

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



please ask for Helen Bell  
direct line 0300 300 4040  
date 31 January 2013

## NOTICE OF MEETING

### DEVELOPMENT MANAGEMENT COMMITTEE

Date & Time

**Wednesday, 13 February 2013 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), K C Matthews (Vice-Chairman), P N Aldis,  
A R Bastable, R D Berry, M C Blair, D Bowater, A D Brown, Mrs C F Chapman MBE,  
Mrs S Clark, I Dalgarno, Mrs R J Drinkwater, Mrs R B Gammons, D Jones,  
Ms C Maudlin, T Nicols, I Shingler and J N Young

[Named Substitutes:

L Birt, P A Duckett, C C Gomm, Mrs D B Gurney, R W Johnstone, J Murray,  
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***

**N.B. The running order of this agenda can change at the Chairman's discretion. Items may not, therefore, be considered in the order listed.**

# 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 meetings of the Development Management Committee held on 12 December 2012 and 16 January 2013.

(previously circulated)

4. **Members' Interests**

To receive from Members any declarations of interest including membership of Parish/Town Council consulted upon during the application process and the way in which any Member has cast his/her vote.

## REPORT

<b>Item</b>	<b>Subject</b>	<b>Page Nos.</b>
5	<b>Planning Enforcement Cases Where Formal Action Has Been Taken</b>  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 - 12
6	<b>The consideration of an application to delete Maulden Footpath No. 28 under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981</b>  The report examines the evidence behind the application to delete Maulden Footpath No. 28 under the legislation contained within the Wildlife and Countryside Act 1981. Members are asked to come to a view on whether the application should be approved or refused.	* 13 - 76

- 7 **The consideration of an application to extinguish Maulden Footpath No. 28 under Section 118 of the Highways Act 1980** \* 77 - 104

The report examines the application to extinguish Maulden Footpath No. 28 in light of evidence of recent use and the legislation contained within the Highways Act 1980. Members are asked to come to a view on whether the application should be approved or refused.

- 8 **The consideration of an application to seek a Magistrates' Court Order to stop up Maulden Footpath No. 28 under Section 116 of the Highways Act 1980** \* 105 - 134

The report examines the application to seek the stopping up of Maulden Footpath No. 28 by Magistrates' Court order. Members are asked to come to a view on whether the application should be approved or refused in light of evidence of recent use, the legislation contained within the Highways Act 1980, and the Council's adopted policy on such applications.

**Planning & Related Applications - to consider the planning applications contained in the following schedules:**

- | <b>Item</b> | <b>Subject</b>                                  | <b>Page Nos.</b> |
|-------------|---|------------------|
| 9           | <b>Planning Application No. CB/12/02071/OUT</b> | * 135 - 224      |

**Address :** Retail Park at Grovebury Road, Leighton Buzzard

Development of the site for retail warehousing development within Class A1 (retail) to comprise 5,575sqm with 2,090sqm mezzanine floorspace and 929sqm garden centre enclosure and a restaurant/café/public house of 372sqm within Class A1/A3/A4/A5 use.

**Applicant :** Claymore Group and CC Trading Ltd

- 10      **Planning Application No. CB/12/03290/OUT**      \*      225 - 262
- Address :**    Unit 7, Grovebury Road, Leighton Buzzard
- Outline Planning Permission: Proposed non food retail park of up to 10,775sqm (116,000sqft). Gross retail floorspace, up to 600sqm (6,460sqft), storage up to 604sqm (6500sqft), pub/restaurant, up to 167sqm(1800sqft), drive thru restaurant, new vehicular access and associated highway works, associated car parking; hard and soft landscaping and associated infrastructure works.
- Applicant :**    Barwood Developments Ltd & Invesvo P.I.T. Ltd
- 11      **Planning Application No. CB/12/03575/FULL**      \*      263 - 276
- Address :**    29 Steppingstones, Lancot Drive, Dunstable
- Demolition of existing care facility and construction of new building with associated works. Proposed ground floor 8No x studio bedrooms with ensuites and associated communal and staff facilities. First floor assisted living 4No x two bedroom flats and 2No x one bedroom flats.
- Applicant :**    Macintyre Housing Association
- 12      **Planning Application No. CB/12/04310/FULL**      \*      277 - 286
- Address :**    Brickhill Farm Park Homes, Halfmoon Lane, Pepperstock, Luton
- Retention of existing and creation of new mobile home plots to provide a total of 105 plots.
- Applicant :**    Miss G McFarland
- 13      **Planning Application No. CB/13/00101/FULL**      \*      287 - 294
- Address :**    113 Camberton Road, Linslade, Leighton Buzzard
- Single storey front extension and demolition of existing side brick boundary wall. Erection of 1.8m fence to extend rear and side garden to enclose grassed amenity land. (Re-sub 12/3791).
- Applicant :**    Mr & Mrs Silva



- 14      **Planning Application No. CB/12/03999/FULL**      \*      295 - 302
- Address :**    37 Moor Lane, Maulden, Bedford
- Retrospective approval for a garage extension to a dwelling.
- Applicant :**   Mr Swan
- 15      **Planning Application No. CB/12/04248/FULL**      \*      303 - 316
- Address :**    Oak Tree Farm, Potton Road, Biggleswade
- Change of use of site and buildings from Light industrial / retail / store / showroom / workshop / restaurant to school. External alterations including revised parking layout / landscaping / play areas and new fencing. Subdivision of land to separate existing house. New windows and doors.
- Applicant :**   Ermine Education Trust
- 16      **Planning Application No. CB/12/04272/FULL**      \*      317 - 330
- Address :**    32 Astwick Road, Stotfold, Hitchin
- Erection of 3 dwellings
- Applicant :**   Mr T Saunders
- 17      **Planning Application No. CB/12/04342/FULL**      \*      331 - 342
- Address :**    Land to the Rear of 152 – 156, St Neots Road, Sandy
- Erection of 4No. semi-detached dwellings and formation of associated access.
- Applicant :**   L&R Developments (Herts) Limited
- 18      **Planning Application No. CB/12/04140/FULL**      \*      343 - 348
- Address :**    16 Ickwell Green, Ickwell, Biggleswade
- Single storey rear extension to garage.
- Applicant :**   Mr Turner

19      **Planning Application No. CB/12/04247/FULL**      \*      349 - 356

**Address :**    49 Common Road, Stotfold, Hitchin

Two storey side extension and single storey front extension.

**Applicant :**   Mr Nergaard

20      **Planning Application No. CB/13/00088/OAC**      \*      357 - 382

**Address :**    London Luton Airport, Airway Way, Luton

Other Authority Consultation: Proposed alterations to Airport Way / Airport Approach Road, infill extensions and alterations to terminal buildings, extensions to existing mid or long term car parks, new taxiway (Foxtrot), extensions to the existing taxiway (Alpha) and aircraft parking aprons (including 6 new strands) and a new multi-storey car park linked to terminal building.

**Applicant :**    Luton Borough Council

21      **Site Inspection Appointment(s)**      \*

In the event of any decision having been taken during the meeting requiring the inspection of a site or sites, the Committee is invited to appoint Members to conduct the site inspection immediately preceding the next meeting of this Committee to be held on 27 March 2013 having regard to the guidelines contained in the Code of Conduct for Planning Procedures.

In the event of there being no decision to refer any site for inspection the Committee is nevertheless requested to make a contingency appointment in the event of any Member wishing to exercise his or her right to request a site inspection under the provisions of the Members Planning Code of Good Practice.

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**Meeting:** Development Management Committee  
**Date:** 13 February 2013  
**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.

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**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 receive an update of Minerals and Waste Planning Enforcement cases where formal action has been taken at Appendix 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 list at Appendix B briefly describes the breach of planning control for Minerals and Waste cases, dates of action and further action proposed.
13. Members will be automatically notified by e-mail of planning enforcement cases within their Wards. For further details of particular cases in Appendix A please contact Sue Cawthra on 0300 300 4369. For further details of Minerals and Waste cases in Appendix B please contact Roy Romans on 0300 300 6039.

**Appendices:**

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

Appendix B – Minerals and Waste Planning Enforcement Formal Action Spreadsheet

# Planning Enforcement formal action (DM Committee 13th February 2013)



ENFORCEMENT CASE NO.	LOCATION	BREACH	DATE ISSUED	EFFECTIVE DATE	COMPLIANCE DATE	APPEAL	NEW COMPLIANCE DATE	RESULT	NOTES/FURTHER
1	Land at 6 Sutton Road, Potton, SG19 2DS	Enforcement Notice - siting of mobile home for independent residential accommodation	31-Aug-12	01-Oct-12	01-Dec-12			Not complied	Proceed to further action
2	Land at 6 The Belfry, Luton. LU2 7GA	Enforcement Notices - change of use of land from amenity land to use as garden.	13-Sep-12	11-Oct-12	08-Nov-12	Appeal submitted 27/9/12			Await outcome of appeal
3	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	Appeal dismissed, compliance extended	29-May-13		Check compliance after 29/3/13
4	Land adjoining Greenacres, Gypsy Lane, Little Billington, Leighton Buzzard. LU7 9BP	2 Enforcement Notices 1 - unauthorised encroachment onto field 2 - unauthorised hard standing, fence and buildings	15-Oct-12	12-Nov-12	10-Dec-12				Timber building has been sold, awaiting removal then fence to be moved back
5	Land at The Drovers, Flitwick Road, Steppingley	Enforcement Notice - Terracing of land and installation of timber retaining walls	30-May-12	30-Jun-12	30-July-12 30-Aug-12	Appeal dismissed 24/10/12	24-Nov-12 and 24-Jan-12		Notice upheld at appeal Check compliance end January 2013 Plans submitted for regrading land
6	The Grade II Listed building at 24 Market Square, Toddington, Dunstable LU5 6BS	Listed Building Enforcement Notice - removal of ceilings and wall plaster.	14-Jun-12	12-Jul-12	12-Oct-12			Part complied	Remainder of work being undertaken and being monitored
7	Land at London Gliding Club, Tring Road, Dunstable LU6 2JP	Enforcement Notice. The construction of a T Hangar.	17-Apr-12	15-May-12	15-Jul-12	Appeal dismissed 3/1/13	3-Mar-13		Appeal dismissed, check compliance after 3/3/13
8	Plots 1 & 2 The Stables, Gypsy Lane, Little Billington, Leighton Buzzard LU7 9BP	Breach of Condition Notice Condition 3 SB/TP/04/1372 named occupants	15-Oct-12	15-Oct-12	12-Nov-12				Occupied temporarily, await outcome of appeal for Kingswood Nursery
9	Unit H Kensworth Industrial Estate, Common Rd Kensworth	Breach of Condition Notice. Condition 1 SB/TP/87/0748 height of storage	19-Jun-12	19-Jun-12	19-Jul-12				Pre-app received 19/7/12 for variation of condition, discussions taking place. Await decision on variation.

## Planning Enforcement formal action (DM Committee 13th February 2013)

ENFORCEMENT CASE NO.	LOCATION	BREACH	DATE ISSUED	EFFECTIVE DATE	COMPLIANCE DATE	APPEAL	NEW COMPLIANCE DATE	RESULT	NOTES/FURTHER
10	Land at Queen Street, Leighton Buzzard. LU7 1BZ	Breach of Condition Notice - Condition 3 to planning permission SB/TP/05/00761 tree planting	05-Oct-12	05-Oct-12	31-Dec-12			Part complied	Some trees planted, monitor remainder
11	Land to rear of The Farmers Boy PH, 216 Common Road, Kensworth, Dunstable LU6 2PJ	Enforcement Notice - raising and leveling of the land by the importation of waste material	08-Aug-12	10-Sep-12	10-Nov-12	Appeal submitted 10/9/12			Await outcome of appeal
12	Land at Plot 2, Greenacres, Gypsy Lane, Little Billington, Leighton Buzzard. LU7 9BP	Enforcement Notice - construction of timber building and the laying of hardstanding.	17-Jan-13	14-Feb-13	14-Mar-13				Check after 14/3/13
13	Land at Motorcycle Track South of Billington Road, Stanbridge.	Breach of Condition Notice, Condition 3 planning permission SB/TP/95/0176. Training and practice taking place outside 1st April to 30th September	02-Jan-13	02-Jan-13	30-Jan-12	N/A			No compliance yet
14	215 Common Road, Kensworth	Enforcement Notice - Erection of a double garage and storeroom	16-Mar-05	18-Apr-05	18-Jul-05	6-May-05	6-Aug-05	Planning permission granted 20/12/12 for smaller building CB/12/03651	2 months given to reduce size of building. Check after 20/2/13
15	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	Appeal dismissed.	9-Jan-09	<b>Part complied</b> - (use of buildings and land)	Prosecuted and fined September 2011. Monitor site and action on completion of M1 roadworks if there is a breach of planning control.
16	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	04-Sep-09	LDC proposed granted 22/3/12. Part complied with LDC proposed	Prosecuted and fined October 2011. In process of altering to comply with proposed LDC. Neighbour dispute re access

# Minerals Waste Enforcement formal action (DM Committee 13 February 2013)

ENFORCEMENT CASE NO.	LOCATION	BREACH	DATE ISSUED	EFFECTIVE DATE	COMPLIANCE DATE	APPEAL	RESULT	NEW COMPLIANCE DATE	NOTES/FURTHER ACTION
11/0360	Former BR Goods Yard, Chiltern Green Road, East Hyde	Enforcement Notice - Creation of large concrete slab (33m x 40m) on part of area that should be landscaped	3-Oct-11	9-Nov-11	Depends on requirements Varies 3 - 4 months	YES - Hearing 28 Feb 2012	Part Allowed (Grounds f & g) Part Dismissed	13-Dec-12	The operator had only marked out the parts of the slab to be removed by the compliance date. Work is progressing on site to modify the slab to accord with the requirements of the Notice. Evidence being collected to progress possible prosecution action
11/0360	Former BR Goods Yard, Chiltern Green Road, East Hyde	Breach of Condition Notice - Non compliance with landscaping provision in CBI/10/00457/MW	3-Oct-11	3-Oct-11	Depends on requirements Varies 3 - 6 months	N/A		13-Dec-12	Compliance requirements varied by outcome of Enforcement Notice appeal No planting carried out. Evidence being collected to progress possible prosecution action.
11/0374	Plot 2 Station Road Industrial Estate, Ampt Hill	Breach of Condition Notice - Non compliance with height of stockpiled materials - Cond no. 12 of perm 18/2005	14-Nov-11	14-Nov-11	14-Dec-11	N/A	Guilty on 5 charges.		Bedford Magistrates on 7 Dec 2012 found the operator WRS guilty of non compliance with BCN. Fined £4000 with £1990 costs. Matter still under investigation as stockpile heights continue to be excessive
11/0374	Plot 2+ 2bc Station Road Industrial Estate, Ampt Hill	Enforcement Notice - Change of use of land to waste transfer and material recycling facility which constitutes unauthorised EIA development	19-Jul-12	23-Aug-12	Depends on requirements Varies 1-2 months	YES - Hearing 23 Jan 2013	Pending		Appeal on grounds b), f) and g) only. The planning merits of the change of use were not considered. PINS appeal decision awaited. Regular liaison continues with the Environment Agency re current conditions on site.



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The determination of an application to delete Maulden Footpath No. 28  
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**Meeting:** Development Management Committee  
**Date:** 13 February 2013  
**Subject:** The consideration of an application to delete Maulden Footpath No. 28 under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981  
**Report of:** Head of Service for Transport Strategy and Countryside Services  
**Summary:** The report examines the evidence behind the application to delete Maulden Footpath No. 28 under the legislation contained within the Wildlife and Countryside Act 1981. Members are asked to come to a view on whether the application should be approved or refused.

**Advising Officer:** Trevor Saunders, Assistant Director of Planning  
**Contact Officer:** Adam Maciejewski – Senior Definitive Map Officer - Countryside Access Team - 0300 300 6530  
**Public/Exempt:** Public  
**Wards Affected:** Ampthill ward  
**Function of:** Council

**CORPORATE IMPLICATIONS**

**Council Priorities:**

The determination of the application is a statutory duty of Central Bedfordshire Council as the Surveying Authority for the Definitive Map and Statement.

**Financial:**

1. Keeping the Definitive Map and Statement up to date and determining applications to modify the Definitive Map and Statement is a statutory duty of the Council and, as such, there is a degree of direct funding from central government to fulfil this duty. Definitive Map modification orders are made at no cost to the applicant. Consequently the costs of any Council administration, the costs of advertising the making and confirmation of any order, and the costs of any works would be borne by the Council; as would the costs of any public hearing or inquiry and the cost of any appeal to the Secretary of State if the Council initially declined to make an order. These costs – which are estimated to total approximately £3000 - £4000 (excluding legal fees of possibly £4000) - would come out of existing budgets and no growth is required.

**Legal:**

2. Section 53(5) of the Wildlife and Countryside Act 1981 permits a member of the public to apply to the Council (as Surveying Authority) to modify, by order, the Definitive Map and Statement if they consider it to be incorrect. The Definitive Map is the Council's legal record of public rights of way.
3. The Council has a statutory duty to determine the application and must look at all available evidence when coming to its decision. The decision must focus on whether a public right of way does or does not exist. Ancillary matters, such as issues of privacy, security, and whether the path is needed should be disregarded.
4. Footpath No. 28 was originally added to the Definitive Map and Statement by means of a Definitive Map modification order made in 1995. In July 2004 the footpath was diverted by public path order and in 2010 this order was the subject of a variation order which re-aligned the footpath to its current position. Consequently the current line of the majority of Footpath No. 28 is correctly shown on the Definitive Map through it being created as part of a public path diversion order. However, the Council's legal advice indicates that as these alterations are relatively small and if the original line of Footpath No. 28 can be shown to have been erroneously recorded in the first instance, the current line of the footpath should be deleted from the map.
5. Defra's Rights of Way Circular 1/09 requires that when considering an application to delete a right of way, the evidence must be new and cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made. The evidence must also be of sufficient substance to displace the presumption that the Definitive Map is correct and this evidence must be cogent (compelling).
6. If an order to delete Footpath No. 28 was made, this would need to be advertised in a local paper and on-site. An objection period of at least five weeks would then ensue, during which anybody could object to the order. Given the user-evidence history of the path, objectors would probably end up being heard at a local public inquiry.
7. If the Council chooses not to make an order to delete the footpath, the applicant would most likely exercise his right to appeal the decision to the Secretary of State for Environment, Food, and Rural Affairs. The Secretary of State could, if so minded, direct the Council to make an order to delete the footpath. Such an order would again require publicising and would again be likely to receive objections.

**Risk Management:**

8. The existence of Maulden Footpath No. 28 has been disputed by the applicant, who for 20 years has been the owner of the majority of the land over which the footpath runs. The actions of the former County Council and Mid-Beds District Council, in dealing with this footpath, have been the subject of at least seven complaints to the Local Government Ombudsman (“LGO”) by not only the supporters of any attempt to extinguish the footpath, but also by those seeking to retain it. None of the complaints of maladministration by either Council were upheld.
9. Mr. Bowers’ application to delete Maulden Footpath No. 28 has the support of the Police<sup>1</sup>, Maulden Parish Council, the local ward members, and local MP, Mrs. Nadine Dorries. The application does not have the support of local and national user-groups however, which treat this long-running case as a *cause célèbre*. Central Bedfordshire Council, as the Surveying Authority for the Definitive Map and Statement has a duty to act impartially and to determine the application solely on the evidence of whether the footpath does, or does not, exist and consequently has to disregard local views as to whether the footpath is suitable or desirable.
10. The long-standing dispute between the various parties has so far resulted in five legal orders, three public inquiries, and three prosecutions. Consequently, the Council’s decision is likely to receive significant press interest (the case was keenly followed by the Open Spaces Society who have given this matter national coverage). In summary, the key risks to the Council are:
  - Reputational risks,
  - Risk of failure to discharge statutory responsibilities and legislative issues,
  - Risk of further challenge/appeal/legal action/judicial review, or risk of legal action being taken against officers of the former County Council or Central Bedfordshire Council.

**Staffing (including Trades Unions):**

11. Not Applicable.

**Equalities/Human Rights:**

12. 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.

<sup>1</sup> The Police’s national Secured by Design guidelines state that “public footpaths should not... ..provide access to gardens, rear yards, or dwellings as these have been proven to generate crime...” and so, by default, the Police support any extinguishment of a public right of way through any domestic property.

13. It has been determined in court cases that modification order determinations have no human rights implications. When the Council determines a modification order application made under the primary legislation of the Wildlife and Countryside Act it is exempted from having to adhere to Section 6(1) of the Human Rights Act 1998 when coming to its decision. This is because the committee is only concerned in the evaluation of the evidence to show whether public rights do, or not, exist. The Development Management Committee, in coming to its decision based on the evidence at hand will have acted as required by the primary legislation and thus in accordance with the 1998 Act.
14. The recommendations in the report would not affect the diversity of those entitled to use the right of way and would not directly impact on the use of the way by any section of the public.

**Public Health**

15. Not applicable

**Community Safety:**

16. The report proposes that Maulden Footpath No. 28 be retained from Clophill Road to its junction with Bridleway No. 24. Use of the footpath by local residents removes the requirement for pedestrians to use a bridleway which has occasional equestrian, cycle, and vehicular traffic. Footpath No. 28 has a junction with Clophill Road, Maulden. The road is straight with a footway on the opposite side. Were the footpath to be deleted, walkers would either have to walk in the road for some 43 metres between points A -C or to walk along the footway on the southern side of Clophill Road to cross at the nearby three-way road junction. The Council's Senior Traffic and Safety Engineer has appraised both the current and alternative routes on Clophill Road and considers both to have similar low levels of risk – however, crossing away from the road junction would help to minimise any inherent risk. A road-side sign has also been erected to draw attention to the footpath. Walkers using Footpath No. 28 are constrained within a narrow path between 1.1 and 1.6 metres wide and so would have little space to avoid unauthorised cyclists or an aggressive dog. A gate has been installed at the request of the land owner, Mr. Bowers, to deter cycle use of the footpath. By contrast, Bridleway No. 24 is wider with a surfaced width of between 2.5 and 3.5 metres (measured verge-verge) but pedestrian use is shared with cyclists, equestrians, and motor vehicles. No incidents have been reported on either path.

