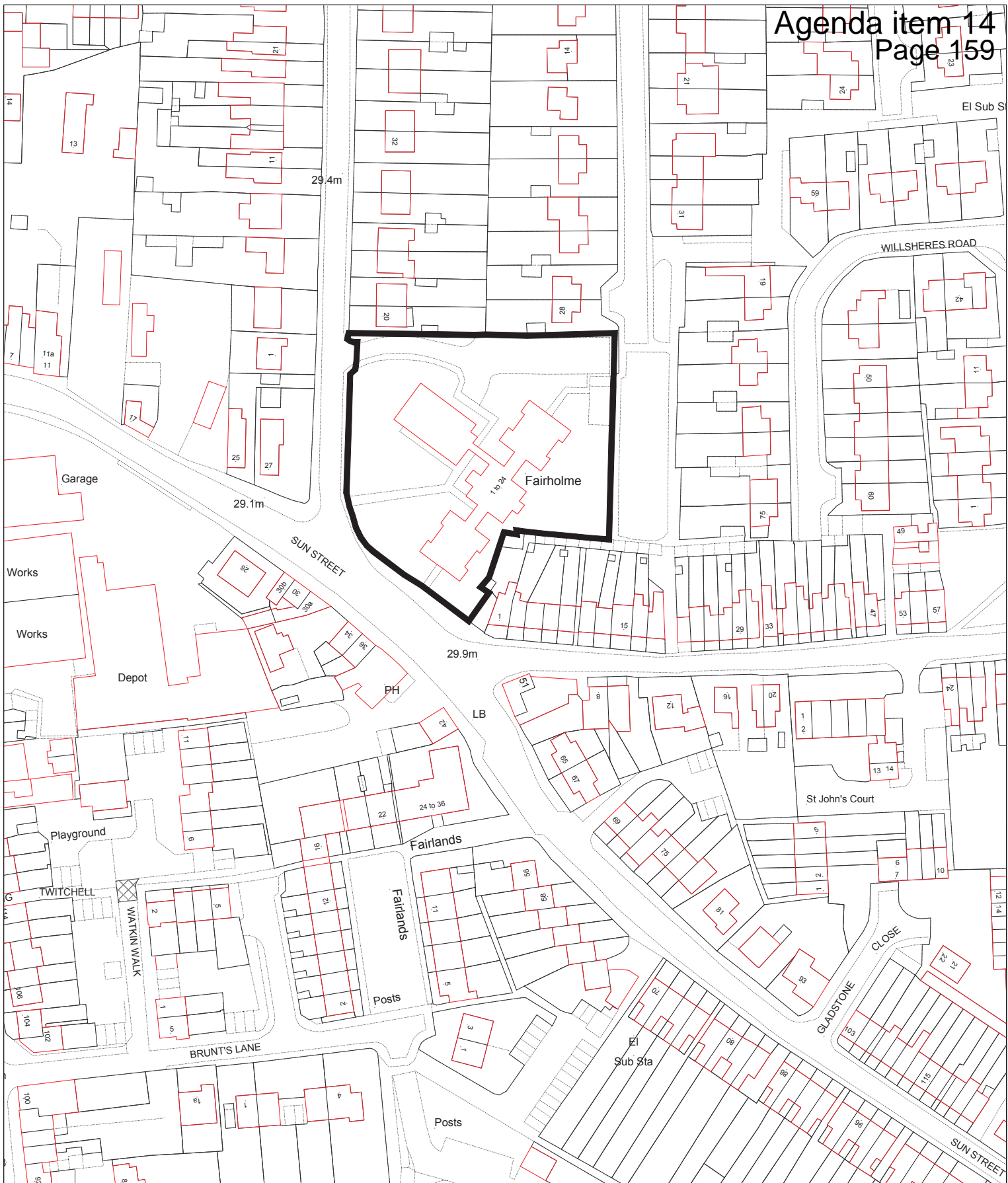
4. All roads to be constructed within the site shall be designed in accordance with Central Bedfordshire Council's publication "Design in central Bedfordshire (Design Supplement 7 – Movement, Street and Places" and the Department of the Environment/Department of Transport's "Manual for Street", or any amendment thereto.

DECISION

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Central Bedfordshire Council
Licence No. 100049029 (2009)

Date: 13:February:2012

Grid Reference: 518913, 245120

CB/11/04503/FULL

Scale: 1:1500

Former Fairholme, Fairfield Road, Biggleswade

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Item No. 14

APPLICATION NUMBER CB/11/04503/FULL
LOCATION Land at former Fairholme, Fairfield Road,
Biggleswade, Beds. SG18 0DP
PROPOSAL Residential development comprising 19 No. units
plus associated car parking and landscaping.
PARISH Biggleswade
WARD Biggleswade North
WARD COUNCILLORS Cllrs Jones & Mrs Lawrence
CASE OFFICER Samantha Boyd
DATE REGISTERED 21 December 2011
EXPIRY DATE 21 March 2012
APPLICANT Grand Union Housing Group
AGENT BRP Architects
REASON FOR Cllr call in – Cllr Jane Lawrence due to public
COMMITTEE TO attention
DETERMINE

RECOMMENDED
DECISION Full Application - Granted

Site Location:

The application site is located on the north side of Sun Street at the junction with Fairfield Road in a predominantly residential area of Biggleswade. The western boundary of the site fronts Fairfield Road and the northern boundary is immediately adjacent to properties in Fairfield Road and Cedar Avenue. The boundary to the east faces an area of public open space that lies between St Johns Road and Cedar Avenue. A public footpath also runs alongside the public open space connecting St Johns Street with the residential properties in Cedar Avenue and beyond. Much of the southern boundary fronts Sun Street however part of the site also shares the rear boundaries of properties in St Johns Street.

The site was formerly occupied by a sheltered housing facility known as Fairholme that comprised 24 self contained units with communal amenity space and a parking area accessed off Fairfield Road. Fairholme was constructed in the late 1960's as a two storey building with small elements of single storey sections. The accommodation provided was deemed to be sub-standard when compared to current construction legislation and the upgrading of the building unviable. The building has since been demolished. The site is owned by Grand Union Housing Group.

The Application:

Planning consent is sought for the erection of 19 dwellings with associated parking and access.

The application proposes the erection of nine 2 bedroom houses, eight 3 bedroom houses and two, 2 bedroomed flats. The proposal includes private garden space

and 43 parking spaces along with access and turning area within the site. Six of the dwellings are to be Shared Ownership units with the remainder being rented accommodation.

This application is submitted following the withdrawal of a previous application CB/11/03095/FULL. The application was withdrawn following concerns regarding highway matters.

The revised application has reduced the number of dwellings from 21 to 19, increased the parking provision, reconfigured the access arrangements and included a 1.8m boundary wall to the eastern boundary of the site.

RELEVANT POLICIES:

National Policies (PPG & PPS)

- PPS1 Delivering Sustainable Development
- PP3 Housing
- PPG13 Transport
- PPS22 Renewable Energy
- PPG24 Planning and Noise

Regional Spatial Strategy

- East of England Plan (May 2008) (RSS14)
- Milton Keynes & South Midlands Sub-Regional Strategy (MKSM SRS)

Central Bedfordshire Core Strategy and Development Management Policies

- CS1 Development Strategy
- CS2 Developer Contributions
- CS7 Affordable Housing
- CS14, DM3 High Quality Development
- DM1 Renewable Energy
- DM4 Development Within and Beyond Settlement Envelopes
- DM10 Housing Mix

Supplementary Planning Guidance

- Design in Central Bedfordshire (2010) A Guide for Development: DS1 New Residential Development

Planning History

- | | |
|--------------------------|---|
| MB/02/01043 | Boiler/plant room serving new heating system - Granted 07/08/02 |
| MB/92/01098/DC | Regulation 2: Ground floor extension to provide covered link, lift extension on east and west elevations - Granted 16/10/92 |
| CB/11/03095
withdrawn | Residential development comprising 21 dwellings - |

**Representations:
(Parish & Neighbours)**

Biggleswade Town Council Strongly Object - inappropriate development in this area with the loss of sheltered accommodation. Development is too high density. Members of the public present at the Town Council meeting expressed concerns. Summarised below as

- conflicts with Bedfordshire Community Safety Supplementary Planning Guidance
- insufficient parking
- increased parking in Cedar Avenue and surrounding areas
- will cause difficulty for emergency vehicles as people forced to park on the street
- overlooking properties gardens in Cedar Avenue
- no provision for elderly accommodation
- increase in noise pollution
- privacy issues
- 1.8m wall not tall enough, should be 2m
- Grand Union change plots 1-4 to bungalows for elderly

Application advertised in local press 6.01.12

Site Notice displayed (x2) 4.01.12

Neighbours 9 comments received with objections to the proposal summarised below -

- no great change from previous plans
- loss of existing facility for the elderly, this should be replaced with a similar facility
- increase in traffic in the area
- not enough parking, will result in residents having to park on surrounding streets
- already a congested area, development will mean additional traffic
- driveways onto Fairfield Road too close to busy junction
- on street parking will be a hazard to emergency vehicles
- design of properties not in-keeping with area
- overdevelopment of site - too many properties
- noise and disturbance from building site
- overlooking onto properties in Cedar Avenue

Consultations/Publicity responses

CBC Archaeology Officer	No objection on archaeological grounds
CBC Public Protection	No objections subject to condition to ensure the proposed dwellings are protected from noise from road traffic in accordance with PPG24 .
CBC Waste	No comments received for this application. Comments sent for previous application recommended a Site Waste Management Plan as a condition if approved.
CBC Highways	No objection subject to conditions.
CBC Tree and Landscape	Comprehensive landscape scheme required as condition.
Environment Agency	No objection to application.