**Sustainability:**

17. Not Applicable.

**Procurement:**

18. Not applicable.

The determination of an application to delete Maulden Footpath No. 28  
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**RECOMMENDATION:**

**The Committee is asked to:**

- 1. Refuse the application by Mr. Alan Bowers to make an order under Section 53(2) of the Wildlife and Countryside Act 1981 to delete Footpath No. 28 under Section 53(3)(c)(iii) of the Act because no new substantive and cogent evidence has been discovered which demonstrates on the balance of probability that a valid non-intention to dedicate existed during the period 1936 – 1956.**

**Introduction**

19. In 1989 the applicant, Mr. Alan Bowers, purchased a plot of land off Clophill Road, Maulden. In 1992 he fenced off the land and locked the access gate. In 1994 Mrs. Izzard, his neighbour, subsequently applied to the former County Council for a Definitive Map modification order; Mrs. Izzard claimed that a public footpath existed over the line of what was a narrow track used by the previous owner, Mr. Cecil Sharp, as an occupation way through his market garden.
20. In September 1995 the former County Council made a Definitive Map Modification Order to add Maulden Footpath No. 28 to the Definitive Map and Statement, based upon evidence of public use of the route. Mr. Bowers objected to the modification order which was subsequently heard by an independent Inspector using a process based on exchanges of correspondence. The 1995 order was confirmed in 1997 by an independent Inspector appointed by the Secretary of State for the Environment, by which time Mr. Bowers had built his house, No. 123b Clophill Road, over the line of the footpath.
21. Since 1997 Mr. Bowers has applied three times for Footpath No. 28 to be extinguished. The former Mid-Beds District Council made two extinguishment orders: one under the Town and Country Planning Act 1990 in March 1998; and one under the Highways Act 1980 in September 2000. Neither order was confirmed by independent Inspectors following public inquiries so the footpath remains on the map. Appendix F (F.8-F.16) details the former County Council's involvement in these orders. Mr. Bowers' third application to extinguish the footpath was submitted to the former Bedfordshire County Council in 2004 and is the subject of two further agenda items put to this sitting of the Development Management Committee ("the Committee").
22. In October 2008, at the suggestion of former County Council officers, Mr. Bowers submitted an application to delete Footpath No. 28 as he held the view that it ought not to be shown on the Definitive Map. However, Mr. Bowers did not supply any evidence to support his application until March 2009. The evidence consisted of nine signed statements by people who knew Mr. Bowers or the previous owner of the land, Mr. Cecil Sharp, to the effect that the path was not a right of way. In early 2012 Mr. Bowers submitted a further six statements. The 15 statements of non-use of the path comprise

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new evidence which was not considered by the former County Council when it considered the matter in 1995.

### **Legal and Policy considerations**

23. Section 53(5) of the Wildlife and Countryside Act 1981 enables a member of the public to apply to the Council if they consider that the Definitive Map and Statement, which is the Council's legal record of public rights of way, needs modifying to correct an error or omission. The applicant must support their application with evidence. If the evidence is sufficient the Council has a duty to make an order to modify the Definitive Map and Statement.
24. Mr. Bowers has applied to delete a Footpath No. 28 from the map and statement. Mr. Bowers wishes to have Footpath No. 28 deleted from the Definitive Map and Statement because he believes that the public use considered by the former County Council and Inspector for the original 1998 modification order either did not happen, or if it did happen, it could not have resulted in a dedication of public rights – and consequently the current footpath is recorded erroneously. Defra Circular 1/09 states that the evidence necessary to delete a path under the Wildlife and Countryside Act must be new and not previously considered by the authority; it must be sufficient to displace the presumption that the Definitive Map and Statement is correct; and thirdly that the evidence must be cogent (i.e. compelling).
25. The non-user evidence supplied by Mr. Bowers in March 2009 and heard at interview in 2012 has not previously been considered by the former County Council, which made the 1995 Definitive Map modification order, or by the Inspector appointed by the Secretary of State for the Environment who confirmed the order. Consequently the evidence can be considered to be “new” evidence to trigger a fresh investigation – the findings of which are detailed in this report.
26. The fact that the original user evidence was re-evaluated some 16 years ago by an independent Inspector means that any new evidence must be sufficiently compelling to not only overturn the presumption that the Definitive Map and Statement is correct, but also overturn the findings of the Inspector who confirmed the order.
27. Defra's Rights of Way Circular 1/09 states that where an applicant wishes to delete a right of way it is for them to prove the map and statement requires such a modification. The authority must investigate the subject of the application but it is not required to prove that the map and statement are correct (see Section B.9 at Appendix B ).

### **Land ownership**

28. Prior to June 1911 the land in question was owned by the Duke of Bedford. This was sold at auction and purchased by an unknown person; with that part to the west of Footpath No. 28 being made into a series of allotments. By 1925 the land over which Footpath No. 28 runs was in the ownership of the Izzard family and it remained so until Messrs. Cecil and Alfred Sharp purchased the land in 1946 for a market garden. In 1956 Mr. Cecil Sharp became the outright



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owner of the land affected by the footpath.

29. In December 1989 Mr. Alan Bowers bought the market garden land from Mr. Sharp. In 1990 Mr. Sharp sold No. 123 Clophill Road to a Mr. Brown who in turn sold the plot now occupied by 123b Clophill Road to Mr. Bowers in October 1993. In November 1995 Mr. Bowers transferred a small portion of the land at the intersection of Bridleway No. 24 and Footpath No. 28 to Mr. & Mrs. Worseley. This small land parcel is currently owned by Mr. & Mrs. Tebutt of 125a Clophill Road (see Appendix A).

### Historic Evidence

30. The Maulden Parliamentary Inclosure Award does not refer to Maulden Footpath No. 28. Early privately produced plans similarly do not record the line of the footpath. This though is primarily due to the small scale of most maps and the fact that many were produced for users of carriages or horses, rather than walkers.
31. The 1<sup>st</sup> edition of the Ordnance Survey's 25":1 mile map of 1883 records a track along the original line of Footpath No. 28 as well as the brick "Pound" by the roadside – see Appendix E for extracts from a variety of maps. The 1901 2<sup>nd</sup> edition of this map also records the track, this time with the annotation "F.P" indicating it had the characteristics of a permanent footpath. Whether this path was private or public cannot be ascertained though. With the exception of the Ordnance Survey's 1938-1950 6 inch:1 mile map, all the maps looked at up to the 6" map of 1991 record the physical presence of a defined track along the alignment of Footpath No. 28.
32. There is no historical documentary evidence that indicates a statutory creation of public rights over what is now Footpath No. 28. Evidence of public rights must therefore come from public use of the footpath, leading to a presumption or inference of a dedication of public rights along the path. Aerial photographs taken in 1947 and 1976 corroborate the physical presence of a track on the ground along the routes depicted by the Ordnance Survey maps at this time which the public could have used.

### Definitive Map History

33. In c.1952 Bedfordshire County Council asked Maulden Parish Council to undertake a survey of all the paths it considered public as the first step towards creating a Definitive Map of Public Rights of Way under the National Parks and Access to the Countryside Act 1949. Maulden Parish Council recorded on its survey map a footpath (path "J") along what is now the line of Footpath No. 28. This path however was then crossed through with an "X" – see Section E.14 at Appendix E.
34. In the accompanying survey statement, under Path No. 23 which was a bridleway, the footpath "J" was described in an addendum as:  

"At the point near the bungalows occupied by Sharman and Izzard the bridleroad No. 23 is joined by a footpath which leads from this point through the adjoining land in a southerly direction which [sic] it joins the main Clophill

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Road near the Hurdle Barn [the Pound]”

35. The Draft Map of Public Rights of Way was published in April 1953. No right of way was recorded along what is now Footpath No. 28. However, what was then Footpath No. 24 was recorded along the lane currently occupied by Bridleway No. 24. The statement for Footpath No. 24 reads:

“It starts: from Bridle Road No. 23 at a point near the bungalow occupied by Sharman & Izzard and leads through the adjoining land in a southerly direction directly and joins the main Clophill Road near the Hurdle Barn.”
36. The discrepancy between the mapped route and text description of Footpath No. 24 caused some confusion as to the actual legal line of the path. A 1956 note of a telephone conversation between F. Roberts of the former County Council and a Mr. H. Robinson records the agreement that the route of the Footpath No. 24 was along the lane now occupied by Bridleway No. 24.
37. The Modified Draft and Provision Maps of 1963 recorded changes made to the Draft Map by a number of local hearings and inquiries. These maps show that Footpath No. 24 had been upgraded to its current bridleway status; however, no footpath was shown along the current line of Footpath No. 28 – see Appendix E.
38. The 1964 Definitive Map recorded Bridleway No. 24 along the lane, but did not record the presence of any footpath. However, the Definitive Statement continues to record Bridleway No. 24 as a footpath passing along approximately the route of Footpath No. 28 through Mr. Bowers’ property.
39. In 1995 the former County Council made a Definitive Map modification order to add Footpath No. 28 to the Definitive Map and Statement. The order was made on the basis of evidence contained within 36 submitted user evidence forms and 16 subsequent interviews. The forms were received by the former County Council in two batches, the first being primarily from relatives of the applicant, Mrs. Izzard, whose family had owned the land before 1946, and the second from local residents after Mrs. Izzard was prompted by a Council officer to submit additional evidence from non-relatives as these would strengthen her application. The forms and interviews gave a picture of regular public use of Footpath No. 28 between 1907 and 1992. Two periods of interruption of the footpath were identified: the first in 1956, and the second in 1992 which precipitated the modification order application. Following objections to the order by Mr. Bowers, the order was forwarded to the Secretary of State for the Environment for confirmation. After an exchange of correspondence between the Planning Inspectorate and the various parties involved, the order was confirmed by an independent Inspector on behalf of the Secretary of State for the Environment in August 1997. By this time Mr. Bowers had built his house, No. 123b Clophill Road, over the line of the added footpath. The Inspector’s decision is summarised below at Section 52.
40. Mr. Bowers initially applied to divert the footpath, however the former Mid-Beds District Council refused to approve the application as it affected an (at the time) unmapped footpath and sought to provide an alternative route over an existing right of way. Mr. Bowers then applied twice to the former District



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Council for Footpath No. 28 to be extinguished. The former District Council made two extinguishment orders: one under the Town and Country Planning Act in March 1998; and one under the Highways Act in September 2000. Both orders were not confirmed by independent Inspectors following public inquiries in February 1999 and June 2001 respectively (see Appendix F) and so the footpath was retained on the map.

41. In July 2004 the former County Council made a public path diversion order to divert Footpath No. 28 out of Mr. Bowers' house onto a route down the western side of the property. Mr. Bowers, the local Parish Council, and 163 individuals objected to the diversion order. Following a public inquiry, an Independent Inspector confirmed the diversion order in June 2006.
42. In September 2004 Mr. Bowers applied to the former County Council for public path extinguishment order under the Highways Act 1980. This application is the subject of two further agenda items at this sitting of the Development Management Committee.
43. Following the demolition in 2008 of the roadside brick storage building (known variously as "the Hurdle Barn" or "Pound" – hereafter "the Pound") situated next to Footpath No. 28, the route of the 2004 diversion order was altered by a variation order made and confirmed in 2010.

#### **Actions of the former Bedfordshire County Council**

44. Mr. Alan Bowers, the applicant, has made several allegations concerning:
  - (a) How officers of the former County Council gathered the evidence for the original 1995 Definitive Map Modification Order;
  - (b) The position of the former County Council and its officers in relation to the two extinguishment orders made by the former District Council;
  - (c) The actions of former County Council's Members and officers in relation to how the authority dealt with the footpath in the period 2000-2003; and
  - (d) The relationship between former County Council officers and user-groups.

These allegations are addressed in Appendix F to this report – the inclusion of which was requested by both Mr. Bowers and Cllr. Paul Duckett.

#### **User Evidence**

45. Mr. Bowers supplied 15 statements from people who know the land or the previous owner, Mr. Cecil Sharp. Several of these people are also known to Mr. Bowers as relatives, friends or acquaintances. These witnesses all attest to their non-use of the footpath. The periods covered by the non-users vary but are between 1950 - 2010.
46. The experiences of the non-user witnesses also varies considerably, from somebody employed to work a neighbouring field, through to friends of Mr. Cecil Sharp and members of the local parish council, to somebody who passed the entrance to the market garden on the way to school as a child.

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47. The recollections of the non-users are that Footpath No. 28 was not used as a public footpath, but rather was an occupation track used by the Sharps for the purposes of their market gardening. Two or three other people did use the path – principally Mrs. Hilda Izzard and Mr. Jack Williams. This use was thought by the non-users to be with the permission of Mr. Cecil Sharp.
48. At interview, none of the non-users could recall anybody having been challenged by Mr. Sharp. Most recalled a farm gate by the roadside, although only one non-user stated it ever being locked. Several of the people interviewed recalled that Mr. Cecil Sharp was heavily involved in the local Methodist Chapel and youth group and so often had children visiting the property and potentially using the footpath. As such, this would have been as guests rather than “as of right”.
49. A number of the non-users interviewed have been members of Maulden Parish Council and have stated that whenever rights of way matters arose at parish council meetings Mr. Cecil Sharp would declare that his track wasn't a public footpath. There is, however, no record of any such statement within the parish council minutes for the period 1936 -1974. One non-user also recalls Mr. Cecil Sharp stating he intended to lock his gate once a week against a potential claim for a footpath. Other non-users also recalled Mr. Sharp's apparent eagerness to go and intercept anybody he saw using the footpath.
50. The evidence of public use of Footpath No. 28 comes from the original evidence forms and statements submitted as part of the original claim for the 1995 definitive map modification order. Six of these users are related to the applicant of the original 1995 Definitive Map modification order, Mrs. Izzard, and consequently their use of the footpath prior to 1946 when the land was sold by the Izzards to the Sharps has to be disregarded as this use was “by private right” rather than “as of right”. Similarly, one other user was a relative of Mr. Sharp and so her use after 1946 should be disregarded.
51. Those members of the public who submitted user evidence forms and were subsequently interviewed by the former County Council about their use of the footpath have described public use of Footpath No. 28 from c.1907 through to 1992. Several of the users report that the route was used regularly except for one or two weeks in 1956 when Mr. Cecil Sharp had locked the gate and challenged users and turned them back. I have taken this to be the first calling into question of the public's right to use the footpath. Most of the witnesses also commented on Mr. Bowers' more recent blocking of the footpath in June 1992 which precipitated the claim for a footpath and subsequent modification order.
52. The inspector appointed by the Secretary of State to hear the 1995 modification order identified two relevant 20 year periods of public use - one preceding each calling into question; these were: 1936 – 1956 and 1972 – 1992. Thirty-three users stated that their use was for all or part of the 20 year period prior to Mr. Alan Bowers' fencing of the path in 1992. Nineteen users stated that their use was for all or part of the 20 year period prior to Mr. Cecil Sharp's challenges in 1956: 9 users prior to 1946 (excluding the Izzard family) and 18 users after 1946 (excluding the Sharp family). The Inspector found that public use within each of these relevant periods was “as of right” – that is

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without permission, force or stealth and that use was by the public at large. The Inspector therefore concluded that the dedication of a public right of way on foot could be deemed to have occurred in either of these two relevant periods. Dedication in the earlier period would, of course, negate the requirement to deem that dedication had occurred in the later period.

53. The earliest recollections of users indicate that the footpath was used in preference to the nearby lane occupied by Bridleway No. 24 owing to the poor condition of the lane's surface and flooding problems. In 1987 Mr. Bowers and the former County Council jointly contributed to improving the lane's surface. This is evident from the later statements of the non-users who reported better surface conditions on the bridleway and a tendency for it to only flood at the road junction.
54. Many of the users recall that a farm gate existed at the roadside and that a stile of one form or another existed at the northern end of the footpath for many years before eventually becoming a gap by c.1963 – although this may have been replaced by another stile at a later date.
55. It would appear, historically, that Footpath No. 28 was used by local villagers to access Maulden Woods for the purposes of collecting firewood produced as a by-product of the pit-prop industry which existed prior to World War II. Other uses of the path were for recreation and as a route to chapel. Consequently it is likely that many, if not all the locals walked this route on a regular basis. It appears that several of the users either worked for, or were related to each other or to the owners of the land. This is probably not an unusual situation for a small pre-war hamlet and consequently I consider that use was by the public at large.
56. Mr. Cecil Sharp's attitude to public use of the footpath across his market garden appears to have varied considerably with time; ranging between assuring some users that they and their family could use the path along with other villagers<sup>2</sup>, through tolerating use or granting permission, to locking gates, challenging walkers, and stating there was no public right of way. It does seem, however, that from c.1956 through to at least the mid-1980s, Mr. Sharp acted in a manner that was generally consistent with a non-intention to dedicate the path as a public right of way – even though this non-intention appears to have not always been made apparent to every user of the footpath. However, prior to 1956 there is no evidence of any actions by Mr. Sharp to indicate that at this time he had no intention of dedicating a right of way over his land.

## Consultations

57. In January 2012, Central Bedfordshire Council simultaneously consulted on all three of Mr. Bowers' applications. Several of the responses received gave a broad response rather than concentrating on those aspects relevant to each application. In such cases, those aspects of a consultees' response which reflect their general views are given below.

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<sup>2</sup> User evidence form completed by Mrs. Margaret Morison – see Appendix C.  
Non-Executive report template August 2011

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58. Mr. Alan Bowers, the applicant, has been supplied with drafts of this report and has commented in detail on them. Where relevant to the evidence of whether public rights do or do not exist, his comments have been included in the report and appendices thereto. At the request of Mr. Bowers and Cllr. Duckett, details of the former County Council's democratic and investigative processes have also been included at Appendix F.
59. Mr. & Mrs. Tebbutt of 125a Clophill Road own a small parking area on the southern side of Bridleway No. 24 which is crossed by the northern-most 10 metres of Footpath No. 28 (near point B on the plan at Appendix A). Although they were never consulted by Mr. Bowers in the statutory manner when he originally applied, they were consulted on the proposed deletion in November 2012. Consequently I do not consider their rights to comment on or object to the proposal have been prejudiced. Mr. Tebbutt responded on 16-11-2012 stating "...I have no real strong view in favour of the footpath remaining as it was not in existence when we moved to this address... ..don't get me wrong I will be glad to see the end of the footpath...". Mr. Tebbutt added to his comments on 19-11-2012, stating:"... I really have no view either way on the up keep of it or indeed its existence or non existence as the case may be - my comments were merely an observation that it is really a couple of walkers and my kids using it which really deems it pointless . I hope this information is of some help in bringing this to a conclusion - a conclusion which really does not effect us at 125A which ever way it goes...".
60. In response,- the former County Council made a Definitive Map Modification Order in 1995 to record the existence of the footpath based on a presumed dedication in potentially 1936. However, the path had not been usable since before 1995 until a 2009 Magistrates' Court order forced Mr. Bowers to remove a number of obstructions on the footpath.
61. Maulden Parish Council was consulted but has not commented directly on the deletion of the footpath. It has, however, responded to a parallel consultation on the extinguishment of the footpath. In its response the parish council stated that it "...feels very strongly that this footpath should be extinguished on the grounds that it is unnecessary and supports Mr. Bowers and your Council in an application to the Magistrates' Court for an extinguishment order...".
62. Mrs. Sylvia McParlin of No. 123 Clophill Road, whose property abuts Footpath No. 28, was consulted and wrote a letter in support of the deletion, stating "...The access to the path is on a main road whereby you step straight out onto the main road, as no path exists on that side. Cars stop over the entrance thus blocking the view of oncoming traffic....".
63. Mr. & Mrs. Fenton of No. 121 Clophill Road, whose property abuts the northern half of Footpath No. 28 has been consulted but has not yet responded.
64. The Ramblers was consulted and in its response, argued that deletion of the path would detrimentally affect the local public rights of way network and would increase the risk of pedestrian-vehicle conflict.

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65. In response to the above – case law<sup>3</sup> has established that the need for a right of way, and issues of safety or convenience are not matters that can be considered when establishing whether a public right does or does not exist and consequently the above comments ought to be disregarded.
66. The three local ward members were consulted. Cllr. Blair responded stating “...I can only say that on the information I have been given, I have to agree with Mr. Bowers that the original DMMO should never have been made, since a public right of way never previously existed. By various means, it appears that a simple work access route was somehow turned into a footpath based upon very questionable evidence – clearly a situation acknowledged by Mid-Beds District Council when they made their subsequently thwarted extinguishment orders....”.
67. Cllr. Smith responded stating “...I can't see anything wrong with the deletion of this footpath, especially as it simply joins an existing bridleway just behind the houses along Clophill Road....”.
68. Cllr. Duckett responded, stating “...I wholly support this deletion as it is a path that goes nowhere and serves no purpose....”.
69. In response – the Ward Members raise a number of points. Cllr. Blair's observation that the footpath “never previously existed” is correct in that there is no evidence of a historical statutory creation of the footpath. However, use of the route by members of the public between 1936 and 1956 did enable the former County Council to deem that Mr. Sharp had, perhaps unwittingly, dedicated the route as a public footpath during this period. The evidence used was scrutinised by the former County Council's Definitive Map Officers, by members of the former County Council's Rights of Way Sub-committee, and by an independent Inspector appointed by the Secretary of State for the Environment. Cllrs. Smith and Duckett have also commented on the need and purpose of the footpath. The Mayhew (1992) case established that only evidence of whether a public right does or does not exist can be considered when determining a modification order application. Consequently, Members' views that Footpath No. 28 is un-needed or serves no purpose must be disregarded.
70. Mrs. Nadine Dorries M.P. has been supporting Mr. Bowers' case for many years and, in a letter dated 11-1-2012, stated “...There is written evidence in the form of a letter dated 21 October 1957 from the County Surveyor stating that the path was not a public footpath. This was confirmed in searches instigated by Mr. Bowers when he purchased the property... ...I understand that neither the current or previous owners were interviewed , but rather officers conducting the survey encouraged people supporting the creation of a path to speak to them and even paid their legal expenses...”.
71. In response – the 1957 letter from the County Surveyor would have been based on his desk-based inspection of the Draft Map of Rights of Way and possibly other relevant documents, such as the Maulden Inclosure Award. A right of way created through contemporaneous public use would not be

<sup>3</sup> Mayhew v Secretary of State for the Environment [1992] QBD  
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documented or known to the County Surveyor at the time of his response. Likewise, when Mr. Bowers purchased the land behind his house, no right of way had been recorded on the Definitive Map and so would not be disclosed on a CON29 property search form. The non-depiction of a right of way on the Definitive Map does not preclude its unrecorded existence – indeed Section 56 of the Wildlife and Countryside Act explicitly states that the map is only conclusive as to what is actually shown upon it. The former County Council's actions over acquiring user evidence are addressed at Appendix F; I have found no evidence to suggest that the evidence used to establish the existence of Footpath No. 28 is either invalid or erroneous. The former County Council paid for solicitors to carry out home visits to obtain statutory declarations from three key witnesses (Mrs. Hilda Izzard – then aged 82, Mr. WJ Burgoyne – then aged 76, and Mrs. Florence Huckle – then aged 93). The obtaining of statutory declarations from key witnesses for a public inquiry was standard practice in 1997. Given the age of the witnesses, travelling to meet them seems a practical and reasonable course of action for the former County Council to take.

72. The Open Spaces Society (“OSS”) was consulted and responded stating: “...We strongly oppose its extinguishment or deletion... ...you can only make a definitive map modification order if you discover evidence that the footpath has been incorrectly shown on the definitive map of public rights of way. This cannot be the case since the order was confirmed by your predecessor council in 1995...”.
73. The Bedfordshire Rights of Way Association was consulted and in its response, it stated that “...Your Council can only make a Definitive Map Modification Order if it discovers evidence to show that Footpath No 28 is incorrectly shown on the Definitive Map. There is no such evidence because the present line of Footpath No 28 appears on the Definitive Map as result of statutory legal processes...”
74. In response – contrary to the views of both the OSS and BRoWA, legal advice obtained by this Council has confirmed that the current route of Footpath No. 28 could be deleted from the Definitive Map if it could be shown that the original line of the footpath ought not to have been recorded – notwithstanding that two Highways Act orders have subsequently been made to slightly vary the route of the original path.

## Conclusions

75. There are no historic documents which positively identify the path through Mr. Bowers' land as a public right of way. Aerial photographs and early large-scale Ordnance Survey maps indicate the persistent presence of a non-vehicular route generally along the line of Footpath No. 28 prior to the 2004 diversion order. The route of Footpath No. 28 was initially recorded by Maulden Parish Council in c.1952 but this was not carried over onto any subsequent statutory map. None of the documentary evidence therefore identifies any public right of way along the line of Footpath No. 28.
76. User evidence suggests that the route of Footpath No. 28 has been used since at least 1907. Whilst some use of the route has been by members of the

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owners' family, other use has been by the public at large, although in such a small hamlet there is always the potential for some indirect connection between land owner and user.

77. Two distinct events have called into question the public's right to use the path: Mr. Cecil Sharp's challenges in 1956, and Mr. Alan Bowers locking of the gate in 1992. These were identified by the Inspector appointed to hear the 1995 modification order who concluded that 1936 -1956 and 1972 -1992 were the relevant periods and that dedication of the footpath could have occurred in either period.
78. The recent evidence submitted by Mr. Bowers, and the subsequent interviews of non-users has led me to conclude that Mr. Cecil Sharp's actions between 1956 and at least the mid-1980s, although erratic, were sufficient to bring the public's right to use the path into doubt. Consequently I can no longer accept the previous finding of the Inspector with regard to dedication occurring during the later period between 1972 -1992. My investigation however still supports the finding that Footpath No. 28 can be considered, on the balance of probability, to have been dedicated during the earlier period of 1936-1956.
79. The non-user evidence submitted by Mr. Bowers does not provide any direct or indirect evidence of any challenges to public user during the first identified period of 1936 - 1956, nor of any evidence of a non-intention to dedicate the footpath by the Sharps before 1956. This is corroborated by the user evidence submitted for the 1995 modification order application which generally was "as of right". Consequently, Footpath No. 28 can be deemed to have been dedicated at the start of the period 1936 – 1956.
80. The lack of evidence of sufficient substance to displace the statutory presumption that the Definitive Map and Statement is legally conclusive - and correct in recording the dedicated footpath, means that there is no compelling reason to overturn the Inspector's decision to confirm the 1995 modification order adding Footpath No. 28 to the Definitive Map and Statement.

**Appendices:**

Appendix A – Plan of rights of way

Appendix B – Legal and policy considerations

Appendix C – User and non-user evidence - summaries of statements

Appendix D – Timeline

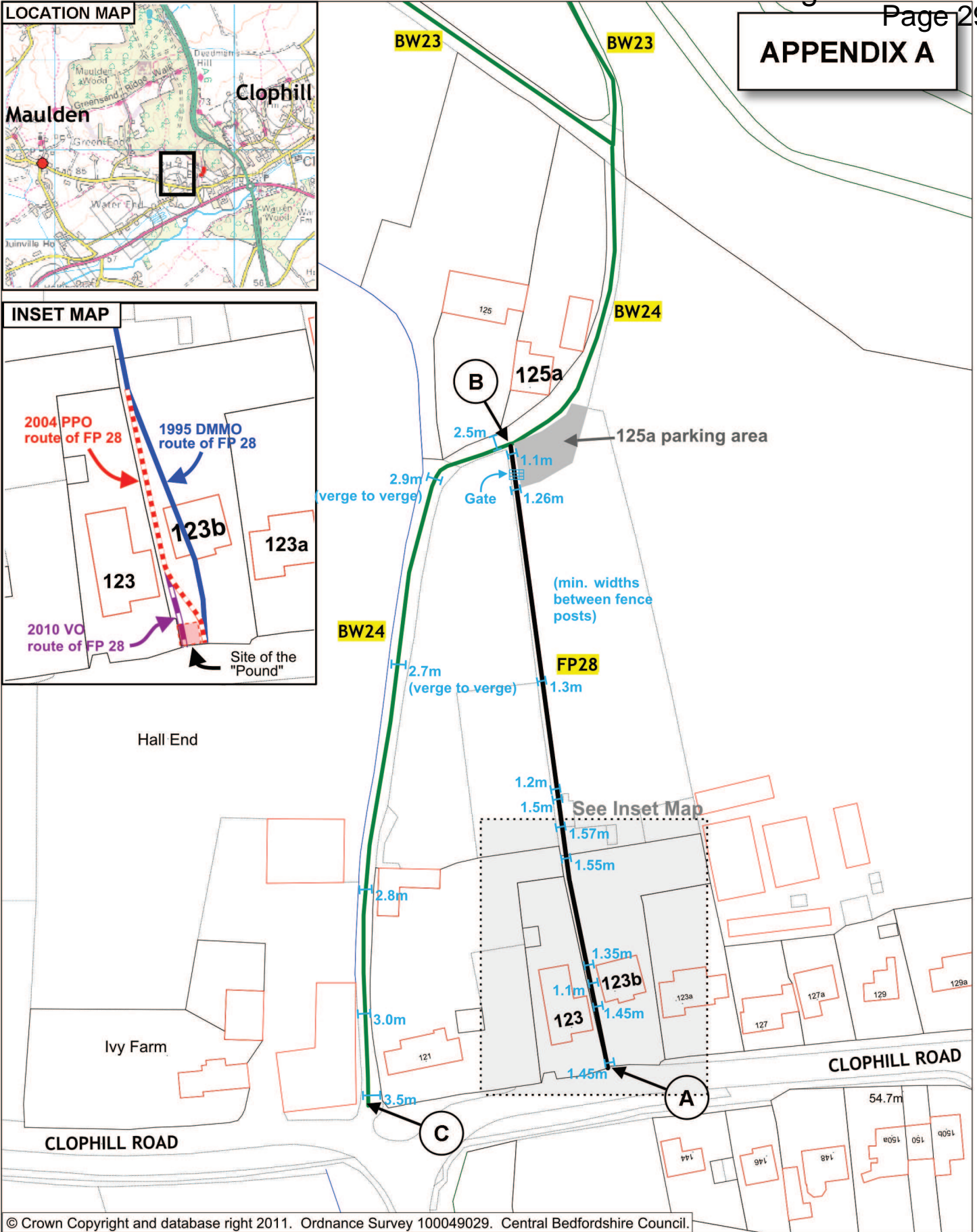
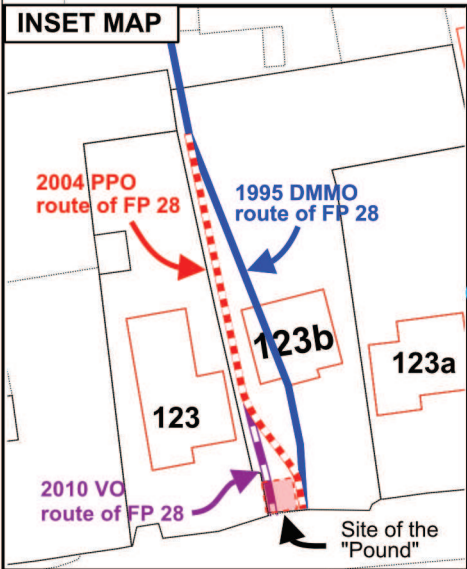
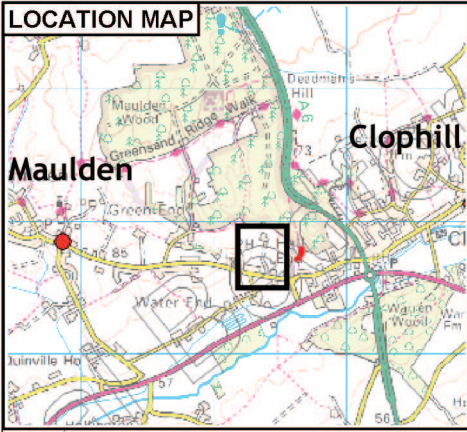
Appendix E – Historical evidence

Appendix F – The democratic process at the former Bedfordshire County Council

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**APPENDIX A**



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Wildlife and Countryside Act 1981 - Section 53

**Proposed deletion of Maulden Footpath No. 28**



Footpath to be deleted

**A** **B**

Unaffected public brideways



Path widths  
in metres



Scale: 1:1250  
11 January 2012

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## Appendix B

### Legal and Policy Considerations

- B.1. Section 56 of the Wildlife and Countryside Act 1981 (the “1981 Act”) explicitly states that the Definitive Map is conclusive evidence as to the public rights shown upon it, though this is without prejudice to the subsistence of any higher right. The accompanying Definitive Statement is conclusive evidence as to the described position and width of the public right and to any limitation or condition recorded.
- B.2. Section 53(5) of the 1981 Act, however, permits any person to apply to Central Bedfordshire Council, as the Surveying Authority for the Definitive Map and Statement, for an order to modify the Definitive Map and Statement under subsection 53(3) of the 1981 Act if they consider these are in error and need correcting.
- B.3. Section 53(2) of the 1981 Act places a duty on the Council, as the Surveying Authority, to modify the Definitive Map and Statement upon the occurrence of certain events detailed in Section 53(3) of the 1981 Act. Section 53(3)(c) gives details of some of the events which require the Council to modify the Definitive Map and Statement:
- “53(3)(c) The discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-
- (i) *(omitted)*;
  - (ii) *(omitted)*;
  - (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map or statement require modification...;”
- B.4. Mr. Alan Bowers has applied under Section 53(5) to delete Footpath No. 28 on the ground that it ought not to be recorded on the Definitive Map and Statement. With regards to the deletion of public rights, Defra’s Rights of Way Circular 1/09 states at section 4.33:

“The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement – and this would equally apply to the downgrading of a way with “higher” rights to a way with “lower” rights, as well as complete deletion – will need to fulfil certain stringent requirements. These are that:

- the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.
- the evidence must be of sufficient substance to displace the presumption that the definitive map is correct;
- the evidence must be cogent.

While all three conditions must be met they will be assessed in the order listed. Before deciding to make an order, authorities must take into consideration all other relevant evidence available to them concerning the status of the right of way and they must be satisfied that the evidence shows on the balance of probability that the map or statement should be modified...”.

- B.5. The requirement that the authority needs to determine an application to delete a right of way after weighing the evidence on the balance of probability is confirmed from the cases of *Todd and another v Secretary of State for the Environment, Food and Rural Affairs [2004] EWHC 1450 (Admin)* and in *Leicestershire County Council, R (on the application of) v Secretary of State for the Environment, Food and Rural Affairs [2003] EWHC 171 (Admin)*.
- B.6. Footpath No. 28 was originally added to the Definitive Map and Statement by means of a Definitive Map Modification Order made in 1995. In July 2004 the footpath was diverted by public path order and in 2010 this order was the subject of a variation order which re-aligned the footpath to its current position. Consequently the current line of the majority of Footpath No. 28 is correctly shown on the Definitive Map through its being created as part of the statutory process of a public path diversion order. However, the Council’s legal advice indicates that as these alterations are relatively small, if the original line of Footpath No. 28 can be shown to have been erroneously recorded then the current line of the footpath should be deleted from the map.
- B.7. As stated at Section B.1 above, the Definitive Map and Statement is conclusive evidence of the existence of those rights recorded. However, where there is a discrepancy or contradiction between the map and statement, the case of *R. (ex parte Norfolk County Council) v Secretary of State for Environment, Food, and Rural Affairs(2005)* has held that it is the map that is conclusive evidence of the status and alignment of the right of way. In the event of a review, however, the matter is to be determined by reference to the evidence presented, with neither the map nor the statement having precedence.
- B.8. The case of *Morgan v Hertfordshire County Council (1965)* confirmed that even if a public right of way was recorded erroneously on the Definitive Map and Statement, the map was still conclusive evidence of the public’s right to use the path so recorded.
- B.9. The Definitive Map and Statement is legally conclusive as to the rights shown upon it. Defra’s Rights of Way Circular 1/09 states at section 4.34 that:
- “...Applications may be made to an authority under section 53(5) of the 1981 Act to make an order to delete or downgrade a right of way. Where there is such an application, it will be for those who contend that there is no right of way or that a right of way is of a lower status than that shown, to prove that the map requires amendment due to the discovery of evidence, which when considered with all other relevant evidence clearly shows that the right of way should be downgraded or deleted. The authority is required, by paragraph 3 of Schedule 14 to

the Act, to investigate the matters stated in the application; however it is not for the authority to demonstrate that the map reflects the true rights, but for the applicant to show that the definitive map and statement should be revised to delete or downgrade the way...” (emphasis added).

- B.10. Consequently it is the responsibility of the applicant to provide the cogent (compelling) evidence in favour of an order deleting a right of way and for the authority to weigh this evidence against the presumption the Definitive Map and Statement is correct, and not for the authority to defend the conclusiveness of the Definitive Map and Statement as it stands.
- B.11. A highway can be created either by statute or can be dedicated by the landowner. Dedication of a highway may be:
- a) “Express” - where the owner openly declares that he is dedicating the way as a public highway;
  - b) “Deemed” - where public user is for a period of 20 years or more. This is regulated by Section 31 of the Highways Act 1980 (“the 1980 Act”);
  - c) “Inferred” - where user has been sufficient to infer that the way has been dedicated as a public highway at common law.
- B.12. Where a highway has been dedicated, the dedication must be accepted by the public. This is usually demonstrated by their use of the route.
- B.13. Section 31 of the 1980 Act describes how a highway may be deemed to have been dedicated by the landowner - as indicated by long use of the way by the public. It states:
- “1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
  - 2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question...
  - 3) Where the owner of the land...
    - (a) has erected... ..a notice inconsistent with the dedication of the way as a highway...
 

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.
  - 4) In the case of land in possession of a tenant... ..[the owner] shall, notwithstanding the existence of the tenancy, have a right to place and maintain such a notice...
  - 5) Where a notice... ..is subsequently torn down or defaced, a



notice given by the owner of the land to the appropriate council that the way is not dedicated as a highway is, in absence of proof of a contrary intention, sufficient evidence to negative the intention of... [the landowner] ...to dedicate the way as a highway.

- 6) An owner of land may at any time deposit with the appropriate council...a map... .. and... ..statement indicating what ways (if any) over the land he admits to having been dedicated as highways... ..to the effect that no additional way... ..has been dedicated as a highway since the date of the deposit... ..[and is] sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway...
- (7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications so as to show the right on the definitive map and statement.
- (7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.
- 8) Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over land as a highway if the existence of a highway would be incompatible with those purposes...
- 9) Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less than 20 years..."

B.14. It is important to determine that use of a way by the public has been "as of right", which has been defined, as in the judgment of Pill J. in *O'Keefe v. Secretary of State for the Environment* (1996), as being "...nec vi, nec clam, nec precario..." which equates to "...without force, without stealth, and without permission...". Use of land by the permission of the owner or on the basis that the user is visiting or in the employment of the landowner would generally mean that the use was not "as of right".

B.15. For a way to be deemed to have been dedicated under the terms of Section 31 the following applies:

- It must have been enjoyed by the public at large and not, for example, only by tenants or employees of the landowner or residents of a particular street. Use must be of sufficient frequency to amount to enjoyment by the public; use by one or two people once or twice a year would not suffice.
- Use of the way must be as of right and not merely with the landowner's permission.

- Use must be without interruption, i.e. without physical challenge by the landowner or someone acting lawfully on the landowner's behalf.
- Use must be for a full period of 20 years counted backwards from the date on which the right of the public to use the way was brought into question.
- The owners must be capable of dedicating a public right of way across the land.
- There must not be sufficient evidence to indicate that the landowner had no intention to dedicate a public right of way over their land. Any evidence of a non-intention to dedicate should be overt and contemporaneous with the use and does not have to be continuous throughout the 20 years of use.

B.16. A dedication at common law does not require a calling into question or for there to be any specific period of public user. At common law, the question of dedication is one of fact. Public user is no more than evidence, and is not conclusive evidence. Any presumption that public user is the result of an earlier dedication can be rebutted.

B.17. The case of *Mayhew v Secretary of State for the Environment* [1992] QBD considered, amongst other things, what was required to trigger a modification order. In the case, Potts J. stated that:

“...section 53 [limits] the modifications which ought to be made in consequence of the occurrence of a relevant event to those which would give effect to the rights of way which were found to exist rather than those which might be thought suitable or desirable... ...The surveying authority's duty under section 53 was to ascertain public rights of way and to modify the map so that it correctly defined those rights; no more and no less...”.

As a consequence of this judgment, the Council, as Surveying Authority, can only consider evidence showing whether a public right of way does or does not exist. Issues of suitability or desirability – and by analogy: privacy, security, and need cannot be considered in establishing what rights, if any, exist when determining whether to make a definitive map modification order.

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## Appendix C

### User and “non-user” evidence (paraphrased and summarised)

#### Non -users

##### “Non-user” Statutory Declarations

##### **Mr. Cecil William Sharp – Statement supplied to Mr. Alan Bowers 17-1-1995**

Mr. Cecil Sharp was the joint freehold owner of the full width of the land now comprising 123a and 123b Clophill Road with his brother Alfred Sharp from 1946 to 1956. From 1956 to January 1990 Mr. Cecil Sharp was the sole freehold owner.

Prior to Mr. Sharp’s purchase the land was used as allotments with holders gaining pedestrian access only by means of a path. The path was not used by members of the public and was no more than 18”-24” wide. After 1946 the Sharp brothers turned the land into a market garden and continued to use the existing path as access.

During the early 1950s Mr. Sharp permitted a few people whom he knew to use the track as a shortcut. Mr. Sharp built his own house in c.1955 and as the path lay through his new garden area he blocked off the path. Mrs. Margaret Izzard told Mr. Sharp that the path was a right of way.

Mr. Sharp contacted the clerk of Ampthill UDC and, in 1957, was informed that no public right of way existed. Mr. Sharp blocked off the path again in 1957-8 by building a gate at the roadside. Mr. Sharp stated that over a period of several years the gate has intermittently vandalised and eventually padlocked by Mr. Sharp at nights.

Mr. Sharp recalled Mrs. Hilda Izzard and Jack Williams would occasionally use the path during the day – and permitted this use. Mr. Sharp told them both they had no right to use the path – but they didn’t agree with him. Mr. Sharp could not recall anybody else using the path.

During the 1960s and early 1970s Mr. Sharp kept the gate chained and locked at night. Occasionally the chain was cut and replaced up until the mid 70s when he ceased to replace it. Mrs. Hilda Izzard and Jack Williams and one or two others use path.

In 1989 Mr. Sharp sold the market garden part of the plot to Mr. Alan Bowers but continued to live at 123a until 20<sup>th</sup> April 1992.

##### **Mr. Harold William Brown – Statement supplied to Mr. Alan Bowers 17-1-1995**

Was the freehold owner of 123a Clophill Road between January 1990 and October 1993. The land encompassed the full width of the property (including

123b) and as far north as the boundary between the garden and the allotment.

Whilst Cecil Sharp owned the house and allotment to rear Mr. Jack Williams, Mrs. Hilda Izzard and Mr. Jackson occasionally walked the track (footpath). Mr. Brown believed that anybody using the track did so with permission.

In April 1992 Cecil Sharp, who had occupied the house since c.1955, moved into residential care. Mr. Brown wired the front field gate shut. The wire was cut and Mr. Bowers (with Mr. Brown's consent) re-wired the gate.