Determining Issues

The main considerations of the application are;

1. The principle of the development
2. The effect on the character and appearance of the area
3. The impact on amenity
4. Highway safety
5. Other considerations

Considerations

1. The principle of the development

The Core Strategy (CS) defines Biggleswade as a Major Service Centre. Policy DM4 of the CS supports new development within the Settlement Envelopes of Major Service Centres where it is commensurate with the scale of the settlement. Policy CS7 (Affordable Housing) aims to secure affordable housing on developments of 4 or more dwellings stating that 35% or more should be affordable.

In terms of density, the site proposes 43 dwellings per ha. The Council's Design Guide for New Residential Development gives an indicative guide to densities depending on the location of the site. The Design Guide recommends that in Market Town residential areas the indicative density is 35-45 dph however higher densities would be expected where dwellings are of a smaller size. The proposal is considered to be in accordance with this recommendation.

Concern has been raised relating to the replacement of the former Sheltered Housing accommodation. Residents feel that the former building should be replaced with similar accommodation for the elderly, however there are no

Policies in the Core Strategy that require the retention of this type of accommodation.

The principle of new residential development in this location is in accordance with Policy DM4 and CS7 and therefore acceptable provided that the proposal complies with other Policies and Guidance relevant to the development.

2. The effect on the character and appearance of the area

The site lies in a prominent location on the corner of the junction of Sun Street and Fairfield Road. Although mainly residential opposite the site there are some commercial uses. Fairholme, the former building, occupied a large area of the site but was set back into the site resulting in an open frontage landscaped with mature trees. The proposed two storey development would be located close to the edge of the site bringing the built form closer to the street frontage along Sun Street and Fairfield Road. The properties that would front Fairfield Road are to be set back from the pavement edge retaining the existing building line along this part of the road whilst along Sun Street the proposed dwellings would sit closer to the pavement edge to reflect the existing dwellings in St Johns Road. Access into the site would be taken from the existing access off Fairfield Road which would lead to the plots located to the rear and parking spaces with a turning area central to the development.

The properties are designed as two storey cottages with a mixture of semi-detached properties and small terrace blocks. On the junction corner, where the flats are proposed the dwellings would be linked with a corner frontage creating a prominent feature in the street scene. It is proposed to use a combination of red brick and render under a slate roof for the external materials however the final details would need to be agreed as a condition of planning approval. 900mm railings are to be provided along the front boundaries of the plots facing Sun Street and Fairfield Road.

Solar Panels are proposed on the southern facing elevations of the dwellings. This accords with section 6 of the Council's Design Guide which states 'photovoltaic panels and solar panels should be incorporated in the roof profile at the outset of the design process'.

On average around 50 sq m of private rear garden space has been provided for each dwelling except for Plot 13 and 14, the two bedroom flats, where a small courtyard area is located to the rear.

It is considered that the proposal would not adversely affect the character and appearance of the street scene along Fairfield Road and Sun Street given that the proposed dwellings have been designed to reflect the scale and form of the existing terraced properties in the vicinity.

The proposed development would also form part of the existing street scene along Cedar Avenue, in particular the area of public open space adjacent to the footpath. However the site is to be closed off to this area by the construction of a 1.8m boundary wall therefore while the rear elevations will be visible they will not have a detrimental impact on the visual appearance of the area.

Overall it is considered that the scale, layout and design of the proposed

residential development would not have an adverse impact upon the character and appearance of the area.

3. The impact on neighbouring amenity

Immediately surrounding the site are properties in Fairfield Road, Cedar Avenue and St Johns Street.

Loss of light and overbearing impact to existing properties

The proposed dwellings are separated from the existing dwellings by distances of at least 10 metres or more apart from Plot 8 which is located to the side of No. 1 St Johns Street separated by approximately 7m. Therefore no adverse loss of light or overbearing impact would occur.

Loss of privacy to existing properties

Plots 08 - 19 are to be located along the site frontage facing Sun Street and Fairfield Road. While these properties would face the existing dwellings on the opposite side of the road, given their separation it is not considered that there would be any adverse loss of privacy.

The side elevation of Plot 19 would be approximately 18m from the side elevation of No 20 Fairfield Road. Windows are proposed on the elevation facing the existing dwelling that would serve ground floor wc, a narrow window in the living room and to the entrance hall. On the first floor there is to be a narrow window serving the landing. Given the existing boundary treatment there would be no adverse overlooking from the ground floor windows and the first floor window is not considered to be a habitable room.

Plots 1-4 would be located towards the rear of the site. The front elevations of these plots would face towards the side elevation and rear garden of No. 28 Cedar Avenue. There is a distance of approximately 18m between the properties which also includes a car parking court. The Council's Design Guide recommends a distance of 21m between rear facing windows of one two storey property and the rear of another facing it. This distance has not been achieved however the guidance refers to rear facing windows. The front elevations of Plots 1-4 would result in some overlooking the rear garden of No 28 however the physical separation between the elevations of the new dwellings and the existing property is not considered to be unreasonable, therefore the level of overlooking is not considered to be unacceptable in a residential area.

Plots 5, 6 and 7 face into the centre of the development, their rear elevations facing the public open space to the east of the site. Beyond the public open space the rear of properties in Willsheres Road are located some 30m away from the new dwellings. Given this distance no adverse overlooking would occur.

Plot 7 would be to the rear of the terraced dwellings along St Johns Road sited fairly close to the boundary. The side elevation for plot 7 would be approximately 20m from the rear elevations of the existing dwellings and separated by single storey outbuildings that form the rear boundary of the terrace. It is considered that 20m is a sufficient distance to avoid any adverse loss of privacy. Furthermore the first floor window in the side elevation of Plot 7 is to be obscurely glazed.

Plot 8 would be located to the west of No 1 St Johns Street. Due to the location of Plot 8 there would be some overlooking towards the rear garden space of No 1, however the first floor window in the side elevation of Plot 8 is to be obscurely glazed, as would the closest window on the rear elevation. Both Plot 7 and 8 would overlook the rear part of the garden of No.1 by some degree, however it is not considered to be significant given that the area is wholly residential.

Furthermore due to the position of the former Fairholme building, overlooking from all the existing first floor windows that faced onto the surrounding properties would have occurred to some extent.

The amenities of the new occupants

The layout of the site has been designed so that the future occupants would not suffer any loss of amenity. Adequate separation between the Plots and the location of windows ensures that there is no adverse loss of privacy.

It is considered that the proposal would not have an adverse impact upon the amenities of the adjacent occupiers therefore the proposal is considered acceptable in this respect.

4. Highway Safety

This application is an amended version of that previously submitted under application CB/11/03095/FULL and is intended to address the concerns raised by Highways Officers with that application.

Access to the site is to be moved slightly further south. Although the 2.4 x 43m vision splay to the north still crosses land that is not within the control of the applicant, it is no longer obstructed by the adjoining boundary fence. Furthermore at 2.0m "x" distance the vision splay is wholly within the highway.

Parking provision has been increased to 2 spaces per dwelling in accordance with the Council's standards and 5 additional visitor spaces are provided.

The layout of the internal parking court has been modified, as suggested and it is now possible for the refuse vehicle to enter the larger parking court within the site, turn and exit in forward gear. This will improve accessibility for all service/delivery vehicles and will reduce carry distances.