Mr. Sharp, having lived in Maulden all his life and having worked and owned the land in question for almost 50 years, believed that there was no public right of way over the track and that any use was with his permission.

**Mr. Alan John Bowers – Statement supplied by Mr. Alan Bowers 18-1-1995**

Mr. Bowers lived at 125a Clophill Road from the mid-1970s. Mr. Bowers bought the market garden area ("the land") on 8<sup>th</sup> December 1989. On 29<sup>th</sup> October 1993 Mr. Bowers bought the house and garden known as 123a Clophill Road.

Mr. Bowers did nothing with the land until June 1992 when he put it into grazing and installed an electric perimeter fence and shut the roadside gate. Shortly afterwards Mrs. Hilda Izzard told Mr. Bowers that he couldn't close gate. Mr. Bowers said he had a right to but gave permission for her to walk the west side of the land.

Mr. Bowers recalls that, apart from Mrs. Izzard, only Mr. Frank Humphries and Mr. Jack Williams walked the track (Mr. Williams allegedly with the consent of Cecil Sharp).

Mr. Bowers chained the roadside gate in c.November 1993. Mr. Bowers considers that, having lived at the end of the track, he believes there to be no public right of way.

A follow-up statement by Mr. Bowers (received 15-5-2012) confirmed that he had used the footpath prior to owning the land. "I and my family used to walk down Mr. Sharps path to visit Mr. & Mrs Sharp who used to look after our children when they were young".

"Non-user" witness interviews

**Mr. Harrold Brown – BCC telephone Interview – 31-10-1994**

Mr. Brown inherited 123A Clophill Road from his wife's uncle, Mr. Cecil Sharpe, in 1990. He stated that Mr. Sharpe bought the smallholding in c.1945 to farm himself. Prior to that the plot had been allotments and part of the Duke of Bedford's Estate.

Mr. Brown stated that when Mr. Sharpe bought the land people had been using the path across the allotments to get to [Maulden] woods even though it

was an occupational road leading to the smallholdings. When Mr. Sharp built his house in 1955 and put up a gate, he had a lot of trouble from the Izzard family who had been used to using the path as a short cut to Clophill Road.

Mr. Brown stated that Mr. Sharpe had asked Ampthill Rural District Council for its opinion and was told the path was an occupational path to the allotments; however, as Mr. Sharp was a quiet, gentle man and could not stand the arguments whenever he shut the gate, so he left it open.

Mr. Brown stated that the path was a narrow beaten earth path about two feet wide, just wide enough to take a wheel barrow.

Mr. Brown stated that Mr. Sharpe left his house to him in 1990. At some time, the field behind the house had been sold to Mr. Alan Bowers. Mr. Brown shut and locked the gate in 1990 but it was smashed open twice; this was the talk of the local pub. The local parish council [supported Mr. Brown over the gate and path], but in order to keep the peace he too left the gate open in the end.

Mr. Brown stated that in October 1993 he sold his house to Mr. Bowers, who by then owned most of the land between Clophill Road and the woods.

#### **Mr. Trevor Hazzard – Witness interview – 6-3-2012**

Mr. Hazzard moved to 136 Clophill Road in 1971 and used the bridleway to access the woods as this was signposted. The bridleway was potholed and had puddles and occasional car use. He cannot remember there being any signs or structures on the footpath and does not know of anybody being challenged.

#### **Mr. Howard Lockey – Witness interview – 8-3-2012**

Mr. Lockey recalls that Mr. Bowers was good friends with the Izzards (who had been his next door neighbours). Mr. Lockey was in the market gardening business and so did business with Cecil Sharp in the 70s and 80s.

Mr. Lockey had never walked the footpath in his youth and only became aware of the issues through his involvement in Maulden Parish Council. Mr. Cecil Sharp was vice Chairman of the Parish Council and when a footpath issue was on the agenda used to reiterate that his path was not a public right of way. Mr. Lockey recalls that the Parish Council had confirmed to Cecil Sharp in 1957 that no right of way existed over his land.

Mr. Lockey remembers that a field gate by the roadside was kept locked at night by Mr. Sharp. Mr. Sharp was actively involved in the Methodist Church (superintendent) and in the village youth club and so knew most of the village.

When Mr. Sharp moved away a Mrs. Cotterell bought No. 123a. Mr. Lockey believes it was her who took photographs of a flash flood on the bridleway. Minor localised flooding occurs due to a dip in the land – although this apparently drains away quite quickly.

**Mr. Michael Harvey – Witness interview – 8-3-2012**

Mr. Harvey was a wholesale vegetable grower and used to work for Leon Northwood who was supplied by Mr. Sharp. Mr. Harvey used to collect vegetables from Mr. Sharp's land on Fridays and over the weekend from 1967-71. Mr. Harvey knew Mr. Sharp well did not consider him someone who would tolerate public access or trespass over his market garden. Mr. Harvey used to drive a tractor over the land and knew the path well. The field gate at the roadside was wide and was always open when he came to collect produce. He does not know what happened at night.

Mr. Harvey once saw Mrs Izzard using the path and understood this was a permissive arrangement between her and Mr. Sharp. He only saw the Izzards using the path two or three times and saw nobody else during his period working for Mr. Northwood.

Mr. Harvey has never walked the path or bridleway for pleasure. He has worked for Mr. Bowers before – replacing his windows at No. 125a.

**Mr. David Gomm and Mrs. Anne Gomm – Witness interview – 7-3-2012**

Mr. Gomm's parents owned the Dog and Badger pub and so his mother knew Cecil and Alfred Sharp well. The Gomms three children used to visit Cecil Sharp and play in his garden in the mid-60s. Mr. & Mrs. Gomm lived at The Bungalow between 1960 and 1994.

Mr. & Mrs. Gomm used to walk up the bridleway to the woods and recall there being a step-over stile at the wood end of the footpath. The bridleway was overgrown with nettles but they cannot recall it ever flooding. There was a wooded farm gate at the entrance to the land between the Pound and a hedge.

Mr. & Mrs. Gomm cannot recall anybody walking the path or being challenged for doing so.

**Mr. Michael Humphries – Witness interview – 7-3-2012**

Mr. Humphries lived at 129a from 1954 to 1977 and so knew Mr. Cecil Sharp well and who acted as informal "Uncle" to many local children. Mr. Humphries' father was also a market gardener and knew the Sharps well.

Mr. Humphries recalls there was a wooden field gate at the roadside which was kept locked at night by Mr. Sharp. Mr. Humphries recalls Mr. Sharp referred to the path as "my path" rather than "the footpath" and believed it to be private.

Mr. Humphries does not remember the bridleway being overgrown but does recall it was rutted with puddles – but not flooded. Flooding only occurred at the junction with the main road. The wood end of the path was open with no structures and no signs.

Mr. Humphries recalls Mr. Sharp looking out of his window to see if people were trying to open the farm gate and would get agitated if people were walking at the top end of the field and would go out to have a word with them.

**Mr. Brian Woodward - Witness interview – 8-3-2012**

Mr. Woodward was born in 1937 and always used the bridleway track to access Maulden Woods. Mr. Woodward considers the track has looked exactly like it did when he last used it in c.2007. He cannot recall the bridleway flooding except in the wood and where it meets the road; the surface has always been good enough to walk on.

Mr. Woodward knew Mr. Cecil Sharp before he built his house (in c.1957). Once Mr. Sharp moved into the house the track across the market garden was quite narrow. Mr. Woodward recalls that there was always a five-bar gate at the roadside which was mostly kept shut.

Mr. Woodward joined the Parish Council in 1974 and knows that the footpath has been discussed often. His view is that the footpath does not exist.

Mr. Woodward cannot recall Mr. Sharp ever complaining about people using the footpath. He cannot remember if there was any structure at the bridleway end of the footpath and cannot recall there ever being any signs.

**Mrs. Eileen Brown - Witness interview – 9-3-2012**

Mrs. Brown moved to 204 Clophill Road in 1967 and has known Cecil Sharp since she was a child. Mrs. Brown stated the path was merely a wheelbarrow track. The Izzard family used to own the land and used the track as a shortcut to access the main road.

Mrs. Brown used to take her two young (3-4 and 5-6) children to the woods and used to always use the bridleway. She recalls that once Mr. Sharp asked her where she was going with her children and he opened the field gate for her and told her she could use the path as a shortcut to the woods but this was by invitation only.

The garden track started next to the old blacksmiths shop (Pound) and continued as a narrow track on the west side of the field to the bridleway at the top.

Mrs. Brown has been on Maulden Parish Council for 32 years. She recalls that whenever footpaths were mentioned at council meetings Mr. Sharp would state "*my path isn't a footpath*".

Mrs. Brown remembers the fields at the back being all open and used for market gardening. She does not know of anybody except Mrs. Izzard using the path. Mrs. Brown remembers Mr. Sharp saying that intended to shut the gate one day a week as a precaution against a footpath being claimed – this was probably in the late 1970s.

Mr. Sharp was a popular man, being involved in the Methodist Church and youth group. All the village children called him "Uncle Cecil" and his wife "Aunty Nelly".

Mrs. Brown remembers the bridleway was potholed with grass in the middle and a ditch on the west side. The track was never flooded though. When

Mr. Bowers applied for planning consent for No. 123b the Parish Council didn't object as it did not consider a right of way existed over the track.

**Mr. Craig – Witness interview – 6-3-2012**

Mr. Craig moved to Maulden in 1968 with his two small children and from the 70s would take them up to the woods using the bridleway. There was no sign, stile or gate on the path at this time and no sign it was being used. Mr. Craig stated the bridleway looked as it does now, though without the tarmac. The passage of vehicles kept the vegetation down and so it was never overgrown.

Mr. Craig stated that he has not known of anybody who walked the path – or of anybody who was stopped or turned back.

**Mr. Ken Newnam – Witness interview – 6-3-2012**

Mr. Newnam moved to Maulden in 1960 when he took over the local garage. He often visited Mr. Lobb (Mr. Sharp's neighbour) who had a haulage business and needed his lorries starting if it was very cold. Mr. Newnam remembers the path at the side of Mr. Sharp's property being narrow and untidy.

Mr. Newnam recalls when Mr. Bowers moved into No. 125a in 1974 as the removal van got stuck in the ditch alongside the bridleway. Mr. Newnam considers that the bridleway has remained unchanged since then. The track has never flooded – although water does back up where it joins the metalled road.

Mr. Newnam became a Parish Councillor in 1987 and walked all the public rights of way to familiarise himself with the parish. As the path was not listed he did not walk it.

Mr. Newnam stated that the only route used by the Ramblers was the bridleway. Mr. Newnam believes that the path is private and the lack of any signs bears this out. Likewise he has never heard of anybody using the path – or of being turned back whilst doing so.

**Mr. Ronald Garner – Witness interview – 9-3-2012**

Mr. Garner knew Mr. Cecil Sharp and Mr. Harold Brown (Mr. Sharp's niece's husband) who looked after Mr. Sharp's affairs when he died. In c.1991 Mr Brown had asked Mr Garner (who was on the Parish Council between 1975 – 2005) whether the path was a public right of way. Mr. Garner had asked Mr. Lockey who said it wasn't.

Mr. Garner has lived in Maulden all his life and uses the footpath behind his house to get to Maulden woods. He has never used the bridleway and knows nothing about it. He also has never used the path in question. Mr. Garner would visit Mr. Sharp about once a year for anniversaries and remembers Mr. Sharp using a wheelbarrow on the path.



Mr. Garner cannot remember what the front of 123b looked like or whether there was a gate. He also cannot recall whether anybody used the path or was prevented from doing so.

Extracts from “non-user” statements

**Mr. Guy Bragg (deceased) – Witness statement – 1-4-2009**

Mr. Bragg remembered cultivating and rotavating Cecil Sharps’ market garden in the 1970s. To get onto the land Mr. Bragg used to take his tractor along the bridleway to then enter via a gate opposite No. 125a which was Mr. Bowers’ house at that time. Mr. Bragg would leave a yard or so unploughed in a straight line with the gate in order to leave to give Mr. Sharp room to tend his crop. On the opposite side of the plot to Mr. Sharp’s neighbour’s ground, Mr. Vass, Mr. Bragg was not aware of any public footpath on the ground.

Mr. Bragg acknowledged that in those days local people were welcomed to walk in open spaces unheeded if known to the owner of the land.

**Mr. Alan Burgoine – Witness statement – 23-1-2012**

Mr. Burgoine was born in Clophill Road in 1952. Mr. Bernard Sharp used to take Mr. Burgoine to Sunday School and so he often spoke to Mr. Cecil Sharp as a child.

Mr. Burgoine used to walk or cycle past the front of Mr. Sharps’ house on the way to catch the school bus. He remembers the track leading up through the allotments but cannot remember ever seeing anybody using it.

**Mr. Harold Brown – Witness statement – 17-3-2009**

Mr. Brown stated that the house and path belonging to his wife’s uncle had never been a public right of way and was used constantly to collect produce. After Mr. Sharp died the [roadside] gate was locked which caused Mr. Brown to receive abuse from passers by.

**Mrs. Helen Bowers – Witness statement – 23-3-2009**

Mrs. Bowers stated that as a girl living in Clophill she had walked the bridleway with her family in order to access Maulden Woods as there was no footpath.

**Mr. Peter Smith - Witness statement – 17-3-2009**

Mr. Smith stated that he had known the land since c.1946 and had worked on it for many years when it was owned by Mr. Cecil Sharp. Mr. Smith stated that the public used the nearby bridleway and the footpath was never used as it was an occupational track.

## Users

### User Statutory Declarations prepared for the 1995 modification order

#### **Mrs. Hilda Izzard – Stat Dec - 6-5-1997**

Mrs. Hilda Izzard moved into 125b Clophill Road in 1936. Since that date she has known and used the path to be a public footpath. She used it because her husband (Ralph) and his father used the path. Ralph Izzard and Cecil Sharp used to use the path to go from their houses in the “Rows” by the Commander in Chief Public House at Hall End to Maulden Woods for wood. Mrs. Hilda Izzard’s father-in-law used the path to get to work in the woods (at poultry farm).

From sometime before 1936 until 1946 land was owned by Ralph Izzard’s uncle who also considered it a public path. The Vasses, Jack Burgoyne, Madge Peat, Jack Pits and Gladys Stevens all used the path.[the Vasses had an allotment adjoining the path as did a number of other residents including the Preslands and Huckles (*Mrs. Huckle has stated however that their allotment was to the south of Clophill Road*)].

The bridleway used to be too rough and wet and so people used the footpath in preference. Mrs. Hilda Izzard recalls there used to be a “V” stile at the wood end of the footpath which was used a lot as access to the woods.

Before 1956 Mr. Cecil Sharp worked land next to path as market garden. In 1956 he took down stile and left a gap. In c.1956 he built his house (123a) and closed path and locked gate. Mrs. Hilda Izzard’s daughter allegedly went to the County Council and was told that he couldn’t block it off as it was a public footpath, so Mr. Sharp opened it again.

Mr. Brown who acquired No. 123a after Mr. Sharp went into a home closed the path in c.1990. Mrs. Hilda Izzard’s husband persuaded him to re-open it – although he subsequently closed it again.

Mr. Bowers bought No. 125b from Mrs. Hilda Izzard’s son in 1974. Mrs. Hilda Izzard alleges that Mr. Bowers used the path everyday from c.1974 to take his children to school. (*see Bowers statement*)

Mrs. Hilda Izzard stated that the path had been public for over 70 years.

#### **Mrs. Florence Huckle – Stat Dec - 6-5-1997**

Mrs Huckle was born in Maulden in 1904 and moved to Hall End in 1930. She used the path daily to access the woods until moving to Duck End in 1960. The path ran between allotments on one side and fields on the other. Everybody used it.

There was no gate at the roadside, or it was left open. There was no stile at the wood end. Mrs Huckle stated that she had never had an allotment or owned land there.

(*several other witnesses have stated that Mr. Huckle did have an allotment here though*)



**Mr. Jack Wilfred Burgoyne - Stat Dec - 6-5-1997**

Mr. Burgoyne was born at Sunnyside Nurseries at Hall End in 1921 and lived there until 1954. He ran a market garden as his father and grandfather had.

Mr. Burgoyne used the footpath from c.1924 until c.1985. As a youth this was to church with the family and friends. It was also used as a circular walk to Trilly and then the Dog & Badger pub. He employed men from most of the families in Maulden at one time or another – including Mr. Izzard's sons.

The footpath was used as the bridleway was flooded in winter. There used to be a tied-up field gate at the roadside and a stile (later just posts) at the wood end.

Mr. Burgoyne knew Mr. Sharp through Chapel but didn't know he had bought the land there. Everybody knew it was a public footpath.

Witness interviews undertaken for the 1995 modification order

**Mr. M.J. Williamson (127 Clophill Rd) – Interview statement - 6-12-1994**

Mr. Williamson moved into Maulden in 1974 and used the path twice a day until 1992 when the gate was locked. The roadside field gate was closed on Sundays but never locked. He recalls that there was a wooden sign saying footpath on side of the Pound.

He was never challenged and he did not know of anyone turned off by Mr. Sharp. He never had an allotment there.

**Mrs. Freda Vass – Interview statement 24-5-1995**

*(first cousin of Cecil Sharp)*

Mrs. Vass used the path from when she was born in the "first Row" in Hall End in 1905 until c.1915. She used the path to visit "Granddad and Grandma Sharp" who lived where 125a Clophill Road now is. In 1915 Granddad Sharp's coffin used the path.

She didn't use the path again until courting in 1923 and then not until she moved into the cottage where No. 125a stands in c.1930. Path was decent but nearby bridleway very rutted and impossible to use. She used the path every day with her pram until she moved to another house in Hall End after which she used it less frequently until she moved away in 1975.

There was a gate next to the thatched cage (Pound?) which was never locked. She cannot remember any notices. Cecil and Bernard Sharp were her first cousins and were born in the "second Row" and also used to use the path to visit their grandparents.

Mrs. Vass's husband had the top allotment from c.1930. The Coles and Inskips also held allotments.

**Mrs Kate T. Turner (127a) - Interview statement – 6-10-1994**

Mrs. Turner came to Maulden in October 1963. She used the path every Saturday to access the woods with her children and used the path in preference to the bridleway owing to the bridleway being overgrown and inaccessible for a pushchair. She thinks there was a footpath sign at the road

There was a gate at the roadside which was closed on Saturdays but never locked. The stile at the wood end had gone by 1963 and there was just a gap with some poles.

Mrs. Turner stated that Cecil Sharp had informed her that the path was public, and that she was never stopped from using the path.

**Mr. D. Rumbold – Interview statement – 7-10-1994**

Mr. Rumbold first used the path in 1985 and used to take his dogs up to the woods for a walk. He last used the path in 1992.

There was a gate at the roadside that was open and never locked. There was nothing at the wood end.

Mr. Rumbold was told by Mr. Sharp that the path was not a public path - but that he would try to keep it open. Mr. Rumbold assumed the path to be private property but that Mr. Sharp allowed people to use it.

**Mr. Stan Newbury – Interview statement – 2-5-1995**

*(brother of Mrs Lochrie and nephew of Florence Huckle)*

Mr. Newbury moved into Hall End in 1928 at the age of 4 and he thinks he first used the path in c.1934. He was the youngest of ten children and the entire family used the path for their Sunday evening walks to Green End and the woods. He was called up in 1940 and then moved to Luton after the war and then to Maulden in c.1950

He recalls a five-barred gate at the road end by the house. It was heavy and had to be opened but it was never locked. He knew Mr. Sharp and talked to him when they walked through but he was never challenged. The path was single track and everybody used it – not just allotment holders.

**Mrs. I. Lochrie – Interview Statement – 17-5-1995**

*(Sister of Stan Newbury)*

Mrs. Lochrie first used the path in 1929 when her family moved to Hall End. She used the path for weekend walks with her father. She used the path until 1949 when she moved away briefly. She moved back in 1950 and used the path until 1958 when she moved to Maulden.

Mrs. Lochrie cannot remember any signs but does remember the gate by the road which was never shut. The path was known as the "Close".

Mr. Sharp was Mrs. Lochrie's Sunday School teacher. She is not given permission to use the path and was never challenged. She and her family did not have an allotment in the target area.

**Mr. Kenneth Izzard – Interview statement – 6-12-1994**

*(Son of Mrs. Hilda Izzard)*

Mr. Kenneth Izzard was born in 1946 and lived at 125a Clophill Road. He walked the path from c.1947 as this was the best route to school as the bridleway was unusable. By the time he got a car the bridleway had been made good enough to use. The bridleway was used as a driftway and got churned up and flooded. Forestry workers and residents used to use the footpath.

Mr. Izzard does not remember any signs or hedges but does recall a stile at the wood end and a field gate at the road end. Mr Sharp did once stop him using the path in 1956. Mr. Izzard's sister went to the County Council to check and was told that he couldn't block the path.

Mr. Izzard recalled that Alan Bowers had walked the footpath for some 18 years prior to buying the field

**Mrs. Hilda Izzard – Witness Interview – 6-12-1994**

*(notes in addition to Stat' Dec')*

Mrs. Izzard's late husband had lived at No. 125a long before she married him and had always used the path. She believed her father-in-law also used the path.

Mrs Izzard recalls that the milkman, postman, and bread man all used the path.

*(Mrs. Izzard thinks that the Huckles had an allotment next to the path but Mrs Huckle has stated their allotment was on the south side of the road.)*

**Mr. Alan Izzard – Witness interview – 6-12-1994**

*(Mrs. Hilda Izzard's son)*

Mr. Izzard was born in 1940 and used the path from early childhood until he got a car. He then used only when going out on foot.

Mr. Izzard does not recall any signs but does recall a field gate at the Clophill Road end and a stile at the wood end comprising of two posts with planks cross the bottom to direct winter floodwater down the bridleway rather than along the path.

Mr. Izzard recalls that Mr. Sharp chained the gate in c.1956 but let people through after a while. He never asked Mr. Sharp for permission to use the path.