The revised layout can be deemed acceptable in highway terms subject to the recommended conditions.

5. Other relevant considerations

Archaeology

Biggleswade is a medieval town therefore the site is identified as a heritage asset with archaeological interest as defined by PPS5: Planning for the Historic Environment. During pre-application discussions the applicant commissioned an archaeological trial trench evaluation. The results of the evaluation have been submitted with the application and the conclusions of the report state that the application site is likely to be just outside the core of the medieval town.

There are no objections on archaeological grounds.

Waste

There are no objections to the layout of the scheme from a waste perspective. Details of collection points for bins needs to be clarified and due to the size of the development, a Site Waste Management Plan needs to address the anticipated waste during construction and occupation.

Developer Contributions

Policy CS2 requires that the developer contributes towards local infrastructure requirements in accordance with the Planning Obligation Strategy. In this case the previous development is offset against the proposed dwellings resulting in net loss of dwellings, however the charges are calculated by an assessment of the number of bedrooms proposed having regard to the type and size of the unit. Given the offset, the Planning Obligations Calculator identifies nil for some contributions however Education is calculated on a case by case basis and has been assessed as £146,843 for this development. This is because the previous building on the site would not generate any educational need in view of the type of accommodation, and that family accommodation is now proposed.

The applicants have stated that this amount together with 100% affordable housing provision would render the development unviable. The Planning Obligation Strategy makes it clear that the planning obligations may be reduced where there are financial viability issues. Therefore the viability of a scheme is a material consideration in the assessment of the planning application. The onus is on the applicant to provide the necessary financial information for assessment by the Council's Housing Development Officer and following this assessment it has been found that the development would have a deficit of around £435,000 with planning obligations and affordable housing.

Given that the scheme proposes 100% affordable housing which is a priority of the Council, and in accordance with Policy CS7, it is recommended that the Council agree to accept nil contributions to enable the scheme to progress, with this subject to the proposed affordable provision being contained within a legal agreement, to ensure that the dwellings remain affordable.

Recommendation

That planning permission be granted subject to the completion of a Section 106 Planning Obligation restricting the occupation of the dwellings as affordable housing and subject to the following conditions:

- 1 The development hereby approved shall be commenced within three years of the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 which is designed to ensure that a planning permission does not continue in existence indefinitely if the development to which it relates is not carried out.

- 2 **Prior to the development hereby approved commencing on site details of the final ground and slab levels of the dwellings hereby approved shall be submitted to and approved in writing by the Local Planning Authority. Such details shall include sections through both the site and the immediate adjoining properties. Thereafter the site shall be developed in full accordance with the approved details.**

Reason: To ensure that a satisfactory relationship results between the new development and adjacent buildings and public areas.

- 3 Prior to the commencement of the development a scheme shall be submitted for written approval by the Local Planning Authority setting out the details of the materials to be used for the external appearance of the buildings, and the boundary wall to the eastern boundary. The development shall be carried out in accordance with the approved scheme.

Reason: To protect the visual amenities of the building and of the area generally.

- 4 Prior to the occupation of the buildings full details of both hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. These details shall include:-

- materials to be used for any hard surfacing;
- minor structures (e.g. furniture, play equipment, signs, etc);
- planting plans, including schedule of size, species, positions, density and times of planting;
- cultivation details including operations required to establish new planting;
- details of existing trees and hedgerows on the site, indicating those to be retained and the method of their protection during development works.
- boundary treatments.

The development shall be carried out in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to ensure that the landscaping is carried out within a reasonable period in the interest of the visual amenities of the area.

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

Reason: In the interests of the visual amenities of the site and the area generally.

- 6 **Prior to the commencement of the development a scheme for protecting the proposed dwellings from noise from road traffic adjacent to the proposed development has been submitted to and**

approved in writing by the Local Planning Authority. none of the dwellings shall be occupied until such a scheme has been implemented in accordance with the approved details, and shown to be effective, and shall be retained in accordance with those details thereafter.

Reason: To protect occupants from externally generated traffic noise in accordance with PPG 24.

- 7 **Details of the method of disposal of foul and surface water drainage shall be submitted to and agreed in writing by the Local Planning Authority including any land drainage system, before the development is commenced. Thereafter no part of the development shall be brought into use until the approved drainage scheme has been implemented.**

Reason: To ensure that adequate foul and surface water drainage is provided and that existing and future land drainage needs are protected.

- 8 **Prior to the first occupation of Plots 05, 07, 08 and 19 the first floor window in the side elevation of the dwellings shall be fitted with obscured glass of a type to substantially restrict vision through it at all times, details of which shall have been previously submitted to and agreed in writing by the Local Planning Authority.**

Reason: To safeguard the amenities of occupiers of adjoining properties.

- 9 **Prior to the commencement of the development hereby approved details of a Site Waste Management Plan and Waste Audit shall be submitted to and approved in writing by the Local Planning Authority. The details shall include -**

1. **anticipated nature and volume of waste that the development will generate.**
2. **measures to maximise the re-use of waste arising from demolition, engineering and landscaping**
3. **steps to be taken to ensure effective segregation of waste at source during demolition and subsequent construction of the development including, where appropriate, the provision of waste sorting, storage and recovery of recycling facilities.**
4. **any other steps to be taken to minimise the generation of waste throughout the process of demolition and during construction of the development**
5. **provision for monitoring the implementation of 1 -4 above.**

The development shall accord with the approved details.

Reason: To ensure the satisfactory disposal of waste at the site.

- 10 **Development shall not begin until details of the junction between the proposed estate road and the highway have been approved by the Local Planning Authority and no building shall be occupied until that junction has been constructed in accordance with the approved**

details.

Reason: In order to minimise danger, obstruction and inconvenience to users of the highway and of the proposed estate road.

- 11 **Development shall not begin until the detailed plans and sections of the proposed road(s), including gradients and method of surface water disposal have been approved by the Local Planning Authority and no building shall be occupied until the section of road which provides access has been constructed (apart from final surfacing) in accordance with the approved details.**

Reason: To ensure that the proposed roadworks are constructed to an adequate standard.

- 12 The access shall have a minimum width of 4.8m, kerb radii of 6m, and shall be located in the position shown on approved drawing G73/003/Rev G.

Reason: In the interest of road safety and for the avoidance of doubt.

- 13 No dwelling shall be occupied until visibility splays have been provided at the junction of the access road with the public highway. The minimum dimensions to provide the required splay lines shall be 2.4m measured along the centre line of the proposed access road from its junction with the channel of the public highway and 43m measured from the centre line of the proposed access road along the line of the channel of the public highway. The vision splays required shall be provided and defined on the site by or on behalf of the developers and be kept free of any obstruction.

Reason: To provide adequate visibility between the existing highway and the proposed

- 14 Before any of the individual accesses are brought into use an area of land across the whole of the site frontage measuring at least 2.4m from and parallel to the nearside edge of the adjacent road carriageway shall be provided and thereafter be kept free of all obstruction to visibility.

Reason: To provide adequate visibility between the existing highway and the proposed accesses and to make the accesses safe and convenient for the traffic that is likely to use them.

- 15 Before the premises are occupied all on site vehicular areas shall be surfaced in a manner to the Local Planning Authority's approval so as to ensure satisfactory parking of vehicles outside highway limits. Arrangements shall be made for surface water from the site to be intercepted and disposed of separately so that it does not discharge into the highway.

Reason: In order to minimise danger, obstruction, and inconvenience to users of the highway and of the premises

- 16 Before the new access is first brought into use, any existing access within the frontage of the land to be developed, not incorporated in the access hereby approved shall be closed in a manner to the Local Planning

Authority's written approval.

Reason: In the interest of road safety and to reduce the number of points at which traffic will enter and leave the public highway.

Reasons for Granting

The proposed residential development of 21 dwellings would not have a negative impact on the character and appearance of the area or an adverse impact on the residential amenity of neighbouring properties and is acceptable in terms of highway safety. Therefore by reason of its site, design and location, is in conformity with Policies CS1, CS2, CS7, CS14, DM1, DM3, DM4 and DM10 of the Core Strategy and Management Policies, November 2009; Government Planning Guidance PPS1, PPS3, PPG 13, PPS22, PPG24; Regional policies in the East of England Plan (May 2008) and the Milton Keynes and South Midlands Sub-Regional Strategy (March 2005). It is further in conformity with Supplementary Planning Guidance: Design in Central Bedfordshire, 2010.