**Mrs. Marian Hymus – Interview statement - 7-12-1994**

*(first cousin once removed to Mrs. Hilda Izzard)*

Mrs. Hymus used to live in Clophill Road and first used the path as an infant in 1938 because her mother used to visit Mrs Izzard who was her cousin and to visit the woods. Later she used to walk the path to get to the Trilly Oak and to walk her dog. She stopped using the path in 1955 when she moved to Flitwick.

Mrs. Hymus thinks there was a footpath sign near the road and there was a five-bar gate. There were also posts at the wood end. Mr. Sharp never stopped her using the path.

Mrs. Hymus never had an allotment. Her grandmother's sister (*great aunt*) Mrs. Sharman used to live in the other bungalow (125b) next to Mrs. Izzard and her grandmother used to use the path to visit her sister.

**Mr. C. A. Humphries – Interview Statement – 6-12-1992**

Mr. Humphries moved to Hall End are in 1931 and first used the path in 1933 as a boy with his parents.

Mr. Humphries recalls that there was a “no Footpath” sign on the Pound by the road and somebody painted out the “No”. There was a field gate at the road end and, early on, a “V” stile at the wood end. This was later replaced by an ordinary stile.

The Sharp brothers always kept the path clear and no-one tried to stop him using it.

Mr. Humphries never had an allotment or any connection with the land there.

**Mrs. Florence Huckle – Witness interview 6-12-1994**

*(notes in addition to Stat' Dec')*

Mrs. Huckle used the path occasionally in the early 1920s before she was married. She has a clear recollection that the route was public. She was never stopped or challenged when she walked the path and has not known anybody else being stopped.

**Mrs. Eileen Fleckney – Witness interview - 7-12-1994**

*(Mrs. Fleckney's mother was Mrs. Izzard's cousin)*

Mrs. Fleckney was born in Clophill Road. Her father had a market garden on the south side of the road. From about 1940 as a child she used the path daily to get to the wood. Even after being married in 1953 she used the path as part of a circular walk. She last walked the path in 1992 and the gate was not chained then.

Mrs. Fleckney recalls a public footpath sign by the Pound pointing up “the Close” (path). There was a gate at the road which she cannot remember

being locked. There was at one point poles with a gap through at the wood end.

Mrs. Fleckney was never given permission by Mr. Sharp to use the path. She was never challenged and never heard of anybody being challenged. Her parents were friendly with the Preslands who owned an allotment up the track.

**Mr. Ernest Errick – Witness interview – 7-12-1992**

Mr. Errick grew up at 178 Clophill Road. He used the path from early childhood c.1946 to the mid-60s on a regular basis (weekly-fortnightly) to visit the woods and to visit Mrs Izzard's son. After 1966 he had a car and moved to Clophill so didn't use the path more than 4x a year.

Mr. Errick thinks there was a green signpost with white lettering [*unlikely prior to mid-1960s*].

**Mr. Ernest Downing – Witness interview – 6-12-1994**

*(nephew of Mrs. Florence Huckle)*

Mr. Downing moved into The Row by the Commander-in-Chief pub house in September 1938 when he got married. He stayed there until 1977. His wife and other ladies used the path almost daily to go to collect firewood from the woods. He and the men did this at the weekend to heat the "copper" (tub).

Mr. Downing does not recall any signs but does remember the five-bar gate which was shut but never locked. There was no stile or anything at the wood end of the path.

Mr. Downing knew Mr. Sharp and was never told he couldn't use the path. Many other locals also used the route. Mr. Downing's Aunt's husband (Mr. Huckle) had an allotment by the path in the 30s or 40s. He was never given permission to use the path as everybody considered it public.

**Mr. Jack Burgoyne - Witness Interview – 24-5-95**

*(notes in addition to Stat' Dec')*

There was a field gate next to the granary barn (The Pound) at the roadside. Cecil Sharp used to tie this up but it was never locked. Mr. Burgoyne recalls one of Mrs. Izzard's daughters used to bang the gate loudly as she was annoyed he had tied it shut. At the wood end there was originally a stile but later this was two posts or trees which you walked between.

Mr. Burgoyne stated that everybody knew Mr. Sharp couldn't stop them using the path as it was public. He only tried later when he was old and didn't want them walking through his garden.

Extracts from selected user evidence forms submitted for the 1995 modification order

**Mr. & Mrs. D. Rumbold – User evidence form – 9-9-1992**

Use period: 1985 – 1992

“Mr Sharpe, previous owner, did tell us when we first started using the path that it was his garden but he allowed people to use it”.

“When we first asked Mr. Sharpe for permission to use his path, he gave us permission, but also told us that when he sold the house he would ask for the path to stay open for people to use”.

**Ms. Lisa Jane Rogers – User evidence form – 4-9-92**

*(possibly a relative of the Izzards?)*

Use period: 1966 - 1985

“The pathway has been used by my grandparents and their parents before them. It has also been used by Mr. & Mrs. Bowers and their family. The pathway has been regularly used by the general public to get to Maulden Woods.”

**Mrs. M. A. Owen – User evidence form - 4-9-1992**

*(daughter of Mrs. Izzard)*

Use period: 1939 – 1992

“For years the route was open but then the late (?????) Mr. Cecil Sharp tried to close it to the public, but only for one week”.

**Mrs. Margaret Morison – User evidence form - 4-10-1992**

Use period: 1989 – 1992

“I knew the previous owner Councillor Cecil Sharp and he always assured me that the path by his house could be used by myself and my family as it had been for years and by many other residents of the village”.

**Mr. Rod Morison – User evidence form - 9-9-1992**

Use period: 1977 – 1992

“Mr. Sharp informed me it was a public footpath and to use it as it was safer than the bridleway”.

**Mr. Wilfred A. W. Izzard – User evidence form - 2-9-1992**

Use period: 1941 – 1992

“When I sold the 125a Clophill Rd. to Mr. Bowers in 1974 it was on the understanding that it was a public footpath and me and his family used it as such”.

*(Mr. Alan Bowers has stated that he has no recollection of such an understanding)*

**Mr. Ralph Alan Izzard – User evidence form - 3-9-1992**

Use period: 1922 – 1992

Turned back in “1956 for about 2 weeks. Then we were allowed to use it and have used it ever since until July 1992”.

“This path is used by many people in the village to walk in the woods. My bungalow is at the end of the path with two more houses one of which belongs to Mr. Bowers, he has used this path for 18 years... ..The roadway the cars use is sometime under water...”.

**Mr. Kenneth John Izzard – User evidence form – 31-8-1992**

Use period: 1946 – 1992

Turned back “when I was about 10 – 1956-ish for 2-3- days only”

“...the present owners of the fields [the Bowers] who have used this path as a public footpath every day for the last 18 years...”.

**Mrs. Hilda Mary Izzard – User evidence form – 24-7-1992**

Use period: 1936 – 1992

“V shaped access top end... .. was taken down approx 1952”

The Izzard family was stopped using the path “in approx 1956 for about 2-3 months then was clear until present”.

“Told it was not public by A Bowers whose family have used it for the last 18 years”

**Mrs. Christine Brooks – User evidence form – 12-9-1992**

*(daughter of Mrs. Izzard)*

Use period: 1944 – 1962 daily and then less frequently

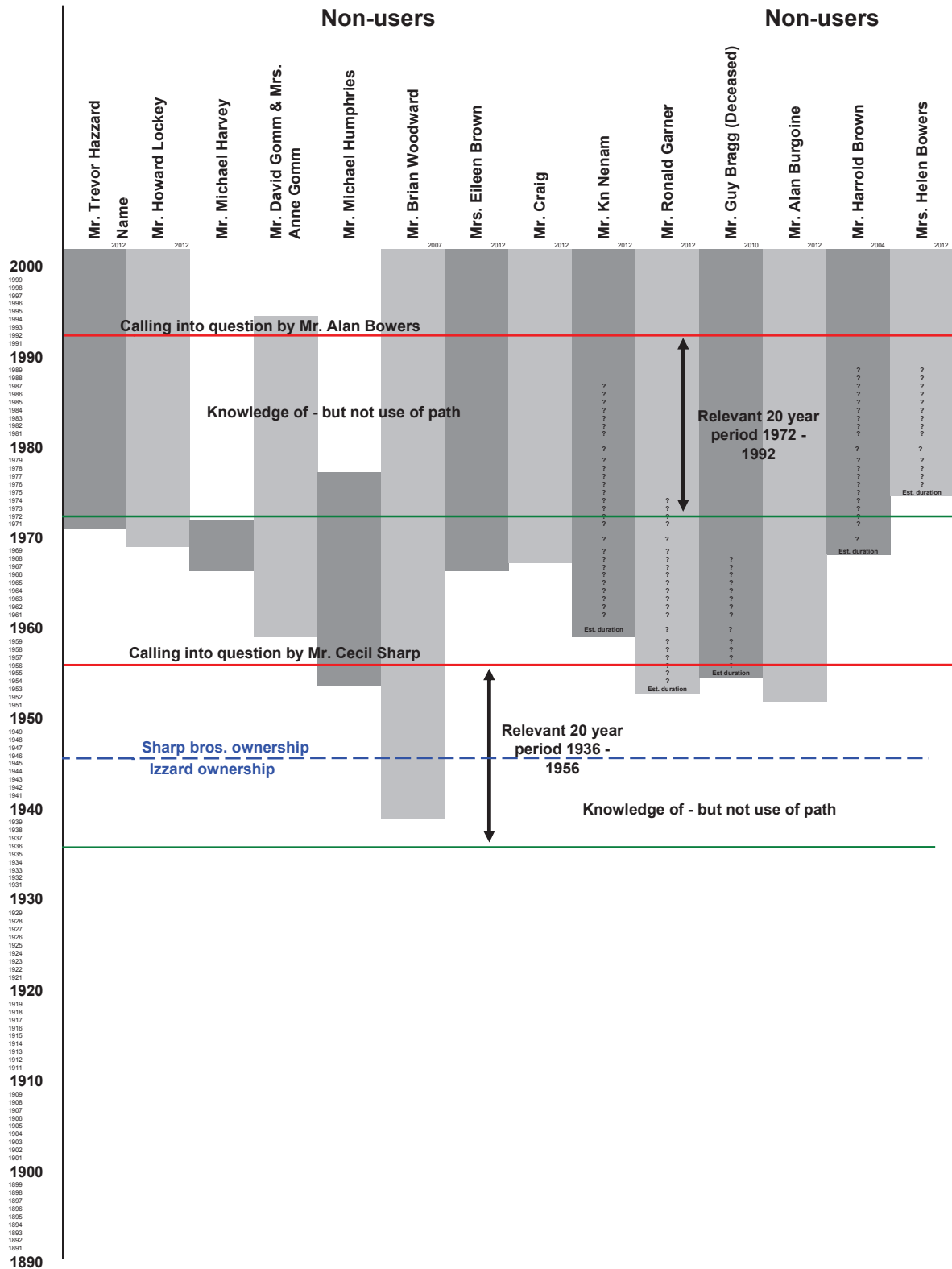
“An easy walk through stile many years ago...”

“Around mid 50s when I was a child there was a dispute re us [the Izzards?] using the path. (He was Mr. Sharp)...”

“During the few weeks mentioned above my younger brother and myself were turned back many times”.







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## Appendix D

### Maulden FP 28 Timeline

Date	Event
1883	Path recorded on 1 <sup>st</sup> Ed. Ordnance Survey 25":1 mile map
c.1907-1915	Mrs. Freda Vass first uses path before being married
June 1911	Executors to Duke of Bedford estate sells land
<hr/>	
c.1910-1912	Allotments created near path
1922	Mr. Ralph Izzard uses path
1923	Mrs. Freda Vass moves into cottage at location of 125a Clophill Road
1925	Mr. J. Izzard recorded as owning the land in question as market garden
1924 – 1985	Path used by Mr. Jack Burgoyne
1929	Path used by Mrs. I. Lochrie ( <i>née Newbury</i> ) and family
1930	Mrs. Florence Huckle (newly married) moves into Hall End
c.1930	Mr. Vass acquires top allotment
1930	Mrs. Freda Vass moves into bungalow
1933	Mr. CA Humphries uses path with parents
1934	Path used by Mr. Stan Newbury
1936	Mrs. Hilda Izzard (newly married) moves into 125b Clophill Road
1938	Mrs Hymus used path to visit Mrs. H. Izzard ( <i>relative</i> ).
1938	Mr. E Downing moves into area
<hr/>	
Pre-1936 - 1946	Mr. J. Izzard owns land at 123a and 123b Clophill Road
1939	Mrs. MA Owen uses path
c.1940	Mrs. E. Fleckney uses path as child to access woods
1944	Mrs. C. Brooks uses path
<hr/>	
1946	Mr. Cecil and Alfred Sharp buy land at 123a and 123b Clophill Road

The determination of an application to delete Maulden Footpath No. 28 – Appendix D

1946	Mr. Errick uses footpath
c.1946	Mr. P. Smith knows of land and later worked it for Mr. Cecil Sharp.
1954-1977	Mr. M. Humphries lives at 129a Clophill Road
1955	Mr. Cecil Sharp builds No. 123a Clophill Road
1955	Mr. Cecil Sharp locks gate – “told off” by Mrs. Margaret Izzard
c.1955-56	“Dispute” recalled by many users – people turned back by Mr. Cecil Sharp
1956	Mr. Cecil Sharp buys out his brother’s share of the land at 123a and 123b Clophill Road
c.1952-1956	Mr. Cecil Sharp removes “V” stile on north end of path
1957	Mr. Cecil Sharp contacts Ampthill UDC regarding whether any right of way subsisted over his land
1957	Maulden Parish Council confirms to Mr. Cecil Sharp that no public footpath exists
1957-8	Mr. Cecil Sharp builds gate at roadside and locks it at night
1960	Mr. K. Newnam moves to Maulden
1960 – 68??	Mr. A. Burgoine walks past entrance to market garden
1960 – 73?	Mr. Cecil Sharp locks roadside gate at night
1960-1994	Mr. & Mrs. Gomm live in “The Bungalow”
1963	Mrs. K.T. Turner comes to Maulden
1967	Mrs. Eileen Brown moves into 204 Clophill Rd.
1967-1971	Mr. M. Harvey works on Leon Northwood’s market garden
1968	Mr. Craig moves to area
1971	Mr. T. Hazzard moves into area
1970s	Mrs. H. Bowers used nearby bridleway with her family
1970s & 80s	Mr. H. Lockey does business with Mr. Sharp
1974	Mr. Alan Bowers buys 125a Clophill Road from Hilda Izzard’s son (and uses path with his own family)
1974	M.J. Williamson moves into area
1985	Mr. Rumbold uses path and told by Mr. Cecil Sharp it is not public
<hr/>	
8 <sup>th</sup> December 1989	Mr. Cecil Sharp sells market garden land to Mr. Alan Bowers

The determination of an application to delete Maulden Footpath No. 28 – Appendix D

January 1990	Mr. Harold Brown acquires 123a Clophill Road
20 <sup>th</sup> April 1992	Mr. Cecil Sharp moves into residential care
c.1992	Mrs. Cotterell lives in 123a Clophill Road for a short while
June 1992	Mr. Alan Bowers erects electric fence and shuts gate
<hr/>	
October 1992	Mr. & Mrs. Izzard submit an application for a modification order claiming a public right of way across the land
29 <sup>th</sup> October 1993	Mr. Alan Bowers buys plot of 123b Clophill Road and garden
November 1993	Mr. Alan Bowers locks roadside gate
4 <sup>th</sup> September 1995	Definitive Map Modification Order made
26 <sup>th</sup> August 1997	Definitive Map Modification Order confirmed
<hr/>	
c.31 <sup>st</sup> October 1995	Mr. A. Bowers applies to Mid-Beds DC for a diversion order under the Town and Country Planning Act 1990
16 <sup>th</sup> February 1996	Mid-Beds DC's Environment & Leisure Committee. resolve not to make a diversion order
c.November 1997	Mr. A. Bowers applies to Mid-Beds DC for an extinguishment order under the TCPA
12 <sup>th</sup> February 1998	Mid-Beds DC's Env. & Leis. Cmte. resolve to make an extinguishment order under TCPA
26 <sup>th</sup> March 1998	Mid-Beds DC make a Town and Country Planning Act 1990 extinguishment order
9 <sup>th</sup> February 1999	Public inquiry into TCPA extinguishment order
May 1999	Inspector's decision <u>not</u> to confirm TCPA order
June 2000	Mr. A. Bowers applies to Mid-Beds DC for an extinguishment order under the Highways Act 1980
29 <sup>th</sup> September 2000	Mid-Beds DC make a Highways Act 1980 extinguishment order
19 <sup>th</sup> June 2001	Public inquiry into HA extinguishment order
10 <sup>th</sup> August 2001	Inspector's decision <u>not</u> to confirm HA order
16 <sup>th</sup> July 2004	BCC make diversion order under Highways Act 1980
14 <sup>th</sup> September 2004	Mr. A. Bowers submits application to extinguish footpath under Highways Act 1980
9-28 <sup>th</sup> March 2006	Public Inquiry into HA diversion order
6 <sup>th</sup> June 2006	Inspector's decision to confirm HA diversion order

The determination of an application to delete Maulden Footpath No. 28 – Appendix D

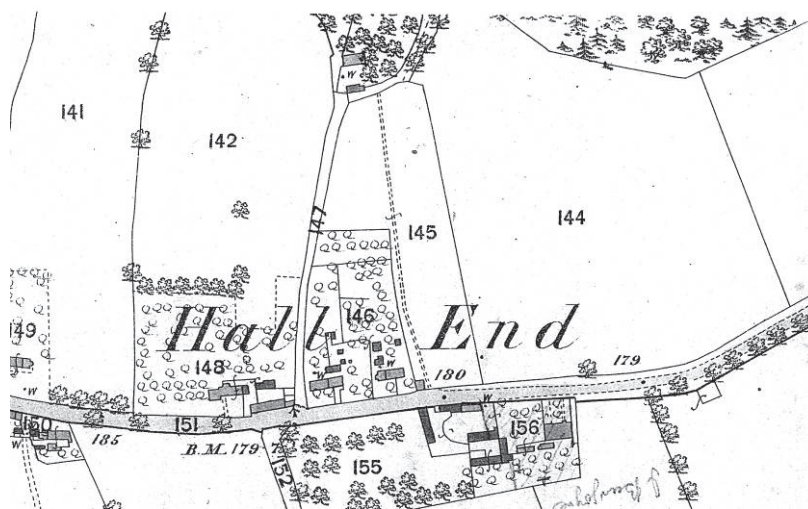
- 6<sup>th</sup> October 2008      Mr. A Bowers' agent submits an application for a modification order to delete Footpath No. 28
- 23<sup>rd</sup> March 2009      Mr. Bowers submits evidence for his application and the application is confirmed as duly made
- 9<sup>th</sup> April 2010      Central Bedfordshire Council confirms an unopposed variation order to realign the route of Footpath No. 28



## Appendix E

### Historic Evidence

- E 1. The parish of Maulden underwent enclosure in 1797 by way of Parliamentary Act of Inclosure. The Inclosure Award and accompanying map do not record any public right of way over the line of what is now Footpath No. 28. This is because this land was already enclosed as a series of “closes” and thus not subject to further enclosure and the associated creation of public rights.
- E 2. The land in the early part of the 19<sup>th</sup> Century was owned by the Duke of Bedford. The Maulden Estate was sold at auction in 25 lots in June 1911. Lot 3 included the land over which Footpath No. 28 now runs. Although no mention was made of any public right of way this appears not to be unusual as only private access rights were recorded over the whole area to be auctioned off.
- E 3. Bryants’ Map of the County of Bedford of 1826 was a commercially produced map which was the most accurate of the (generally) post-Inclosure maps of Bedfordshire, being produced at a scale of 1½”:1 mile. It records the lane occupied by Bridleway No. 24, although on a slightly different alignment but does not record anything along what is now Footpath No. 28. However, on a map of this scale, which was aimed more at users of horses and carriages, this does not preclude the path’s existence; only a handful of footpaths are identified across the entire county on this map.

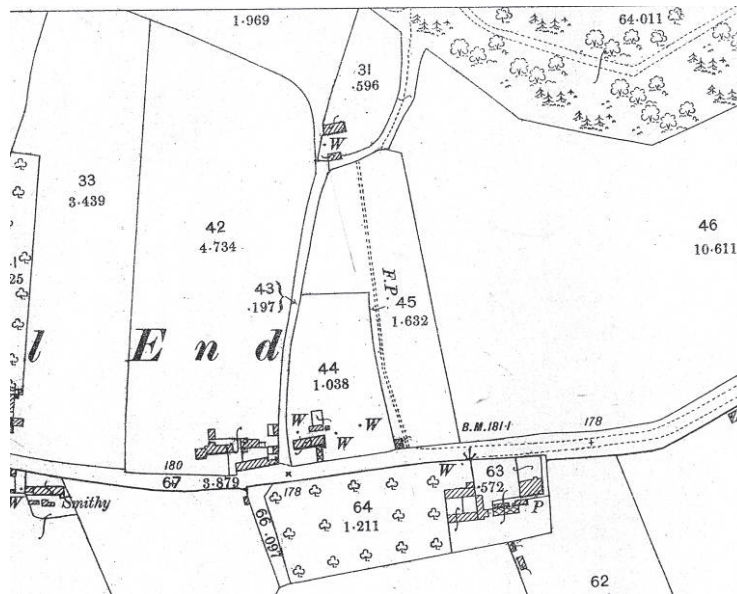


Ordnance Survey 25”:1 mile map (1<sup>st</sup> Ed.) of 1883

- E 4. The Ordnance Survey 25”:1 mile map (1<sup>st</sup> Ed.) of 1883 was the first large scale Ordnance Survey map of Maulden and depicts what is now the northern half of Footpath No. 28 as a double-pecked (“= =”) line. This indicated that the path was not enclosed by hedges or fences. The southern

half of the path was also unenclosed but ran close to the boundary of a large property adjoining the bridleway and Clophill Road. The path ran from the side of the old Pound northwards to its junction with Bridleway No. 24. The bracketing (“]”) indicates that the land to either side of the track were all incorporated in the same land parcel (No. 145). The date of this map pre-dates the instructions to surveyors to classify the paths they found as footpath or cart track. The width of the pecking, however, is suggestive of a narrow footpath rather than a wide cart track.