Notes to Applicant

1. The applicant is advised that no works associated with the construction of the vehicular access should be carried out within the confines of the public highway without prior consent, in writing, of the Central Bedfordshire Council. Upon receipt of this Notice of Planning Approval, the applicant is advised to write to Central Bedfordshire Council's Highway Help Desk, Technology House, 239 Ampthill Road, Bedford MK42 9BD quoting the Planning Application number and supplying a copy of the Decision Notice and a copy of the approved plan. This will enable the necessary consent and procedures under Section 184 of the Highways Act to be implemented. The applicant is also advised that if any of the works associated with the construction of the vehicular access affects or requires the removal and/or the relocation of any equipment, apparatus or structures (e.g. street name plates, bus stop signs or shelters, statutory authority equipment etc.) then the applicant will be required to bear the cost of such removal or alteration.

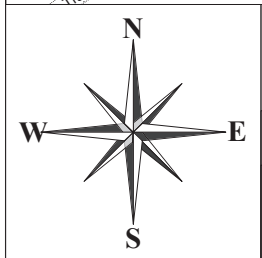
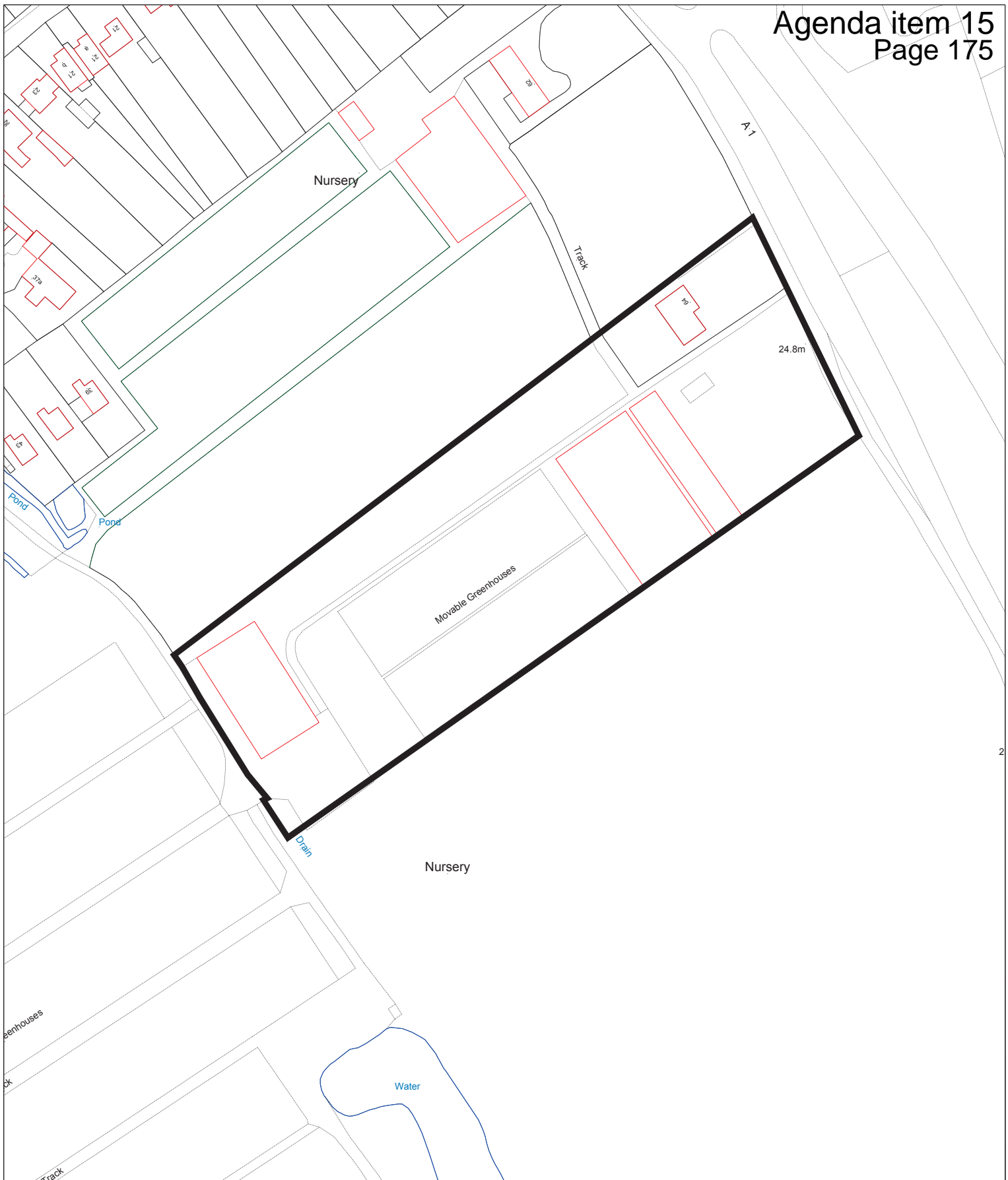
The applicant is advised that the requirements of the New Roads and Street Works Act 1991 will apply to any works undertaken within the limits of the existing public highway. Further details can be obtained from the Traffic Management Group Highways and Transport Division, Central Bedfordshire Council, Technology House, 239 Ampthill Road, Bedford MK42 9BD.

The applicant is advised that the closure of existing access(es) shall include the reinstatement of the highway to include any footway, verge and kerbing in a manner to be agreed in writing with Bedfordshire Highways, Central Bedfordshire Council's Highways Helpdesk, Technology House, 239 Ampthill Road, Bedford MK42 9BD. No work shall be carried out within the confines of the public highway without prior consent. The applicant will also be expected to bear all costs involved in closing the access(es).

DECISION

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Central Bedfordshire Council
Licence No. 100049029 (2009)
Date: 14:February:2012
Grid Reference: 517260, 247879

CB/11/04334/FULL

Scale: 1:1700

54 High Street, Sandy, SG19 1AJ

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Item No. 15

APPLICATION NUMBER	CB/11/04334/FULL
LOCATION	54 High Street, Sandy, SG19 1AJ
PROPOSAL	Change of use from office to day care nursery(non residential) for main building and annexed building to rear of site.
PARISH	Sandy
WARD	Sandy
WARD COUNCILLORS	Cllrs Aldis, Maudlin & Sheppard
CASE OFFICER	Clare Golden
DATE REGISTERED	07 December 2011
EXPIRY DATE	01 February 2012
APPLICANT	Mini Explorers
AGENT	Priory Heritage
REASON FOR COMMITTEE TO DETERMINE RECOMMENDED DECISION	Councillor Aldis called the application to Committee on the grounds of concerns relating to pedestrian safety from increased vehicular movements
	Full Application - Granted

Site Location:

The application site is 54 High Street in Sandy a former dwelling most recently used as office accommodation. The site is located at the far end of the High Street towards the railway station. The site comprises of a detached, two storey brick building under a multi-pitched concrete tiled roof. There is an area of hard surfaced parking at the front and side access to a further larger area of parking to the rear. Also located to the rear is an area of soft landscaping and a detached, brick built outbuilding.

The site is surrounded predominantly by residential properties with a new residential development, Greyhound View located to the south east. There are a number of mixed use properties further to the west along the High Street.

The site is located within the settlement envelope, outside of the town centre, and just outside of the conservation area.

The Application:

This application seeks permission for the change of use of the main building and outbuilding from office (B1) to a day care nursery (D1).

RELEVANT POLICIES:

National Policies (PPG & PPS)

PPS1: Delivering Sustainable Development

PPS4: Planning for Sustainable Economic Development

PPS5: Planning for the Historic Environment

PPS7: Sustainable Development in Rural Areas
PPS5: Planning for the Historic Environment
PPG24: Planning and Noise

Core Strategy and Development Management Policies for Central Bedfordshire (North)

CS1	Development Strategy
CS3	Healthy and Sustainable Communities
CS10	Location of Employment Sites
CS14	High Quality Development
CS15	Heritage
DM3	High Quality Development
DM4	Development within Settlement Envelopes
DM9	Providing a range of transport
DM13	Heritage in Development

Supplementary Planning Guidance

Design in Central Bedfordshire, 2010

Planning History

MB/94/01257/FA	FULL: ERECTION OF SINGLE STOREY EXTENSION TO CONFERENCE ROOM WITH NEW KITCHEN EXTENSION AND INTERNAL ALTERATIONS TO TOILETS. Granted.
MB/88/00528/FA	FULL: CHANGE OF USE FROM RESIDENTIAL TO CLASS A2 (OFFICES). Granted.
MB/83/0096A/FA	FULL: ALTERATIONS TO EXISTING VEHICULAR ACCESS. Granted.
MB/83/00096/FA	FULL: SINGLE AND TWO STOREY EXTENSIONS. Granted.
MB/76/00570/FA	FULL: EXTENSION. Granted.

Representations: (Parish & Neighbours)

Sandy Town Council	No objection but would like to make the following comments: - A barrier is required for the safeguarding of children preventing them from going onto the road. - There should be off road unloading and loading of children to prevent obstruction of a busy pavement.
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Neighbours	No comments received.
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Consultations/Publicity responses

Site notice posted on	No comments received.
Highways, Development Management	No objection subject to a condition requesting the submission of a travel plan.
Public Protection	No objection subject to a condition controlling the hours

Determining Issues

The main considerations of the application are;

- 1. The principle of the development**
- 2. Impact on the visual amenities of the area**
- 3. Impact on the residential amenity of occupiers of neighbouring properties**
- 4. Any other material planning considerations**

Considerations

1. The principle of the development

This application seeks permission for a change of use of the existing office building (B1) into a day centre children's nursery (D1). The number of children using the nursery would be up to a total of 59, although the applicant has stated that this figure is based on 100% capacity whereas they usually work up to 75% (44 children). The 100% capacity figure has been used to take account of emergencies or lap over where parents may be late picking up their children.

Policy CS1 identifies Sandy as a Major Service Centre where development should meet the needs of the town and the surrounding communities that look to it for goods and services. This policy notes that Sandy is a sustainable location with good access to the A1 and railway line. The policy further states that development should focus on redeveloping existing sites within the town. Policy CS3 promotes the creation of healthy and sustainable communities via the provision of a range of social and recreational facilities which includes the safeguarding and upgrading of education facilities. Policy DM9 is concerned with transport facilities and in particular, the encouragement of accessing new facilities other than by car.

The location of the site is considered to be accessible with good pedestrian access to the railway station and town centre. The proposal would utilise an existing, vacant building on the site and the use would provide a service to the local community. The principle of locating this type of facility in and close to residential properties to provide child care to local residents is considered to be acceptable so long as it does not significantly impact on neighbouring properties in terms of noise and disturbance, and highway considerations are deemed acceptable, in accordance with Policy DM3.

Whilst the site lies within the setting of the conservation area, no material operational development is required to enable the change of use to be carried out. There is therefore no principle objection in this respect.

2. Impact on the visual amenities of the area

The site is located at the south eastern end of the High Street and comprises a large, detached building set back from the highway. The building is visible within the streetscene, although by virtue of its set back, its visual prominence is reduced.

Given the fact that the building and the external area will remain much as at present, it is felt that there will be minimal impact on the visual amenities of the area generally, and the proposal would preserve the setting of the conservation area, and character and appearance of the general streetscene in accordance with Policies DM3, DM13 and CS15, and guidance the Adopted Design Guide, 2010.

3. Impact on the residential amenity of occupiers of neighbouring properties

The site is surrounded by residential properties to the north, south, east and west, with a recently constructed residential development known as Greyhound View, to the south east. There are a number of mixed use properties along the High Street, to the west of the site.

Privacy and Overlooking:

There are no external alterations proposed to the existing building. There are however, three existing first floor windows and three ground floor windows and one door on the rear elevation. These windows overlook the rear garden and parking area of the property.

No. 59a and 59b High Street are located to the east side of No. 54 and these are two storey, semi-detached properties. No.s 11 and 14 Greyhound View are ground and first floor flats and are located adjacent to the south east side boundary of the application site.

The first floor use of the rooms served by these windows would be as an office, store room and staff room and thus it is not considered that the potential for views out of these windows would result in a significant increase in overlooking or loss of privacy afforded to these properties, having regard to the authorised use of the building as an office.

The proposal does not involve any further external alterations to the building and thus there are no issues in terms of outlook, daylight or sunlight or overbearing impact for these properties.

Noise disturbance:

The application property is a detached property so internal noise transmission to neighbouring properties is not considered to be significant. There is the potential however, for noise disturbance from the children as they play in the rear garden and in summer months when windows and doors are open.

The applicant's have however, submitted a Garden Management Plan which outlines how the outdoor area will be used. This document indicates that there would be a maximum of 6 babies in the baby unit garden and 10 children in the main garden at any one time. The garden would not be used all day because the children will participate in other activities, some of which will take place off site. During the winter months, the level of activity in the garden will also be significantly reduced.

The side boundary with No. 52 is well defined by a brick wall and hedgerow

which would provide a good barrier against any noise. The east side boundary is defined by a 1.8metre close boarded fence with semi-mature trees along it. This boundary is more open than to the west, although it still provides a good degree of screening and noise mitigation.

With regard to the potential impact on the amenities of neighbours, the activity is only to take place on week days during working hours and not at all on weekends. In view of these hours, and the fact that there are to be a maximum of 10 children and 6 babies in a relatively large area of garden space, it is considered that the potential impact on neighbours by way of noise and general disturbance will not be sufficient as to justify refusal. It is very unlikely that all of the children would arrive or leave at the same time nor would they play in the rear garden at the same times in the day. It is also noted that the site is located very close to the railway line and the High Street which, because of the consistent flow of vehicular and pedestrian traffic along it, causes a higher level of background noise.

The Council's Public Protection Officer has raised no objection to the proposal subject to the imposition of a condition controlling the hours of use of the garden for external play to only be 10:00 hours to 16:30 hours, Monday to Friday and not at all on weekends, Bank or Public Holidays without the prior agreement in writing by the Local Planning Authority.

Subject to the imposition of this condition, it is considered that the proposal will not result in a significant amount of noise disturbance, and thus there will not be a detrimental impact to the residential amenities of neighbouring properties.

The proposal is therefore considered to be acceptable to preserve the residential amenities of neighbouring properties in terms of amount of daylight and sunlight, privacy and outlook and by not being overbearing, and by not causing an unacceptable level of noise disturbance, in accordance with Policy DM3 of the Council's Core Strategy and Development Management Policies DPD and the Adopted Design Guide.

4. Any other material planning considerations

Highways

The vehicular access into the site would not be altered. The proposal provides a total of 10 car parking spaces on the site which alone, is considered to be insufficient to serve this proposal. There is however, a good provision of on-street parking with a parking bay at the south side of the High Street extending from the northern end of the site's access up to a point in line with the northern boundary of No. 38 High Street and it is acknowledged that the period of time that the parking spaces will be occupied will be short.

It is further noted that the site lies within a very accessible town centre location with good opportunities for walking and access to public transport. It is therefore, likely that many of the children living within Sandy will be taken to the site by foot.

Subject to the submission of a Travel plan which is to be requested by a condition, the proposal is not considered to result in a material impact on the

safe operation of the highway.
There are no further issues.

Recommendation

That Planning Permission be **Granted** subject to the following:

- 1 The development hereby approved shall be commenced within three years of the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 which is designed to ensure that a planning permission does not continue in existence indefinitely if the development to which it relates is not carried out.

- 2 **Before occupation of the development hereby approved, details of a Travel Plan shall be submitted to and approved in writing by the local Planning Authority and the recommendations of the Green Travel Plan shall be implemented in full within 6 months of the development being occupied. In addition, the plan should be monitored and the results of this monitoring be reviewed on an annual basis and further recommendations for improvements shall be submitted to and be approved in writing by the Local Planning.**

Reason: For the avoidance of doubt and to reduce reliance on the private car.

- 3 The garden area shall not be used for external play except between the hours of 10:00 hours and 16:30 hours Monday to Friday and not at all on weekends, Bank or Public Holidays without the prior agreement in writing of the Local Planning Authority.

The car park area at the rear of the premises shall not be used at any time for the purposes of external play.

Reason: To safeguard the amenities which the occupiers of neighbouring properties might reasonably expect to enjoy.

- 4 The use shall only operate between the hours of 08:15 to 18:15 on Monday-Friday, and not at all on Saturdays, Sundays or Bank Holidays. The use shall not operate at any other time without the prior agreement in writing of the Local Planning Authority.

Reason: To safeguard the amenities which the occupiers of neighbouring properties might reasonably expect to enjoy.

- 5 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers: 1104/4A; 1104/2A; 1104/2B' 1104/2; 1104/3; 1104/4; 1104/5; 1104/6.

Reason: For the avoidance of doubt.