- E 5. The Ordnance Survey 25":1 mile map (2<sup>nd</sup> Ed.) of 1901 again records the line of what is now Footpath No. 28 with double-pecked lines. The path is again bracketed with the adjoining land (now parcel No. 45). In addition, the track is annotated with “F.P.” for footpath.

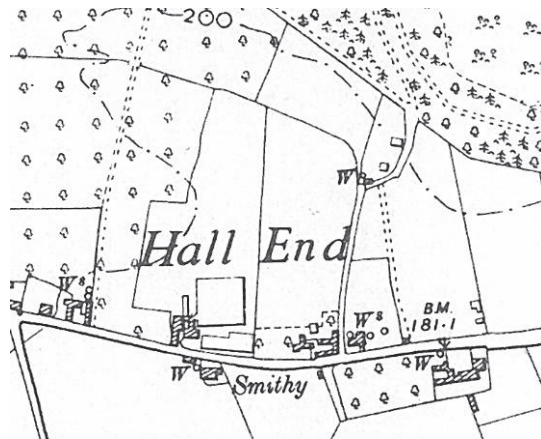


Ordnance Survey 25":1 mile map (2<sup>nd</sup> Ed.) of 1901

- E 6. The annotation “F.P.” was only added to Ordnance Survey maps produced from 1893 so that the public would not mistake the annotated route as a road traversable by horses or wheeled traffic. From 1893, the instructions to the surveyors of Ordnance Survey maps required that “...all footpaths over which there is a well known and undisputed public right of way... [and] ...private footpaths through fields... ...should be shown... ...mere convenience paths... ...should not be shown...”<sup>1</sup> and thus the indication, and annotation, of a footpath on these maps is indicative of there being a footpath of a permanent nature along the route shown. However, as the Ordnance Survey maps were not intended to conclusively record the existence of public rights they were, until recently, issued with the disclaimer “...the representation of any road, track or path on this map is no evidence of the existence of a right of way over it...”.

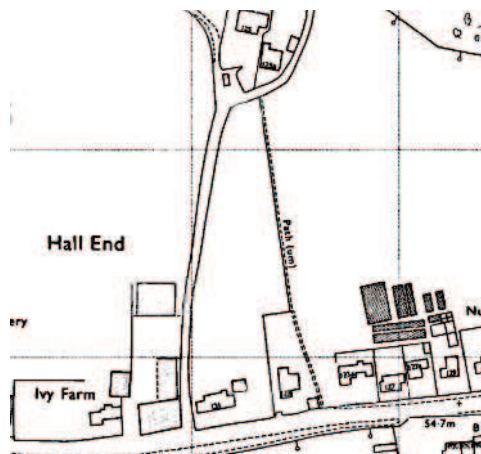
<sup>1</sup> Taken from: “*Ordnance Survey maps: a concise guide for historians*” by Richard Oliver, p.57.

- E 7. The 1910 Finance Act valuation survey was used to identify the extent of the taxable lands identified in the accompanying valuation book. Unfortunately no map is available in the local archives for land in question. The valuation book does not record deductions for public rights of way in the vicinity of Hall End.
- E 8. The 1925 Valuation Act survey, records the land in question as being owned by Mr. J. Izzard and used for market gardening.
- E 9. The smaller scale Ordnance Survey 6":1 mile map of 1938-50 records the bridleway as an enclosed track but does not record the presence of what is now Footpath No. 28.
- E 10. The smaller scale Ordnance Survey 6":1 mile map (Provisional Ed.) of 1947 shows the lane now occupied by Bridleway No. 24 as an enclosed track and also depicts what is now Footpath No. 28 with a double-pecked line for its northern half and a continuous and pecked line (" - - ") for its southern half.



Ordnance Survey 6":1 mile map (Provisional Ed.) of 1947

- E 11. The Ordnance Survey 1:2500 map (4<sup>th</sup> Ed.) of 1975 shows what is now Footpath No. 28 as being a track unenclosed for its southern half and enclosed on its western side for its northern half. The path is also annotated "Path (um)" where "um" stands for unmetalled (unsurfaced).



Ordnance Survey 25":1 mile map (4th Ed.) of 1975

- E 12. The Ordnance Survey 6":1 mile map of 1991 records what is now Footpath No. 28 with a continuous and pecked line (" - - - ") for its entire length indicating it was fenced/hedged on its western side.
- E 13. Aerial photographs taken in 1947 and 1976 show that a track existed at these times on the ground along the approximate route of Footpath No. 28. A later aerial photograph taken in 1986 suggest that at that time an alternative, and much wider route, was being utilised through the middle of the market garden.



June 1947



June 1976

Aerial photographs. The track now occupied by Footpath No. 28 is arrowed.

### Definitive Map History

- E 14. In c.1952 the former Bedfordshire County Council asked Maulden Parish Council to undertake a survey of all the paths it considered public as the first step towards creating a Definitive Map of Public Rights of Way under the National Parks and Access to the Countryside Act 1949.



Maulden Parish Council 1952 survey map of rights of way.



- E 15. Maulden Parish Council returned the survey map showing what is now Footpath No. 28 as a red line annotated with a “J”. The red line, however was crossed out with an “X” as shown above.
- E 16. In the accompanying survey statement, under Path No. 23 which was a bridleway, the footpath is described in an addendum as:  
 “At the point near the bungalows occupied by Sharman and Izzard the bridleroad No. 23 is joined by a footpath which leads from this point through the adjoining land in a southerly direction which [sic] it joins the main Clophill Road near the Hurdle Barn”
- E 17. Once all the local town and parish councils had returned their survey maps the results were collated and any other routes (such as Awarded paths) considered public by the County Surveyor were added. The former County Council then published its Draft Map of Public Rights of Way in April 1953.
- E 18. What is currently Bridleway No. 24 was depicted on the map as Footpath No. 24. The path was drawn running down the eastern edge of the lane. The depiction of the footpath to the side, rather than along the centre of the lane appears to have been the custom of the cartographer as many paths in the area are depicted in a similar manner.



Extract from the 1953 Draft Map of Public Rights of Way

- E 19. No footpath was depicted along the current line of Footpath No. 28. No objections appear to have been received to the path’s omission from the Draft Map.
- E 20. Footpath No. 24 (shown above) has its own entry in the Draft Statement as:  
 “From bridle Road No. 23  
 To: Maulden – Clophill Road (A507).  
 The path is a: Footpath  
 It starts: from Bridle Road No. 23 at a point near the bungalow occupied by Sharman & Izzard and leads through the adjoining land in a southerly direction directly and joins the main Clophill Road near the Hurdle Barn...”

- E 21. Once the Draft Map was published, land owners and members of the public could object to errors on the map or omissions from the map. In 1954 the former County Council appointed Mr. W.A.Sime Q.C. to conduct a number of local hearings into the 1683 objections received county-wide to establish whether there was any evidential basis to recommend that the map be modified. Mr. Sime Q.C. made his recommendations in a report submitted in October 1956.
- E 22. The discrepancy between the route of Footpath No. 24 as indicated on the Draft Map and as described in the accompanying statement caused some confusion; as evidenced by a pencilled comment on the statement which reads
- “Telephoned Mr. H. Robinson 20<sup>th</sup> February 1956 in respect of planning question regarding path No. 24. He agreed that the route was as shewn on the Draft Map. F.L.Roberts 20/4/56.”
- E 23. During the telephone conversation between F. Roberts and Mr. Robinson it was agreed the legal route of Footpath No. 24 was along the lane now occupied by Bridleway No. 24. This is consistent with the requirements of the National Parks and Access to the Countryside Act 1949 which gives the map precedence in relation to the legal status and alignment of a right of way.
- E 24. In October 1957 Mrs. Izzard met with the County Surveyor’s assistant to discuss whether what is now Footpath No. 28 was a right of way. The County Surveyor responded to Mrs. Izzard in a letter, dated 21-10-57, stating “...The broken red line indicates the occupation way, which of course, is not a public path and therefore is not shown on the Draft Survey Map...”. The County Surveyor’s letter originated some seven years before the Definitive Map for Maulden was published, and only a year after Mr. Sime Q.C submitted his report to the former County Council on his proposed modifications to the Draft Map of Rights of Way – and six years before the changes were published statutorily. Consequently, the County Surveyor was correct in that the only official map at his disposal (the Draft Map) showed no public right of way over what is now Footpath No. 28 and no Awarded footpath. However, there is no record that the County Surveyor carried out interviews with users of the footpath to establish that a public right of way had become established through a recent dedication. For these reasons I consider little weight can be given to the County Surveyor’s 1957 letter in light of the later findings of the former County Council and independent Inspector to the 1995 modification order.
- E 25. In September 1963 the statutory Schedule of Modifications to the Draft Map was published. This embodied the recommendations made by Mr. Sime Q.C. in his earlier 1956 report. Maulden Footpath No. 24 was upgraded to a bridleway and the change depicted on the non-statutory Modified Draft Map. Unfortunately, the statement for the path was not changed and still recorded the status of the bridleway as a footpath. However, Section 56(1)(b) of the Wildlife and Countryside Act 1981 prescribes that the status of a path is recorded by the map – not the statement. Consequently Bridleway No. 24 is legally a bridleway rather than a footpath.



Extract from Modified Draft Map

The map's annotation of purple line with green circle signifies that the right of way was originally recorded as a footpath but has been upgraded to bridleway status.

- E 26. No right of way was recorded along the current route of Footpath No. 28 in the subsequent 1963 Provisional or 1964 Definitive Maps. Bridleway No. 24 was depicted as a bridleway on both maps. However, the Definitive Statement still erroneously records Bridleway No. 24 as a footpath passing along approximately the route of Footpath No. 28 through Mr. Bowers' property.



Extract from the 1964 Definitive Map  
(The cross-ticking "—|—|—" indicates bridleway status)

### Works to Bridleway

- E 27. Mr. Alan Bowers, whilst a resident of 125a Clophill Road, arranged to pay half the cost of re-surfacing works on the length of track over which Bridleway No. 24 runs. This was surfaced in c.June 1987, and may have included some degree of piping as three sections of ditch close to the Clophill Road end of the bridleway are piped. No other works to the surface or ditch are recorded for the main section of the bridleway, although recently some minor works have been undertaken by Mr. Tebbutt to prevent flooding



of the section of bridleway adjoining No. 125a Clophill Road to the north of Footpath No. 28.

**Legal actions relating to Maulden Footpath No. 28**

- E 28. In 1989 the applicant, Mr. Alan Bowers purchased a plot of land off Clophill Road. His fencing of the land and locking of the access gate precipitated the application by a neighbour to the former County Council for the Definitive Map and Statement to be modified by the addition of public footpath.
- E 29. In October 1992 Mr. & Mrs. Izzard submitted an application to the former County Council claiming the existence of a public footpath over the land owned by Mr. Bowers.
- E 30. In September 1995 the former County Council made a Definitive Map Modification Order to add Maulden Footpath No. 28 to the Definitive Map. By this time, Mr. Bowers had already applied for and received planning consent to build his new house, No.123b Clophill Road, over the line of the footpath. Mr. Bowers objected to the modification order, which was made based on evidence of public use of the route, and the order was heard by an independent Inspector using a process based on exchanges of correspondence. The 1995 order was confirmed in August 1997 – by which time Mr. Bowers had almost completed building his new house.
- E 31. Mr. Bowers applied to the former Mid-Beds District Council for a diversion order under Section 257 of the Town and Country Planning Act 1990 (“the TCP Act”) in c.October 1995. The District Council resolved in February 1996 not to approve the application for a variety of reasons.
- E 32. After the 1995 modification order was confirmed, Mr. Bowers applied in c.November 1997 on the advice of the former County Council for an extinguishment order again under Section 257 of the TCP Act. This received a number of objections and, following a public inquiry (see Appendix F), the independent Inspector determined in May 1999 that the order should not be confirmed.
- E 33. Mr. Bowers then applied again to the former Mid-Beds District Council for an extinguishment order under Section 118 of the Highways Act 1980. An order extinguishing the footpath was made in September 2000 and again objected to by local residents and user groups. The order was not confirmed by an independent Inspector in August 2001 following a second public inquiry (see Appendix F).
- E 34. Following legal advice, the former County Council made a public path diversion order in July 2004 to divert Footpath No. 28 out of Mr. Bowers’ house onto a route down the western side of the property. Mr. Bowers and approximately 180 other people objected to the order and, following a third public inquiry, an Independent Inspector confirmed the diversion order in June 2006.
- E 35. In September 2004 Mr. Bowers submitted an application to extinguish Footpath No. 24 either under Section 118 of the Highways Act or at the Magistrates’ Court under Section 116 on the advice of the District Council. The former County Council decided that Mr. Bowers’ application should not

be processed until the (as then) current public path diversion order was completed and the route was open and available for use.

- E 36. In March 2007 Mr. Bowers pleaded guilty to five summonses for obstructing the line of the diverted path and was given a court order requiring their removal. Mr. Bowers was again prosecuted in April 2009, this time by the newly formed Central Bedfordshire Council unitary authority, for failure to comply with the 2007 court order.
- E 37. In October 2008 Mr. Bowers submitted an application to delete Footpath No. 28 on the ground that it ought not to be shown on the Definitive Map. However, Mr. Bowers did not supply any evidence to support his application until March 2009 just prior to the aforementioned court proceedings. The evidence supplied consisted of nine signed statements by people who knew Mr. Bowers or the previous owner of the land, Mr. Cecil Sharp, to the effect that the path was not a right of way. This application is the subject of this agenda item.
- E 38. Following the destruction of a brick storage building (known variously as “the Hurdle Barn” or “Pound”) next to the footpath in 2008, the line of the 2004 diversion order was modified by a variation order made and confirmed in 2010.
- E 39. In early 2012 Mr. Bowers submitted another six statements in support of his application to delete the footpath.

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## Appendix F

### The democratic process at the former Bedfordshire County Council

- F.1. Mr. Alan Bowers, the applicant, has made several allegations concerning:
- (a) How former County Council gathered the evidence for the original 1995 Definitive Map modification order;
  - (b) The position of the former County Council and its officers in relation to the two extinguishment orders made by the former District Council; and,
  - (c) The actions of former County Council's Members and officers in relation to how the authority dealt with the footpath in the period 2000-2003; and,
  - (d) The relationship between former County Council officers and user-groups.

The inclusion of this section within the report has been requested by Mr. Bowers and Cllr. Paul Duckett and generally applies to all three reports to be considered by the Development Management Committee.

#### Evidence gathering

- F.2. On 5<sup>th</sup> October 1992 Mrs. Izzard applied for the route of what is now Maulden Footpath No. 28 to be added to the Definitive Map and Statement by means of a modification order made under Section 53 of the Wildlife and Countryside Act 1981. She supplied 14 user evidence forms in support of her application, most of which were from relatives or friends. In early October 1994 Mrs. Zena Grant-Collier (a Modifications Officer at the former County Council) began to process Mrs. Izzard's application. On 18<sup>th</sup> October 1994 Mrs. Grant-Collier wrote to Mrs. Izzard to suggest that her application would be strengthened if she could find more evidence from users not connected to her family or to the land over which the footpath runs. Identifying weaknesses and suggesting how an applicant can address them, is part of the advisory service that a Surveying Authority is expected to provide to members of the public.
- F.3. Between October 1994 and May 1995, officers from the former County Council interviewed 14 people who had submitted user evidence forms and two others who had not. Mr. Bowers was not interviewed and neither was Mr. Cecil Sharp, the previous owner of the land in question. However, Mr. Harrold Brown, whose wife was Mr. Sharpe's niece, was interviewed by Mrs. Grant-Collier by telephone on 31<sup>st</sup> October 1994 (see Appendix C).
- F.4. In October 1994, Mr. Bowers instructed his solicitor to investigate whether previous land owners had granted permissive use of the footpath. On 31<sup>st</sup> October 1992 Mrs. Grant-Collier wrote to Mr. Bowers' solicitor requesting that any evidence Mr. Bowers might wish to be taken into consideration be

sent to her. Mr. Bowers' solicitor sent interviews in the form of Statutory Declarations made by Messrs. A. Bowers, C. Sharp, and H. Brown to Mrs. Grant-Collier on 2<sup>nd</sup> February 1995. Since copies of valid statements from these witnesses had already been provided, there was no need for the council to interview these witnesses itself as part of its own evidence gathering process.

- F.5. Mr. Bowers has alleged that former County Council officers wrote to witnesses to ask whether they knew other local residents prepared to give evidence to support Mrs. Izzard's application. Mr. Bowers clearly considers this level of proactive investigation inappropriate to an impartial investigation. However, the officer's role is to ensure that there is sufficient corroborative evidence to make a defensible modification order. The case officer concerned, Mrs. Grant-Collier, was obliged to consider all available evidence and, as such, interviewing other witnesses could help to achieve that aim. Should she have been consulted by Mr Bowers seeking advice on presenting his evidence for the non-existence of the path, she would have done the same. The officer was providing a service to the applicant in the same way that officers are now processing Mr. Bowers' application.
- F.6. Mr. Bowers has also criticised the former County Council for paying for solicitors to carry out home visits to obtain statutory declarations from three key witnesses (Mrs. Hilda Izzard – then aged 82, Mr. WJ Burgoyne – then aged 76, and Mrs. Florence Huckle – then aged 93) at the public expense. According to Mr. Martyn Brawn, the former County Council's Rights of Way Team Leader, the obtaining of statutory declarations from key witnesses for a public inquiry was standard practice at that time – although Mr. Bowers disputes this. Given the age of the witnesses, travelling to meet them seems a practical and reasonable course of action.
- F.7. None of the actions that Mr. Bowers has highlighted, and which are described above, indicate that the evidence of public use of Footpath No. 28 is either invalid or erroneous. Consequently, I consider that the former County Council's decision to make a Definitive Map modification order, and the later Inspector's decision to confirm that order, were both based on evidence acquired in a proper and appropriate manner.

#### **Former County Council's position during MBDC extinguishment orders**

- F.8. Mr. Bowers has also raised issues about the impact of the former County Council objecting to or not supporting the extinguishment orders made by the former Mid-Beds District Council at two public inquiries. These inquiries occurred after the 1995 modification order had been confirmed and consequently the position of the former County Council to the extinguishment orders is irrelevant to the existence of public rights along Footpath No. 28 as determined through the proper evaluation and independent inspection of user evidence at that time.
- F.9. The former County Council responded to the 1997 consultation for the Town and Country Planning Act 1990 ("TCP Act") extinguishment proposal by

stating on 31-12-1997 "...As this Order is sought to enable development to take place and as a suitable alternative route for this path would seem to exist within Bridleway No. 24, Maulden, this Authority would not wish to oppose the proposal...". The former County Council did not make a formal objection to the 1998 extinguishment order when it was made. However, 14 individuals and three user-groups did object, one of which was the Bedfordshire Rights of Way Association ("BRoWA").

- F.10. Mr. Mike Clarke of BRoWA sent a draft of his proof of evidence to Mr. Richard Hall, the former County Council's Community Paths Officer for Maulden, asking him if he had any suggestions or amendments prior to the 9 February 1999 public inquiry into the TCP Act extinguishment order. Although no response is kept on file, there are some changes in the submitted proof which could reflect the advice given to Mr. Clarke by Mr. Hall. The order was not made by the former County Council, and there was no formal County Council resolution to either support or object to it. It is my opinion that the Council's officers would be expected to offer advice to interested parties who wished to either support or object to the order.
- F.11. Mr. Richard Hall, the Community Paths Officer for the area, attended the ensuing public inquiry held on 9 February 1999 to represent the former County Council at the request of the former District Council's solicitor, Mrs. Morris in January 1999 and appeared as an interested party. The Inspector sought Mr. Hall's professional opinion on the order. Mr. Hall explained that the County Council would not oppose the extinguishment of the entire path. However, if confirmed in its current state, the order would only extinguish the southern half of the path, leaving the northern part as a dead-end section. Mr. Hall proposed that the order could be modified so that the path was diverted around Mr. Bowers' house. Diverting the path would allow the development to take place without the path being extinguished. The independent Inspector in coming to his decision concluded that the order should not be confirmed in its original form as it left a dead-end section of footpath and that the nearby Bridleway No. 24 was not a suitable alternative.
- F.12. In a joint briefing note to both former County Council and District Council, dated 13 July 2000, Mr. Martyn Brawn, the former County Council's Definitive Map Team Leader, stated that, "...as Highway Authority, the County Council would have little alternative but to object to an extinguishment order made by the District Council...". On 6 September 2000, the former District Council's Executive Committee voted that a public path extinguishment order should be made to extinguish Footpath No. 28.
- F.13. On 14 September 2000, the former County Council's Development Control Committee ("the DCC") heard a proposal to extinguish Footpath No. 28 and to compulsorily create an alternative route on land within Mr. Bowers' ownership. However, owing to the former District Council's decision eight days earlier, the DCC's official minutes recorded that whilst Members were minded to support the District Council's extinguishment order, and the County Council would not currently be minded to object to the order, the formal resolution was simply that the County Council's recommended creation and extinguishment

proposal should not be pursued. The DCC's minute is set out in full at the end of this appendix.