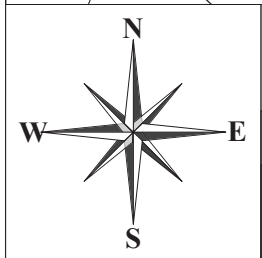
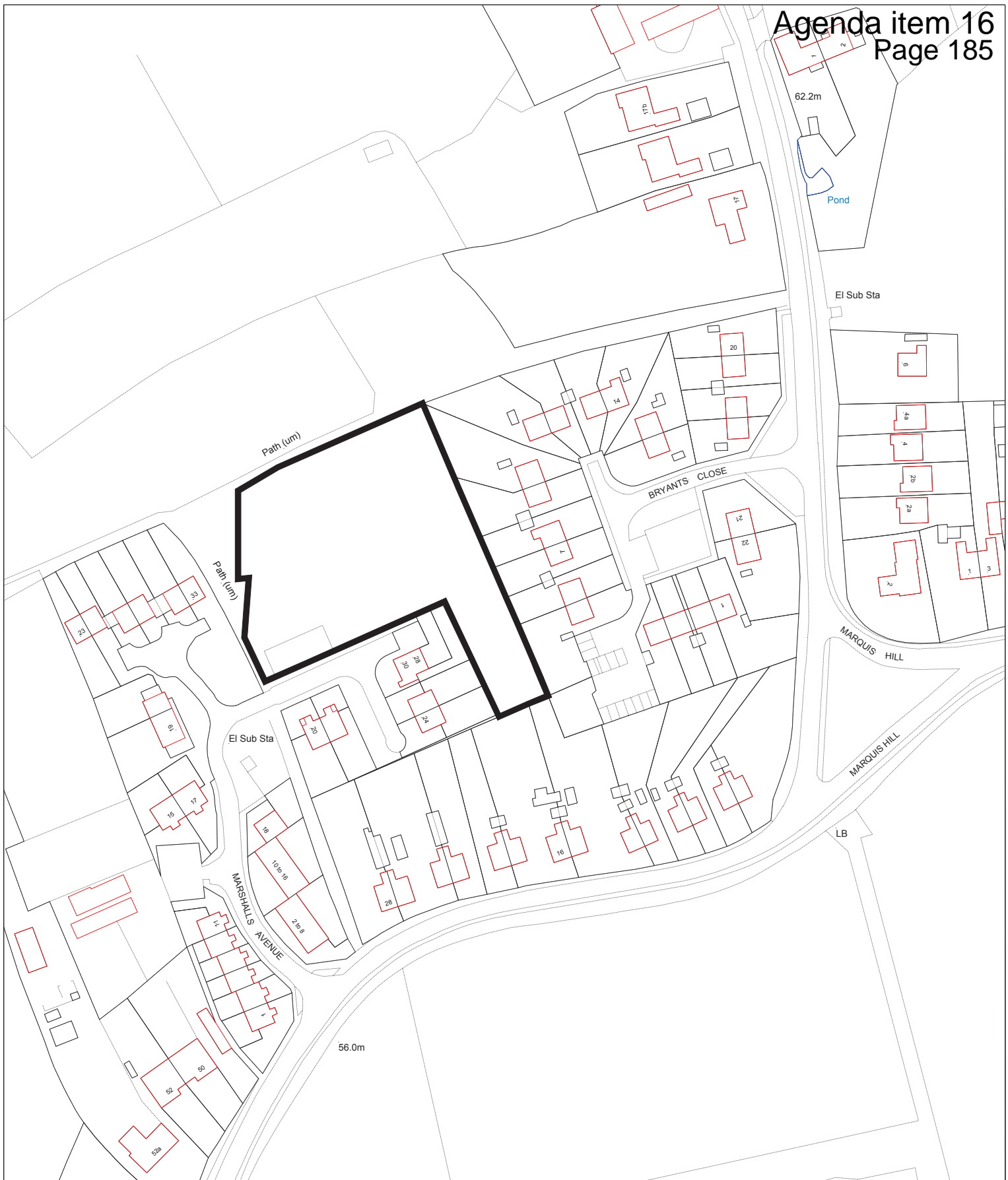
Reasons for Granting

The change of use of the existing office building into a children's nursery (D1 use) has a minimal impact on the residential amenities of nearby occupiers, does not detract from the visual amenity of the surrounding area or setting of the conservation area. The proposal would also have acceptable parking and access arrangements. The proposal is therefore in conformity with policies CS1, CS3, CS10, CS14, CS15, DM3, DM4, DM9 and DM13 of the Core Strategy and Development Management Policies for Central Bedfordshire (North), East of England Plan (May 2008), Milton Keynes and South Midlands Sub-Regional Strategy (March 2005), PPS1 (Delivering Sustainable Development), PPS4 (Planning for Sustainable Economic Development), PPS5 (Planning for the Historic Environment), PPS7: Sustainable Development in Rural Areas and PPG24: Planning and noise. The proposal is also in accordance with the Council's Adopted Design Guide - Design in Central Bedfordshire, 2010.

DECISION

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Central Bedfordshire Council
Licence No. 100049029 (2009)

Date: 13:February:2012

Grid Reference: 512821, 234486

CB/11/03682/FULL

Scale: 1:1700

Land adjacent to Marshalls Avenue, Shillington

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Item No. 16

APPLICATION NUMBER	CB/11/03682/FULL
LOCATION	Land Adjacent To, Marshalls Avenue, Shillington
PROPOSAL	Erection of 8 no. Houses and 3 no. Bungalows providing self contained sustainable housing
PARISH	Shillington
WARD	Silsoe & Shillington
WARD COUNCILLORS	Cllr MacKilligan
CASE OFFICER	Mark Spragg
DATE REGISTERED	21 December 2011
EXPIRY DATE	21 March 2012
APPLICANT	Grand Union Housing Group
AGENT	Kyle Smart Associates Ltd
REASON FOR COMMITTEE TO DETERMINE RECOMMENDED DECISION	Unresolved objection relating to this application on a site owned by Central Bedfordshire Council
	Full Application - Granted

Site Location:

This application site comprises an area of 0.48 hectares of greenfield land, with a small existing enclosed recreation/play area (46sqm) located in its south west corner. To the south and west of the site is the existing residential development of Marshalls Avenue, a mix of modern semi detached houses and older flats. To the east of the site are the rear gardens of properties within Bryants Close, a 1930's development of semi-detached housing. Beyond the south east corner is the garaging serving Bryants Close and the rear gardens of No's 16 and 18 High Road.

A public footpath extends from High Road, and runs adjacent to the west boundary of the site, whilst another footpath leading from Upton End Road runs parallel with the northern site boundary.

The Application:

The application is submitted by Grand Union Housing Group and proposes the provision of 100% affordable housing.

The application is for the erection of 11 dwellings, comprising four No. 2-bed houses (plots 1,2), five No. 3-bed houses (plots 3,4,5,6,7), one No.4-bed house (plot 8), and three No. 2-bed bungalows (plots (9,10,11)).

Each property would have two parking spaces with 6 visitor parking spaces provided around the access road.

A new larger informal recreation area of approximately 130sqm would be provided immediately to the west of the existing area, serving both the proposed new and existing housing.

The application is supported by a Design and Access Statement, a Habitat Survey

and Protected Species Assessment and a Badger Survey. An Arboricultural report has also been submitted.

The application has been amended (Dwg 0773(2)wd2.003 rev P1) to include a bin collection area to serve plots 8-11, the setting back of the garden fence serving plots 1 and 2 with an additional landscape strip shown.

Relevant Policies:

National Policies (PPG & PPS)

- PPS1 Delivering Sustainable Development
- PPS3 Housing
- PPS7 Sustainable Development in Rural Areas
- PPS9 Biodiversity and Geological Conservation

Central Bedfordshire Core Strategy and Development Management Policies (200

- CS1(Development Strategy)
- CS2(Developer Contributions)
- CS7 (Affordable Housing)
- CS8 (Exceptions Scheme)
- CS14 (High Quality Development)
- DM2 (Sustainable Construction of New Buildings)
- DM3 (High Quality Development)
- DM4 (Development Within and Beyond Settlement Envelopes)

Supplementary Planning Guidance Design Guide for Central Bedfordshire (January 2010)

Planning History

08/02060 Erection of 2 no, 2 bed houses, 5 no.3 bed houses and 1 no.4 bed house. Withdrawn

**Representations:
(Parish & Neighbours)**

Shillington Parish Council Support application.

Neighbours One letter received from the occupant of 17 Marshalls Ave making the following comments:

- Question whether the provision of two parking spaces for each house and 6 visitor parking spaces is necessary.
- Request that visitor parking be available to the occupiers of existing properties in Marshalls Avenue as there is currently a shortfall.

Consultations

Highways and Transport Division	The level of parking provision is acceptable given the size and tenure of the proposed dwellings. No objection, subject to conditions.
Internal Drainage Board (IDB)	No comments received.
Rights of Way Sustainability Officer	No comments received.
Village Design Association	Support application.
Ecology	The bat survey and site assessment is satisfactory and it is considered that no harm would result to any protected species. No objections subject to conditions to protect any nesting birds and any reptiles.
Waste Services	No objection to site layout plan amended to incorporate bin collection points.
Tree officer	Request more information regarding proposed planting within the site.
Environment Agency	No objection.
Police Architectural Liaison Officer	No objection

Determining Issues

The main considerations of the application are:

1. Principle of Development
2. Impact of Development on Character and Appearance of the Area
3. Impact of Development on Neighbouring Properties
4. Highway Safety Implications
5. Planning Obligations Strategy (2009)
6. Sustainability Issues
7. Legal Agreement

Considerations

1. Principle of Development

This development is assessed especially, against Policies CS1; CS2; CS7; CS8; CS14; DM2; DM3 and DM4 of the Central Bedfordshire Core Strategy and Development Management Policies (2009).

This site lies outside the settlement envelope of Shillington, wherein residential development is not normally permitted. However, Policy CS8 of the Core Strategy is designed to meet local housing needs for affordable housing in rural areas by permitting such development as an exception. The policy states that "*the Council will support proposals for 100% affordable housing which are designed to meet local housing needs adjacent to the defined settlement*". This is based on the development meeting the following criteria:

- the local need is demonstrated;
- the scheme is viable;
- the scheme will remain available in perpetuity to local people who demonstrate a need for accommodation;
- the design and location of the scheme relates well to the built up area of the settlement;
- the mix of size and tenure will relate to the needs identified in that area.

A Housing Needs Survey, compiled by *Bedfordshire Rural Communities Rural Housing Enabler*, has demonstrated that there is a need for affordable housing in the village.

The background to the survey was to assess the need in the Parish for housing, which because of high property costs in relation to household disposable income or other available assets, cannot readily be met through normal market provision. It is considered that this scheme satisfactorily meets such need.

All of the units being proposed would be on an affordable rented tenure and would comprise a mix of house types, with a range of 2, 3 and 4 bed houses and 2 bed bungalows.

Whilst the proposed residential scheme would involve a loss of agricultural land outside the settlement envelope, it is considered that the benefits of providing a mix of much needed affordable housing, outweigh the concerns that may arise, therefore the development is in principle considered acceptable.

2. Impact of Development on Character and Appearance of the Area

The proposed residential development would be accessed from the same access road as the existing development within Marshalls Avenue, off High Road, which currently terminates as a cul-de-sac. The layout of the development has had regard to the site constraints, dictated by its shape and the need to provide adequate servicing and manoeuvring.

The proposed development would comprise three areas of housing, to the north, west and east of an informal recreation area. Plots 3-9 would have landscaped front gardens, and rear gardens ranging from 13-28m in depth. The submitted site layout plan indicates proposed trees along the front boundaries of plots 3-9. In addition, as amended, the rear boundary fence of plots 1 and 2 has been set back to allow a strip of landscaping to soften the boundary adjacent to the access road. A number of new trees are also proposed within the recreation area.

Whilst the shape of the site appears somewhat skewed by comparison to existing properties in Marshalls Avenue and Bryants Close this reflects the

shape of the site and has been designed to make an efficient use of the area whilst not having a harmful impact on the character of the surrounding housing layouts.

The western boundary with No. 33 Marshalls Avenue has a mature mixed hedgerow of 5 metres high with the northern boundary proposed to have a hedgerow, to screen the development from the public footpath.

Although the proposed dwellings would be of modern design and construction, they would not detract significantly from the existing properties in Marshalls Avenue or Bryants Close, being of an appropriate height scale and design.

It is considered that the layout of development and the opportunity for complimentary landscaping would result in a form of development which would be in keeping with its surroundings.

3. Impact of Development on neighbouring properties and future occupiers

Plots 10 and 11 would be located closest to the rear of No's 5-10 Bryants Close, though at the closest point a 16m separation would be maintained. Furthermore the new properties nearest to the east boundary of the land would be single storey, minimising any impact on the neighbouring houses.

The two storey houses proposed at Plots 1 and 3 would be located in excess of 21m from No.33, behind an existing 5 m hedge beyond the adjacent footpath.

The rear bedrooms of plots 1 and 2 would face towards the front of No's.20 and 22 Marshalls Avenue, however the separation distance of 26m would ensure that reasonable privacy is maintained.

No's 24-30 Marshalls Ave would abut the boundary of plots 10 and 11, which would both be bungalows. The flank elevation of the closest bungalow would be sited 14m from the closest existing property, No.28. Due to the scale of the new bungalows and their design it is not considered that the development would be overbearing or result in any unacceptable loss of privacy to the neighbouring properties, which would be located behind an existing 1.8m high close-boarded fence.

In respect of the 11 proposed dwellings it is considered that the layout would result in an acceptable degree of privacy between occupiers and an acceptable level of amenity provision for future residents.

4. Highway Safety Implications

In considering the impact of this development on highway safety, Highways advise that from its junction with Shillington High Road, Marshalls Avenue conforms to a typical minor residential access road with a footway either side of the main carriageway. Part way along the road, it reduces in status, becoming an "access way" to serve the remaining 14 properties. This proposal therefore, seeks to extend the number of dwellings served via the access way to 25, which is considered acceptable.

The proposal includes parking for two cars on each plot, together with a further 6 spaces for visitor parking. Such parking provision is considered acceptable.

The application has been amended to indicate the access link to the public highways as being within the applicants ownership, as requested by the Highways team.

5. **Planning Obligations Strategy**

In considering this type of development, the Council would normally require the applicant to submit a Planning Obligation in the form of a Unilateral Undertaking Section 106 legal agreement to secure financial contributions towards local infrastructure.

In this case the contributions which would be sought would amount to approximately £96,0000, including £56,000 towards education facilities and almost £23,000 towards children's play facilities, outdoor and indoor sport.

As part of this application a viability assessment has been produced which calculates the costs of providing a 100% affordable housing scheme in addition to the agreed purchase cost of the land. The conclusion of the assessment is that the scheme would not be viable if the infrastructure costs were added to the land value. As such the provision of such much needed accommodation would not be possible.

On the basis of the above and taking account of the Councils strategic aim to secure more affordable housing and the 100% affordable nature of the housing scheme in this location, where such a need has been proven to be required, overrides the justification for financial contributions in this particular case.

6. **Sustainability Issues**

In accordance with Policy DM2 of the Central Bedfordshire Core Strategy and Development Management Policies (2009), all proposals for new development should contribute towards sustainable building principles. New housing development is expected to comply with mandatory standards in relation to the '*Code for Sustainable Homes*', which seeks to provide stepped changes in sustainable home building practice measures, the sustainability of a home against design categories which are; energy/CO₂ emissions, water, materials, surface water run off, waste, pollution, health and wellbeing, management and ecology. The provision of Sustainable Urban Drainage Systems(SUDS) for the disposal of surface water within and leading from development sites, will be expected. It is considered that this proposal incorporates the above objectives.

The application has been supported by a bat survey and protected species assessment and the Councils Ecologist is satisfied that subject to appropriate conditions that no harm to any protected species would result.

7. **Legal Agreement**

This development is subject to a Section 106 legal agreement to ensure that the site is developed for the sole purpose of ensuring the provision of sustainable affordable housing for local people. This agreement is currently being prepared.

Conclusion

In conclusion, the proposed residential development is considered acceptable in form, design and in scale and the provision of affordable housing in this Parish as

demonstrated by the housing needs survey, is welcomed. As such, the proposed housing provision will make a significant contribution to the local community. Therefore, it is recommended that planning permission should be granted.

Recommendation

That planning permission be granted subject to the completion of a Section 106 Planning Obligation restricting the occupation of the dwellings as affordable housing and subject to the following conditions:

- 1 The development hereby approved shall be commenced within three years of the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 which is designed to ensure that a planning permission does not continue in existence indefinitely if the development to which it relates is not carried out.

- 2 **Prior to commencement of development a scheme shall be submitted for written approval by the Local Planning Authority setting out the details of the materials to be used for the external walls and roofs of all dwellings. The development shall be carried out in accordance with the approved scheme.**

Reason: To protect the visual amenities of the building and of the area generally.