- F.14. The views of the DCC were conveyed to Mr. Bowers in a letter dated 15 September 2000 before the official minutes had been circulated and gave an optimistic appraisal of the outcome. In a letter of 13 June 2001, Mr. Martyn Brawn attempted to explain the committee minutes to Mr. Mike Clarke of BRoWA stating: "...My understanding at the time [of the meeting] was that the committee wished to support Mid Beds District Council's extinguishment order. This was not, however, the interpretation of the committee secretary. The minute... .. was approved and endorsed... So, the upshot must be that Bedfordshire County Council is not a formal supporter of the [MBDC] order, but that members of the committee with responsibility for footpath matters are sympathetic with the aims of the District Council order...".
- F.15. On 29 September 2000 the former Mid Beds District Council made an order to extinguish Footpath No. 28 under Section 118 of the Highways Act 1980. The 2000 order received objections from 15 individuals and four user-groups. The former County Council did not object to the order. The independent Inspector's decision letter for the order, dated 10 August 2001, identified the former County Council as not being a formal supporter of the order but recognised that its members were sympathetic to the aims of the order –as evidenced by the original 14 September 2000 DCC minute. The Inspector's reasons for not confirming the extinguishment order were based solely on the tests of Section 118 of the Highways Act. There is no evidence to suggest that the outcome would have been different had the former County Council formally supported the order or indeed formally objected to it. This observation was also expressed in the 6 December 2001 DCC minutes.
- F.16. Based on the decisions of the two independent Inspectors and the reports and minutes of various former County Council and District Council committees I can see no evidence that any officers acted improperly during the course of the two District Council extinguishment orders.

#### **Member – Officer involvement in DCC decisions**

- F.17. Mr. Bowers has queried the role of officers in advising Members of the former County Council's Development Control Committee about their liabilities. I believe this refers to advice about their legal responsibilities to act impartially and in accordance with legislation government guidance and the consequences to them personally if they did not which was given to them at a closed meeting on 7 March 2002 (see below).
- F.18. Following the submission of representations from user-groups and a petition by those people who stated they would use Footpath No. 28 if able to do so, on 19 October 2000, the former County Council's Full Council resolved that the DCC should look again at its 14 September 2000 decision (see above at Section F.13). On 26 October 2000 the DCC did so, and again resolved not to create an alternative route to Footpath No. 28.



- F.19. In response to a complaint to the Local Government Ombudsman (“LGO”) by a local resident, the Chief Executive of the former County Council, Mr. David Bell, stated in a letter to the LGO, dated 31 October 2000, that his council believed (at that time) that the bridleway was a suitable alternative route and, as a result, the footpath was no longer needed for public use. It should be noted that since 2000 there has been an increase in the number of housing developments to the east of Footpath No. 28, the residents of which are likely to use the footpath in preference to the more distant bridleway.
- F.20. On 6 December 2001 the former County Council’s DCC resolved that Footpath No. 28 should be extinguished and a new alternative route created to the east along the boundary of a proposed new development (Trilly Fields). However it transpired that there were planning conditions specifically prohibiting any link from the new development into Maulden Wood, which was the goal of the alternative footpath. On 24 January 2002 the DCC resolved to seek the extinguishment of Footpath No. 28 and to separately investigate whether an alternative could be created – the two actions being approached separately
- F.21. Following the 24 January 2002 DCC resolution, the former County Council received two complaints from local residents. On 7 March 2002 the DCC met in private to hear a report by the County Solicitor and Strategic Director (Environment) to review the recent decisions of the committee in relation to Footpath No. 28. The committee was asked to consider any steps it wished to take in the light of the complaints received, the guidance of the County Solicitor, and the decisions of the Inspectors not to confirm the previous two District Council extinguishment orders. The committee resolved: that no further action should be taken on the proposal to make an extinguishment order for Footpath No. 28 having regard to the legal advice that there was not sufficient basis to make such an order. They also proposed that officers should present proposals for an alternative path to a future sitting of the committee.
- F.22. On 31 October 2002 the former County Council’s DCC heard a report proposing five alternative routes within Mr. Bowers’ property. Members resolved to defer consideration of the proposals whilst both the former County and District Councils investigated options for works to make Bridleway No. 24 suitable as an alternative route to the footpath. At the 6 March 2003 sitting of the DCC officers put forward four options to improve Bridleway No. 24 to make it more suitable for pedestrian passage. The committee resolved to approve works to improve the bridleway by providing three pedestrian refuges which would cost approximately £15,000.
- F.23. Following further complaints from local residents and from the Open Spaces Society, the former County Council took advice from its Head of Internal Audit and from independent Counsel. The auditor’s view was that expenditure to upgrade Bridleway No. 24 would not be appropriate as both the Access & Partnerships Manager and the Council’s Engineer thought the work unnecessary and that the expenditure was solely to assist with the possible extinguishment of the nearby footpath. Counsel’s Opinion was that the former

County Council could not legally seek to extinguish Footpath No. 28, or incur expenditure on improving Bridleway No. 24, or let the footpath remain obstructed. A report including these findings was put to the 27 November sitting of the former County Council's DCC. The report also made it clear there was no budget for the proposed engineering works. The report recommended that the earlier 6 March 2003 DCC resolution be revoked and that the re-routing of Footpath No. 28 within the curtilage of Mr. Bowers' property be pursued. The committee resolved to revoke its early decision and to hear officers' proposals for a diversion of the footpath within the boundaries of Mr. Bowers' property at a later date.

- F.24. On 4 March 2004 the former County Council's DCC heard a report by officers which gave five alternative routes for a diversion of Footpath No. within Mr. Bowers' property boundaries. The committee resolved that a public path diversion order should be made to divert the path to the western side of Mr. Bowers' house. This order was eventually made on 16 July 2004 and subsequently confirmed after a public inquiry on 6 June 2006.

**The relationship between former County Council officers and user-groups**

- F.25. The former County Council and Central Bedfordshire Council both work closely with user-groups, such as the British Horse Society and Ramblers, as well as with preservation societies, such as the Open Spaces Society and the Chiltern Society. The Council works with these organisations on public path orders and the Outdoor Access Improvement Plan, as well as on a wide range of local and strategic rights of way issues. The Council therefore has well established working relationships with the local area officers of these organisations. The Council have also worked with other local rights of way organisations such as BRoWA and the East Herts Footpath Society which act as local pressure groups seeking the enhancement of (generally) pedestrian rights of way.
- F.26. BRoWA in particular has been a very active local group . Their representative, Mr. Clarke, has either independently, or on behalf of BRoWA, objected to approximately 90%of the public path orders that the former County Council and subsequently Central Bedfordshire Council have made since the mid 1990s. Mr. Clarke was the informal Open Spaces Society representative for Bedfordshire, and has formally appeared (against the Council and for the Society) at a number of public hearings and inquiries over the years.
- F.27. Both councils have therefore learnt how best to manage the contradictory issues arising from user-groups and preservation societies being allies in the provision of access whilst also being opponents when legal orders seek to alter the public rights of way network. In such a role it is important for the officers concerned to build up close working relationships with the individual representatives concerned. The art of such a relationship is to remain professional in both formal and informal dealings, regardless of whether there is a shared outcome.
- F.28. Ramblers (formerly the Ramblers Association), BRoWA, and the Open Spaces

Society all supported the provision of extra public access provided by the former County Council's 1995 Definitive Map modification order adding Footpath No. 28 to the Definitive Map and Statement. Once on the map, these organisations have subsequently opposed further orders seeking to extinguish the newly recorded footpath. Mr. Clarke of BRoWA sought advice (detailed above at Section F.10) on how best to oppose the TCP Act order. The Open Spaces Society threatened to judicially review any decision by the former County Council to make a third extinguishment order for Footpath No. 28. At this time they opposed the Councils proposal to extinguish the path. All three of these organisations have stated their continued opposition to Mr. Bowers' recent applications to extinguish or delete the footpath and currently support the officer's recommendations to the Committee.

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**Approved Minutes of the former County Council's Development Control Committee meeting of 14 September 2000**

**00/dc/86 PROPOSED PUBLIC PATH CREATION ORDER AND EXTINGUISHMENT ORDER – HIGHWAYS ACT 1980, SECTIONS 26 AND 118 - MAULDEN**

The Committee considered a report of the Head of Environmental Services which sought approval to the making of concurrent Council generated public path orders to resolve an anomaly on the Definitive Map and Statement of public rights of way.

Councillor Golby declared his interest in this matter and left the meeting during its consideration.

The Committee had visited the site at Maulden earlier in the day.

Members received a detailed account of the background to the situation relating to public Footpath 28 Maulden which ran between Bridleway 24 at Hall End southwards to meet Clophill Road crossing, for most of its length, the residential property and adjoining land, 123b Clophill Road, owned by Mr Bowers.

The footpath was permanently obstructed by the house itself, constructed in 1995/96 close to its southern end and by a wall constructed at the end of it where it met Clophill Road.

Members were informed that the status and position of Footpath 28 were not legally in doubt although its existence was disputed by Mr Bowers, Maulden Parish Council and the local District Councillor.

The report set out, in detail, the history of the dispute and described the various legal considerations, consultations with landowners, local councils, representative user groups and the statutory undertakers.

Councillor Ivey, the local Member for the area, described the dispute as a very unhappy episode for all concerned which had seriously affected



relationships in that part of the village. He reported that the nearby Bridleway 24 running from Clophill Road to Maulden Wood was considered by most to be a suitable alternative, supported by Mr Bowers, Maulden Parish Council and Mid Bedfordshire District Council.

Some Members believed that Footpath No. 28 should be extinguished given that the bridleway was so close to the footpath and indeed the two met at a point south of Maulden Wood.

Concerns were expressed, however, that if Footpath 28 were to be diverted within Mr Bowers' land to allow its use, there could be safety issues where the path would emerge in Clophill Road.

District Councillor Mrs Turner commented that if a new footpath were to be created as proposed with an alternative route through Mr Bowers' land, there would still be a possible conflict between walkers, horses and vehicles at the northern end where it would meet Bridleway 24. She stressed that the bridleway was a thoroughly suitable alternative given the very difficult circumstances being faced.

A number of Members indicated their view that the most appropriate action would be for Footpath 28 to be formally extinguished.

The County Solicitor was asked for his guidance on the proposal and drew attention to the legal considerations set out in the report, reminding Members that the merits of the proposal to extinguish Footpath 28 and create a new Footpath 30 were for the Committee to determine.

Members were informed that Mid Bedfordshire District Council was already in the process of making an order to extinguish Footpath 28 and, as they were minded to support the extinguishment, the Committee agreed to take no further action on the submitted proposal. The order would, of course, have to be the subject of the necessary consultations, but on the basis of the resolution set out below, the County Council would not currently be minded to object to such an order.

**RESOLVED:**

That, in the light of the proposal to make an order by Mid Bedfordshire District Council to extinguish Footpath 28, Maulden, the proposal as submitted for the County Council to create a new public footpath between Bridleway 24 and Clophill Road, Maulden as shown at Appendix 5 to the report and to extinguish Footpath 28, Maulden as shown at appendix 6 be not pursued at the present time.

The proposed extinguishment of Maulden Footpath No. 28.  
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**Meeting:** Development Management Committee  
**Date:** 13 February 2013  
**Subject:** The consideration of an application to extinguish Maulden Footpath No. 28 under Section 118 of the Highways Act 1980  
**Report of:** Head of Service for Transport Strategy and Countryside Services

**Summary:** The report examines the application to extinguish Maulden Footpath No. 28 in light of evidence of recent use and the legislation contained within the Highways Act 1980. Members are asked to come to a view on whether the application should be approved or refused.

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**Advising Officer:** Trevor Saunders, Assistant Director of Planning  
**Contact Officer:** Adam Maciejewski – Senior Definitive Map Officer - Countryside Access Team - 0300 300 6530  
**Public/Exempt:** Public  
**Wards Affected:** Ampthill ward  
**Function of:** Council

#### **CORPORATE IMPLICATIONS**

##### **Council Priorities:**

This proposal meets the following Council priorities:

- Creating safer communities – by providing a public right of way with a safe crossing point on Clophill Road
- Promoting healthier lifestyles by encouraging use of the countryside by providing easy access to the countryside from local residential developments.

##### **Financial:**

1. The use of the Highways Act 1980 to make public path orders is a discretionary power of the Council and consequently regulations permit certain costs to be recovered from the applicant. These costs relate to: administration and officer time, the cost of advertising the making and confirmation of an order, and the costs of any works related to the order. Where the Council does not make an order, any administration costs already incurred are borne by the authority. Should the committee resolve to make an order however, the costs are envisaged to total approximately £2700. However, as Mr. Bowers' application is very old we have honoured the previous charging rate of £19/hr rather than the current rate of £43/hr. Consequently the applicant is likely to pay around £1500 if an order is made and confirmed, with the remainder (about £1200) being borne by the Council.

2. Should the committee approve the making of an extinguishment order it is highly probable that it will receive objections. If objections are received and not withdrawn, the ensuing Council administration costs incurred in forwarding the case to the Secretary of State for Environment, Food, and Rural Affairs for confirmation would be borne by the Council. The administrative cost of defending an opposed order is unlikely to exceed £1000. However, the cost of legal advice and possible external advocacy in defending the order could exceed £4000. These costs would again be borne by the Council and met from existing budget provision; thus reducing the funding available for other projects. If an order was made and not confirmed by the Secretary of State, the applicant would be liable to pay all the Council's administration and advertising costs up to when objections were received – possibly about £1250 as this would not include the cost of advertising the order's confirmation (about £200).

**Legal:**

3. The Council can use the Highways Act 1980 to make a public path order to extinguish a public right of way where it is expedient to do so and the Council is satisfied that the right of way is not needed for public use and would not be used if it were not extinguished. If an extinguishment order is made, notice of this is advertised and posted on-site. There then follows a statutory objection period of not less than 28 days. If any objections are received and not withdrawn the Council cannot confirm the order itself and would have to decide whether or not to forward it to the Secretary of State who appoints an independent Inspector to determine whether the order should be confirmed or not. Given the history of this footpath it is likely that if the Council forwarded it to the Secretary of State, an opposed order would either be heard at a public hearing or inquiry.
4. Independent legal advice for the Council indicates that the decisions of the Inspectors to not confirm the previous two extinguishment orders will be highly material to the consideration as to whether the Council should make a further extinguishment order.
5. Should an order be made to extinguish the footpath, there is also a risk that an application could be lodged to have the Council's decision judicially reviewed. This is unlikely to occur until the normal statutory route of objection and public hearing or inquiry has been exhausted. The likely ground for such an application would be that the Council has made an order for an outcome which has already been unsuccessfully sought twice by a predecessor authority without any significant change in local circumstances.

**Risk Management:**

6. The existence of Maulden Footpath No. 28 has been disputed by the applicant, who for 20 years has been the owner of the land over which the majority of the footpath runs. The actions of the former County Council and Mid-Beds District Council, in dealing with this footpath, have resulted in at least seven complaints to the Local Government Ombudsman ("LGO") by not only the supporters of any attempt to extinguish the footpath, but also by those

seeking to retain it. None of these complaints of maladministration by either Council were upheld.

7. Mr. Bowers' application to extinguish Maulden Footpath No. 28 has the support of the Police<sup>1</sup>, Maulden Parish Council, the local ward members, and local MP, Mrs. Nadine Dorries. The application does not have the support of local and national user-groups however, which treat this long-running case as a *cause célèbre*. Central Bedfordshire Council, as the Highway Authority, has a duty to act impartially and to determine the application based on the legislative tests of the Highways Act 1980. In doing so it can consider local views as to whether the footpath is needed.
8. The long-standing dispute between the various parties has so far resulted in five legal orders, three public inquiries, and three prosecutions. Consequently, the Council's decision is likely to receive significant press interest (the case was keenly followed by the Open Spaces Society who have given this matter national coverage). In summary, the key risks to the Council are:
  - Reputational risks,
  - Risk of failure to discharge statutory responsibilities and legislative issues,
  - Risk of further challenge/appeal/legal action/judicial review, or risk of legal action being taken against officers of the former County Council or Central Bedfordshire Council.

**Staffing (including Trades Unions):**

9. Not Applicable.

**Equalities/Human Rights:**

10. The application by Mr. Bowers seeks to extinguish the public right of way (Footpath No. 28) which crosses Mr. Bowers' property between Clophill Road and Bridleway No. 24. The footpath was originally added to the Definitive Map and Statement, which is the Council's legal record of such rights, in 1997 following a public inquiry into a 1995 Definitive Map Modification Order. This order formally recognised the existence of a previously dedicated public right. The footpath has had its legal line subsequently changed twice in response to building works on the land. The footpath passes along the eastern side of the boundary between Mr. Bowers and his elderly neighbour, Mrs. McParlin. Whilst most of the fence and hedge between Mr. Bowers and Mrs. McParlin is at least 1.8 metres high, there is a short section in front of several of Mrs. McParlin's bungalow's windows which is lower allowing walkers to look into her kitchen and bedroom.
11. Article 8 of the Human Rights Act 1998 relates to the right to respect for private and family life. Section 2 of Article 8 of the Act states that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the

<sup>1</sup> The Police's national Secured by Design guidelines state that "public footpaths should not... provide access to gardens, rear yards, or dwellings as these have been proven to generate crime..." and so, by default, the Police support any extinguishment of a public right of way through domestic property.



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interests of (amongst other things) the protection of the rights and freedoms of others. Whilst the making of an extinguishment order would improve the privacy of Mrs. McParlin and possibly improve the security of both her and Mr. Bowers, these improvements must be weighed against the loss of a public right.

12. The 1995 Definitive Map Modification Order which added Footpath No. 28 to the Definitive Map and Statement would have been exempted from the restrictions of the later Human Rights Act as the decision to make the order was made on evidence of the pre-existence of public rights. The decision by the Development Management Committee not to make a public path extinguishment order would be in accordance with the Council's Rights of Way Applications policy as well as with the Council's duty to protect and assert the public's right to use this right of way.

**Public Health**

13. Not applicable.

**Community Safety:**

14. The report proposes that Maulden Footpath No. 28 be retained from Clophill Road to its junction with Bridleway No. 24. Use of the footpath by local residents removes the requirement for pedestrians to use a bridleway which has occasional equestrian, cycle, and vehicular traffic. Footpath No. 28 has a junction with Clophill Road, Maulden. The road is straight with a footway on the opposite side. Were the footpath to be deleted, walkers would either have to walk in the road for some 43 metres between points A -C or to walk along the footway on the southern side of Clophill Road to cross at the nearby three-way road junction. The Council's Senior Traffic and Safety Engineer has appraised both the current and alternative routes on Clophill Road and considers both to have similar low levels of risk – however, crossing away from the road junction would help to minimise any inherent risk. A road-side sign has also been erected to draw attention to the footpath. Walkers using Footpath No. 28 are constrained within a narrow path between 1.1 and 1.6 metres wide and so would have little space to avoid unauthorised cyclists or an aggressive dog. A gate has been installed at the request of the land owner, Mr. Bowers, to deter cycle use of the footpath. By contrast, Bridleway No. 24 is wider with a surfaced width of between 2.5 and 3.5 metres (measured verge-verge) but pedestrian use is shared with cyclists, equestrians, and motor vehicles. No incidents have been reported on either path.

**Sustainability:**

15. Not Applicable.

**Procurement:**

16. Not applicable.

**RECOMMENDATION(S):**

**The Committee is asked to:**

- 1. Refuse the application by Mr. Alan Bowers to make a Public Path Order under Section 118 of the Highways Act 1980 to extinguish Maulden Footpath No. 28 between points A-B on the grounds that:**
  - a. The footpath provides a pedestrian-only route from the new developments to the south of Clophill Road and from Trilley Fields to the bridleway linking into Maulden Woods and is therefore considered needed.**
  - b. There is evidence demonstrating that the footpath is used by members of the public and it is likely to continue to be used if not extinguished.**
  - c. The land occupied by the footpath and the alternative route has not undergone significant change for the Council to disregard the earlier decisions by independent Inspectors to not confirm the two previous orders seeking to extinguish the footpath.**

**Introduction**

17. In 1989 the applicant, Mr. Alan Bowers purchased a plot of land off Clophill Road, Maulden. His fencing of the land and locking of the access gate resulted in a neighbour applying to the former County Council for the Definitive Map and Statement to be modified by the addition of public footpath.
18. In September 1995 the former County Council made a Definitive Map Modification Order to add Maulden Footpath No. 28 to the Definitive Map and Statement, based upon evidence of public use of the route. Details of the evidence and actions of the former County Council are given in a separate report within the agenda which addresses Mr. Bowers' parallel application to delete the footpath. By this time, Mr. Bowers had already applied for and received planning consent to build his new house, No.123b Clophill Road, over the line of the footpath. Mr. Bowers objected to the modification order which was subsequently heard by an independent Inspector using a process based on exchanges of correspondence. The 1995 order was confirmed in 1997 – by which time Mr. Bowers had almost finished building his new house.
19. Mr. Bowers was advised by the former County Council to apply to the former Mid-Beds District Council for an extinguishment order. In the end, the former District Council made two extinguishment orders, first under the Town and Country Planning Act 1990 (“the TCP Act”) in 1995, and then under the Highways Act 1980 in 2000. Both orders to extinguish Footpath No. 28 were objected to by a small number of local residents and by user-groups resulting in two public inquiries. The former County Council appeared at the first (1990 Act) inquiry as an interested party and asked that the extinguishment order be modified so that a footpath could be retained within Mr. Bowers' property boundaries. Neither order was ultimately confirmed by the independent Inspectors appointed by the Secretary of State for Environment, Food, and

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Rural Affairs for the reasons discussed at Section 29 below.