- 3 **Prior to the development hereby approved commencing on site details of the final ground and slab levels of the dwellings hereby approved shall be submitted to and approved in writing by the Local Planning Authority. Such details shall include sections through both the site and the adjoining properties, the location of which shall first be agreed in writing with the Local Planning Authority. Thereafter the site shall be developed in full accordance with the approved details.**

Reason: To ensure that a satisfactory relationship results between the new development and adjacent buildings and public areas.

- 4 Prior to commencement of development details of both hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. These details shall include:-

- materials to be used for any hard surfacing;
- planting plans, including schedule of size, species, positions, density and times of planting;
- cultivation details including operations required to establish new planting;
- details of existing trees and hedgerows on the site, indicating those to be retained and the method of their protection during development works.

The development shall be carried out in accordance with the approved details.

Reason: In order to ensure that the landscaping is carried out within a reasonable period in the interest of the visual amenities of the area.

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

Reason: In the interests of the visual amenities of the site and the area generally.

- 6 **Details of the method of disposal of foul and surface water drainage shall be submitted to and agreed in writing by the Local Planning Authority including any land drainage system, before the development is commenced. Thereafter no part of the development shall be brought into use until the approved drainage scheme has been implemented.**

Reason: To ensure that adequate foul and surface water drainage is provided and that existing and future land drainage needs are protected.

- 7 Development shall not begin until details of the junction between the proposed access road and Marshalls Avenue have been approved by the Local Planning Authority and no building shall be occupied until that junction has been constructed in accordance with the approved details.

Reason: In order to minimise danger, obstruction and inconvenience to users of the existing access road and of the proposed access road.

- 8 No dwelling shall be occupied until visibility splays have been provided at the junction of the access road with Marshalls Avenue. The minimum dimensions to provide the required splay lines shall be 2.4m measured along the centre line of the proposed estate road from its junction with the channel of Marshalls Avenue and 43m measured from the centre line of the proposed estate road along the line of the channel of Marshalls Avenue. The vision splays required shall be provided and defined on the site by or on behalf of the developers and be kept free of any obstruction.

Reason: To provide adequate visibility between the existing road and the proposed access and to make the access safe and convenient for the traffic which is likely to use it.

- 9 Development shall not begin until the detailed plans and sections of the proposed road, including gradients and method of surface water disposal have been approved by the Local Planning Authority and no building shall be occupied until the section of road which provides access thereto has been constructed (apart from final surfacing) in accordance with the approved details.

Reason: To ensure that the proposed roadworks are constructed to an adequate standard.

- 10 Before the premises are occupied all on site vehicular areas shall be surfaced in a manner to the Local Planning Authority's approval so as to ensure satisfactory parking of vehicles outside highway limits. Arrangements shall be made for surface water from the site to be intercepted and disposed of separately so that it does not discharge into the highway.

Reason: In order to minimise danger, obstruction, and inconvenience to users of the highway and of the premises.

- 11 The proposed development shall be carried out and completed in all respects in accordance with the access siting and layout illustrated on the approved plan No. 0773(2)wd2.003 and defined by this permission and, notwithstanding the provision of the Town and Country Planning General Permitted Development Order 1995, (or any Order revoking or re-enacting that Order) there shall be no variation without the prior approval in writing of the Local Planning Authority.

Reason: To ensure that the development of the site is completed insofar as its various parts are interrelated and dependent one upon another and to provide adequate and appropriate access arrangements at all times.

- 12 Before development begins, a scheme for the parking of cycles on the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented before the development is first occupied or brought into use and thereafter retained for this purpose.

Reason: To ensure the provision of adequate cycle parking to meet the needs of occupiers of the proposed development and in the interests of encouraging the use of sustainable modes of transport.

- 13 No development shall commence until a wheel cleaning facility has been provided at all site exits in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. The wheel cleaner(s) shall be removed from the site once the roadworks necessary to provide adequate access from the public highway have been completed (apart from final surfacing) to the satisfaction of the Local Planning Authority.

Reason: In the interests of the amenity and to prevent the deposit of mud or other extraneous material on the highway during the construction period.

- 14 Development shall not commence until a scheme detailing access provision to and from the site for construction traffic, which details shall show what arrangements will be made for restricting such vehicles to approved points of access and egress has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be operated throughout the period of construction work.

Reason: To ensure the safe operation of the surrounding road network in the interests of road safety.

- 15 The bin collection area shown on drawing 0773(2)wd2.003P1 shall be provided in accordance with that drawing prior to the occupation of any dwelling, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of amenity.

- 16 The phasing of construction shall be such as to avoid any site clearance during the bird nesting season March to August.

Reason: To protect features of recognised nature conservation importance.

- 17 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers 001, 0773(2)wd.003P1, 004, 005, 006, 007, 008, 009.

Reason: For the avoidance of doubt.

Reasons for Granting

The proposed residential development is considered acceptable in form, design and scale and would not cause harm to the amenities of neighbouring properties, to highway safety or to any ecological assets. The provision of 100% affordable housing would meet a housing need for the Parish, identified by a housing needs survey and as such is acceptable as an exception scheme. As such the proposal is in conformity with Policies CS1, CS2, CS7, CS8, CS14, DM2, DM3 and DM4 of the Central Bedfordshire Adopted Core Strategy and Development Management Policies 2009; A Guide for Development - *Design Supplement 1: New Residential Development* (2009), and Planning Policy Statements 1, 3, 7 and 9. The proposal is therefore acceptable and planning permission should be granted subject to conditions.

Notes to Applicant

1. The applicant is advised of the following notes from the Environment Agency.

The proposal is situated over a Principal aquifer.

Only clean, uncontaminated surface water should be discharged to any soakaway, watercourse or surface water sewer.

Where soakaways are proposed for the disposal of uncontaminated surface water, percolation tests should be undertaken, and soakaways designed and constructed in accordance with BRE Digest 365 (or CIRIA Report 156), and to the satisfaction of the Local Authority. The maximum acceptable depth for soakaways is 2 metres below existing ground level. Soakaways must not be located in contaminated areas. If, after tests, it is found that soakaways do not work satisfactorily, alternative proposals must be submitted.

Drainage from parking areas that will discharge to a surface watercourse must be first passed through an oil interceptor. The Environmental Permitting Regulations make it an offence to cause or knowingly permit any discharge that will result in the input of pollutants to surface waters.

2. The applicant is advised that the requirements of the New Roads and Street Works Act 1991 will apply to any works undertaken within the limits of the existing public highway. Further details can be obtained from the Traffic Management Group Highways and Transport Division, Central Bedfordshire Council, Technology House, 239 Ampthill Road, Bedford MK42 9BD.
3. The applicant is advised that photographs of the existing highway that is to be used for access and delivery of materials will be required by the Local Highway Authority. Any subsequent damage to the public highway resulting from the works as shown by the photographs, including damage caused by delivery vehicles to the works, will be made good to the satisfaction of the Local Highway Authority and at the expense of the applicant. Attention is drawn to Section 59 of the Highways Act 1980 in this respect.
4. The applicant is advised that if it is the intention to request Central Bedfordshire Council as Local Highway Authority, to adopt the proposed highways as maintainable at the public expense then details of the specification, layout and alignment, width and levels of the said highways together with all the necessary highway and drainage arrangements, including run off calculations shall be submitted to the Highways Development Control Section, Central Bedfordshire Council, Priory House, Monks Walk, Chicksands, Shefford SG17 5TQ . No development shall commence until the details have been approved in writing and an Agreement made under Section 38 of the Highways Act 1980 is in place.
5. All roads to be constructed within the site shall be designed in accordance with Central Bedfordshire Council's publication "Design in Central Bedfordshire A Guide for Development" and the Department for Transport's "Manual for Streets", or any amendment thereto.
6. The applicant is advised that as a result of the development, new highway street lighting will be required and the applicant must contact the Highways Development Control Section, Central Bedfordshire Council, Priory House, Monks Walk, Chicksands, Shefford SG17 5TQ for details of the works involved, the cost of which shall be borne by the developer. No development shall commence until the works have been approved in writing and the applicant has entered into a separate legal agreement covering this point with the Highway Authority.
7. The applicant is encouraged to include the provision of bid and bat boxes within the development, as recommended in the submitted Design and Access Statement.
8. In accordance with the recommendations of the submitted Badger Survey and Site Assessment the applicant is encouraged to ensure a short sward is maintained and any waste vegetation removed, to prevent the site becoming suitable to protected species such as reptiles.

DECISION

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