20. Following legal advice, the former County Council made a public path diversion order under Section 119 of the Highways Act in July 2004 to divert Footpath No. 28 out of Mr. Bowers' new house onto a route down the western side of his property. Mr. Bowers objected to the order. The Council received 180 other objections. 175 of the responses were copies of a typed proforma adding no individual perspective. Upon contacting these objectors, 16 either claimed they were fraudulent or withdrew their objection when the purpose of the diversion order was explained to them. Contacting objectors is part of the process of preparing an order for forwarding to the Secretary of State for confirmation. The Council has a responsibility to determine the validity and authenticity of objections and to try and seek their withdrawal if possible in accordance with the Defra Rights of Way Circular 1/09 Para. 10.6 "...Once an order has been advertised, local authorities are expected to make every effort to resolve objections and to secure their withdrawal. ...". Consequently all objectors, including the Parish Council, were written to in accordance with this guidance. Overall, 164 people maintained their objections; 6 of whom were called as witnesses against the 2004 Diversion Order at the ensuing public inquiry. The 2004 Diversion Order was subsequently confirmed in June 2006.
21. In September 2004 Mr. Bowers submitted an application to extinguish Footpath No. 28 either under Section 118 of the Highways Act or at the Magistrates' Court under Section 116. The former County Council decided that the applications should not be processed until the (as then) current 2004 public path diversion order was completed and the route was opened up and made available for public use. The footpath was finally opened up and made available in 2009 following the prosecution of Mr. Bowers' in the Magistrates' Court; this was begun by the former County Council and concluded by its successor Central Bedfordshire Council.
22. Following the removal of a brick storage building (known variously as "the Hurdle Barn" or "Pound") next to the footpath in 2008, the line of the 2004 diversion order was modified by a variation order made and confirmed in 2010.
23. The current route of Maulden Footpath No. 28 starts at the south-western corner of 123b Clophill Road at the roadside and proceeds due north along an unsurfaced strip approximately 1.1 - 1.6 metres wide (see photographs at Appendix C). The footpath is fenced-off to either side with (generally) 6 feet high panel fencing where it passes between the front gardens, houses, and main rear gardens of Nos. 123 and 123b. To the north of the more formal rear gardens of Nos. 123 and 123b the land is set to paddock. Here the footpath continues due north with a grassed surface between post and rail fencing until a gate where the footpath then crosses the edge of a small parking area to its junction with Bridleway No. 24. This gate was installed after repeated requests by Mr. Bowers for a structure to deter cyclists from using the path (see letter at Appendix D). Mr. Bowers modified his request so that the structure would be sited to help prevent children running into Clophill Road. However, The Council's Safety Officer did not identify the necessity and, as the requested roadside location proved unsuitable, the gate was eventually installed at the junction with the bridleway to fulfil the original purpose.

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24. The level of public use on Footpath No. 28 has been monitored electronically between September 2010 and September 2011 as part of the condition of processing Mr. Bowers' application. Despite technical problems with the equipment which interrupted and curtailed the monitoring period, the data shows that the footpath was used on average 9.8 times per day over a 363 day period, see B.2 - B.4 at Appendix B.
25. Following Mr. Bowers' two unsuccessful attempts to have Footpath No. 28 extinguished, officers at the former County Council suggested that he apply to try and get the footpath deleted by means of a definitive map modification order; the grounds of the application being that the original 1996 modification order failed to consider evidence showing the footpath did not exist. Mr. Bowers has also applied to have Footpath No. 28 stopped up at the Magistrates' Court. Both these applications are the subject of two other agenda items put to this sitting of the Development Management Committee.

### **Legal and policy considerations**

26. The Highways Act 1980 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. Section 118 of the Highways Act applies to the extinguishment of such rights.
27. The Development Management Committee under the Central Bedfordshire Council's Constitution (E2 at Annex C) is the appropriate body to determine an application requesting that the Council, as highway authority, make an order under the Highways Act to create, divert, or extinguish a public right of way.
28. Central Bedfordshire Council's Rights of Way Policy on Applications does not restrict the consideration of Mr. Bowers' application now that the required monitoring period has expired.
29. The extinguishment of Footpath No. 28 has already been addressed twice at public inquiry. The conclusions of the first Inspector in not confirming the 1995 order made under the TCP Act were: the use of Bridleway No. 24 as an alternative route to the footpath was not an acceptable alternative to retaining the footpath, and that the leaving of a dead-end path had no value (the extinguishment only affected the southern half of the footpath). The conclusions of the second Inspector in not confirming the 2000 order made under the Highways Act were essentially three-fold:
  - The fact the footpath was obstructed by the newly built house was not a consideration as the house could be removed.
  - The representations made at the inquiry indicated that "...the footpath would be likely to be used, and to a significant extent, by the public..." if not obstructed.
  - That the nearby Bridleway No. 24 was not a suitable alternative route as it could pose problems of conflict of shared use, and had been subject to flash flooding.
30. The legislative tests for extinguishing a public right of way are detailed in Non-Executive report template August 2011

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Appendix B. Essentially a public path extinguishment order can only be made if the Council is satisfied that it is expedient for the footpath to be extinguished because it is not needed for public use. The order cannot be confirmed unless the Council is satisfied that it is expedient to do so, having regard as to whether the path in question would be likely to be used by the public if it was not extinguished. Any temporary circumstances preventing or diminishing the use of the path should be disregarded when evaluating the use of the route. The Council also needs to have regard to the effect of the extinguishment on the land served by it and can consider whether there is a suitable alternative route available.

31. Footpath No. 28 has been electronically monitored for a total of 363 days between 10-9-2010 and 20-9-2011. During this period the average level of use was 9.8 trigger events per day (a total of 3540). A trigger event is when a person passes along the path past the installed counter. The counter cannot distinguish between members of the public using the right of way and Mr. Bowers or his guests walking along the path. The electronic monitoring indicates that Footpath No. 28 is used to a significant degree. Consequently it would be difficult to argue that it is not needed for public use. Were the footpath not extinguished, it is very likely that public use of a similar level would continue in the future.
32. The extinguishment of the Footpath No. 28 would remove public rights from Mr. Bowers' property and from the small parking area at the northern end of the footpath owned by Mr. & Mrs Tebbutt of 125a Clophill Road . It would also prevent members of the public walking past the windows of the neighbouring bungalow belonging to Mrs. McParlin. The land at either end of the footpath can be reached by use of the nearby Bridleway No. 24.
33. When coming to a decision on whether to make an order the Council also has to have regard to any material effects of a Rights of Way Improvement Plan and to the effect of the closure on agriculture, equiculture, forestry, and the preservation of flora, fauna, and physiographical features. The line of Footpath No. 28 runs between two houses and then within a fenced off strip the length of Mr. Bowers' garden. The extinguishment of the footpath would not negatively impact on any of the aspects listed above that need to be considered. The Council's Outdoor Access Improvement Plan is currently being re-written. Until this is formally adopted, consideration of the old plan is required. The proposed extinguishment would not detrimentally affect any of the aims of the old or new plan.

#### **Alternative routes**

34. The proposed use of Bridleway No. 24 as an alternative to Footpath No. 28 has been addressed at both the public inquiries held for the previous two extinguishment orders made by the former District Council. The independent Inspectors appointed by the Secretary of State for both orders decided not to confirm the extinguishment orders, citing that the bridleway was not a suitable alternative route to the footpath as being one reason for not doing so.
35. Bridleway No. 24 starts at the three-way junction of Clophill Road with the A507 spur at point C at Appendix A (see photographs at Appendix C). The



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bridleway, which has some degree of surface dressing, is approximately 2.5 - 3.5 metres wide with hedges to either side at its southern end, becoming enclosed by post and rail fencing for its northern half. A ditch runs along the western edge of the bridleway. This has been piped in three locations along the southern half of the bridleway. The piped areas tend to be overgrown and currently have spoil from ditch clearance dumped on them and are not currently suitable as pedestrian refuges. Approximately 73 metres north of point C a gate in the bridleway and associated turning area widens the bridleway at this point to 6.5 metres. The bridleway provides vehicular access to a small number of properties but appears to not be intensively trafficked. Any walkers approaching from the A507 would also probably use the bridleway in preference due to its proximity.

36. Walkers accessing Maulden Woods from the west would probably approach using the footway on the south side of Clophill Road (there is no northern footway). They would then have the opportunity of crossing Clophill Road at the corner of the junction at the dropped kerb to access the tarmaced entrance to the bridleway. Walkers wishing to use the footpath in preference to the bridleway would probably cross the A507 spur on the corner at the dropped kerb and then continue along the southern footway of Clophill Road until opposite Footpath No. 28 before crossing to use the footpath. Additionally, only pedestrians are permitted on the footpath whereas walkers may encounter cyclists, horse riders and motor vehicles on the bridleway.
37. Walkers accessing Maulden Woods from the east (including the Headley Way estate, the adjoining Pennyfathers Close, and Beeches developments, and the newer Trilley Fields development – see map at B.10 at Appendix B) would probably approach using the footway on the south side of Clophill Road until opposite Footpath No. 28 before crossing on this straight section of road to use the footpath. To access Bridleway No. 24 walkers would need to either cross to the north side of Clophill Road and walk into oncoming traffic for about 35 metres until reaching the grassed area adjacent to Bridleway No. 24 or, more likely, carry on walking westwards along the southern footway of Clophill Road to cross the road at the dropped kerb approximately 10 metres before the junction and then to walk over the grassed area adjacent to the bridleway. Additionally, only pedestrians are permitted on the footpath whereas walkers may encounter cyclists, horse riders and motor vehicles on the bridleway.
38. Mr. Bowers has argued that use of Footpath No. 28 by users of the new estates should be disregarded as they did not use the paths during the time of its deemed dedication (1936-1956) and that use of a public right of way is for the public at large – not just an estate. However, the footpath is a public right of way and so the effect of it being stopped up on the nearby new estates is a material consideration as these estates (and the surrounding houses) are where the public most likely to use the footpath would live.
39. The Council's Senior Traffic and Safety Engineer, Mr. Paul Salmon, has looked at the approaches to the junctions of the bridleway and footpath with Clophill Road and at the utilisation of the southern footway to the dropped kerb near the three-way road junction. He considers that the current and alternative routes along/across Clophill Road have a similar low level of risk. Following concerns raised by Mr. Bowers as to the safety of pedestrians exiting Footpath

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No. 28 onto the road, Mr. Salmon also looked at this aspect. Following a site visit, he concluded "...[the footpath has] at least a metre of footpath which is clear from obstruction before reaching Clophill Road, thus allowing clear visibility of traffic in both directions.....it is felt that this footpath does not pose a significant risk to someone exiting straight in to the highway without being aware of the road itself... ..To mitigate the risk of anyone inadvertently running directly on to the highway a hazard warning sign may be installed on the existing post at the entrance/exit of the [footpath] [This has been done]. In addition and to support this, pedestrian warning signs may be erected on Clophill Road to alert motorists that Non Motorised Users may be entering/exiting the footpath. It is not felt necessary that at this stage any type of barrier be installed on the footpath...". However, at Mr. Bowers' insistence, and after writing repeatedly to Central Bedfordshire Council, a gate was installed on the footpath principally to deter/prevent cyclists from using it. However, this was eventually installed close to the junction of the footpath with Bridleway No. 24 owing to problems digging the footings of the gate at the roadside.

40. Bridleway No. 24 could be utilised as an alternative route – and may already be used in preference by walkers approaching from the west. However, residents of the three developments to the south side of Clophill Road and Trilley Fields on the northern side are likely to use Footpath No. 28 as their primary access route to Maulden Woods; in doing so, they would benefit from both its proximity and vehicle-free character. However, in accordance with the *Bernstein* and *Barry Stewart* cases (see Appendix B), I consider that members of the public from these developments are unlikely to be significantly disadvantaged by having to use the nearby Bridleway No. 24. This view is supported by the former County Council's Chief Executive, Mr. David Bell, who, in response to a complaint to the Local Government Ombudsman ("LGO") by a local resident, stated in a letter to the LGO, dated 31-10-2000, that his council believed (at that time) that the bridleway was a suitable alternative route and, as a result, the footpath was no longer needed for public use. However, since 2000 there has been an increase in the number of housing developments to the east of Footpath No. 28, the residents of which are likely to use the footpath in preference to the more distant bridleway.
41. Electronic monitoring has shown that Footpath No. 28 is used to a significant extent and would continue to be used. The Council has to consider, in the light of this evidence (accepting the likelihood that use of the bridleway would not significantly disadvantage potential users), whether it is expedient for an order to be made to extinguish the footpath. In my view the impact of stopping up the footpath would not be significantly detrimental, however there is a strong presumption in favour of not doing so based on the decisions of the two independent Inspectors who heard the 1995 TCP Act extinguishment order and the 2000 Highways Act extinguishment order. In both cases the Inspectors, in determining not to confirm the extinguishment of Footpath No. 28, concluded that Bridleway No. 24 was not a suitable alternative to the footpath.
42. The Council has not been made aware of any significant alterations to the bridleway to make the above conclusions redundant, or to warrant the Council considering it expedient to make a public path order to extinguish the footpath



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– especially now that monitoring has clearly shown the footpath is used. Mr. Bowers has stated that works have improved the bridleway by piping the ditch and creating pedestrian refuges. The Council has no record of these works and whilst it is evident that three sections of the ditch alongside the southern half of the bridleway have been piped, these areas are covered by vegetation and spoil from recent ditch clearance works and consequently do not currently form suitable pedestrian refuges. Similar works were proposed in October 2002 but these were never carried out according to Council records. Some minor works to surfacing and to prevent flooding have also been carried out opposite and to the east of No. 125a Clophill Road near point B at Appendix A. Furthermore, since the 2000 extinguishment order was made, the new Pennyfathers, Beeches, and Trilley Fields developments which all lie to the east of Footpath No. 28 have provided a new local source of users of the footpath requiring access to Maulden Woods (see map at B.10 at Appendix B). This is especially so as the planning constraints for the Trilley Fields development prohibited a direct link from the estate into the adjoining woods.

### Consultations

43. In January 2012, Central Bedfordshire Council simultaneously consulted on all three of Mr. Bowers' applications. Several of the responses received gave a broad response rather than concentrating on those aspects relevant to each application. In such cases, those aspects of a consultees' response which reflect their general views are given below.
44. Mr. Bowers, the applicant, has commented on a draft version of this report. Where relevant, Mr. Bowers' comments have been included in the body of this report and its appendices.
45. Mr. & Mrs. Tebbutt of 125a Clophill Road own a small parking area on the southern side of Bridleway No. 24 which is crossed by the northern-most 10 metres of Footpath No. 28. They were consulted on the proposed extinguishment in November 2012. Mr. Tebbutt responded on 16-11-2012 stating "...I have no real strong view in favour of the footpath remaining as it was not in existence when we moved to this address. Very few people use the footpath as in the summer it is over grown with nettles - my two boys generally end up walking down the [bridleway] as do any walkers who are not aware of its existence or they are wearing shorts. In my view ( taking aside local views) - the footpath is un maintained and pointless... ..don't get me wrong I will be glad to see the end of the footpath...". Mr. Tebbutt added to his comments on 19-11-2012, stating:"...Your counter would be correct in saying my kids use it for school runs but they are perfectly capable of walking down the [bridleway] if the nettles are out of hand or if the path is extinguished. I really have no view either way on the up keep of it or indeed its existence or non existence as the case may be - my comments were merely an observation that it is really a couple of walkers and my kids using it which really deems it pointless . I hope this information is of some help in bringing this to a conclusion - a conclusion which really does not effect us at 125A which ever way it goes...".
46. In response,- the former County Council made a Definitive Map Modification Order in 1995 to record the existence of the footpath based on a presumed

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dedication in potentially 1936. However, the path has not been usable since before 1995 until a 2009 Magistrates' Court order forced Mr. Bowers to remove a number of obstructions on the footpath. The footpath is cut twice a year (May and September) through the Council's Seasonal Vegetation Clearance programme ("SVC"). Unseasonable weather and teething issues with new SVC contractors has lead to increased weed growth on many paths this year. Mr. Tebbutt clearly is not overly concerned about the fate of the footpath. Whilst he considers that the connecting bridleway is an acceptable alternative to the footpath, he also acknowledges that his children use the footpath as part of their journey to school.

47. Mrs. Sylvia McParlin of No. 123 Clophill Road, who's property abuts Footpath No. 28, was consulted and wrote a letter dated 14-2-2012 in support of the extinguishment, stating "...The access to the path is on a main road whereby you step straight out onto the main road, as no path exists on that side. Cars stop over the entrance thus blocking the view of oncoming traffic... A perfectly good bridleway not 50 mtrs [sic] with good access has always been used in the past...".
48. Mr. & Mrs. Fenton of No. 121 Clophill Road, whose property abuts the northern half of Footpath No. 28 has been consulted but has not yet responded.
49. Maulden Parish Council was consulted and responded on 4-2-2012 stating that it "...feels very strongly that this footpath should be extinguished on the grounds that it is unnecessary and supports Mr. Bowers and your Council in an application to the Magistrates' Court for an extinguishment order...".
50. The three local ward members were consulted. Cllr. Blair responded stating "...I can only say that on the information I have been given, I have to agree with Mr Bowers that the original DMMO should never have been made, since a public right of way never previously existed. By various means, it appears that a simple work access route was somehow turned into a footpath based upon very questionable evidence – clearly a situation acknowledged by Mid-Beds District Council when they made their subsequently thwarted extinguishment orders....". From this and other comments it appears Cllr. Blair is in support of a resolution in Mr. Bowers' favour.
51. Cllr. Smith responded on 31-1-2012, stating "...Having been at Maulden's Parish Council Meeting last Monday (attended by Mr Bowers) I support the Parish Council's view that the footpath should be extinguished. I would hope that the Development Control Committee would also endorse this view...".
52. Cllr. Duckett responded on 13-1-2012, stating "...I wholly support this deletion as it is a path that goes nowhere and serves no purpose....". From this and from meetings with Cllr. Duckett it is clear that he supports an application to extinguish the footpath.
53. In response – the evidence used by the former County Council to deem that a public right of way existed over Mr. Bowers' land was scrutinised and validated by the former County Council's Definitive Map Officers, by members of the former County Council's Rights of Way Sub-committee, and by an independent Inspector appointed by the Secretary of State for the Environment. In addition,

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data from the installed people counters indicate that the footpath is used on a frequent basis. Whilst the origin of most of these users with the exception of the Tebbutt family (see Section 45 above) cannot be established from the counter data, it is plausible that the new developments to the south and east of the footpath act as a source of potential users of the footpath who wish to gain access to Maulden Woods.

54. Mrs. Nadine Dorries M.P. has been supporting Mr. Bowers' case for many years and, in a letter dated 11-1-2012, stated "...the public would not be inconvenienced in any way by the removal of Footpath No. 28 due to the presence nearby of a bridleway. Indeed as the bridleway has been recently upgraded and has a better junction with the road, it is in fact safer for the public to use this than Footpath 28...".
55. In response – the Council's Senior Traffic and Safety Engineer has inspected to the footpath and its junction with Clophill Road and, in an e-mail dated 16-11-2010, stated "... I felt that this footpath does not pose a significant risk to someone exiting straight in to the highway without being aware of the road itself... ..to mitigate the risk of anybody inadvertently running directly on to the highway a hazard warning sign may be installed on the existing post at the entrance to the footway...". This sign has since been erected. The engineer has also evaluated the safety of both routes and the route between the two paths and considers these all to have similar low levels of risk.
56. The Ramblers was consulted and the local Footpaths Officer stated in his detailed response, received 7-2-2012, that "...The path is a pleasant and eminently useable route, giving easy access to the extensive network of paths and tracks within the area of Maulden Wood... ..An examination of the grass surface of the path indicates that the route is well-used and it would appear to be a popular route for local pedestrians and others... ..Extinguishment or deletion will have a negative effect on the local public Right of Way network... ..I have walked the parallel BW24 route and I do not consider this to be an acceptable alternative to FP28. The track along which the BW runs is used by vehicles to gain access to several properties to the rear, and as a result the surface is uneven with water-filled depressions. It presents a much less pleasant route for pedestrians.....A further point to be taken into account regarding the bridleway is that access to it from the southern end is in very close proximity to a road junction. The road at this point carries traffic from Maulden to the A507. This could be potentially hazardous in the case, for example, of families with young children forced to use the bridleway to access the area to the north. There is no footway on the north side of Clophill Road between the FP and the BW... ..there appear to be no material changes since earlier attempts by the applicant to close this path were rejected....".
57. The Open Spaces Society was consulted and responded in a letter, dated 16-2-12, stating: "...We strongly oppose its extinguishment or deletion... ..clearly the path is needed for public use and it would not meet the tests [of the Act]...".
58. The Bedfordshire Rights of Way Association was consulted and in its response, dated 11-2-2012, stated that "...Your Council can only make an Extinguishment Order if it is satisfied that Footpath No. 28 is no longer needed

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for public use. This it will find hard to do given that two previous stopping up orders were not confirmed by the Secretary of State... ..even with Footpath No. 28 obstructed by Mr. Bowers' house the respective Inspectors found the nearby Bridleway No. 24 was not a suitable alternative because it carried vehicular traffic and suffered from flash flooding...”.

59. In response – Mr. Bowers and the former County Council jointly contributed to improving the bridleway's surface in 1987. These works appear to have improved the drainage of the lane, though there is still a tendency for temporary floodwater to collect at the bottom of the bridleway and at the road junction. It is not know whether the piping of the ditch visible today formed part of the work carried out in 1987.
60. Bedfordshire Police have not been consulted on the proposed stopping up as there is no requirement or practice to do so. However, Mr. Bowers did submit a letter from PC Knowles which stated "... I have written to you twice previously... ..indicating the support of Bedfordshire Police for [Footpath No. 28's] extinguishment. I would advise that this position remains unchanged, and is consistent with national Secured by Design scheme guidance; 'Footpath design... 4.1 Routes for pedestrians, cyclists and vehicles should not be segregated from one another. Networks of separate footpaths to unsupervised areas facilitate crime and anti-social behaviour and should also be avoided... 4.2 Public footpaths should not run to the rear of, and provide access to gardens, rear yards, or dwellings as these have been proven to generate crime...”
61. In response – the Police's Secured by Design guidelines are a set of national guidelines targeted at crime reduction and do not consider the merits of public rights of way or their benefit to the general public. Sgt. Andy Rivers of Ampthill & Flitwick Area Neighbourhood Policing Team researched the crime figures relating to the area around Footpath No. 28. No reported crimes or incidences of anti-social behaviour have been reported since January 2011 which is as far back as he searched.
62. National Grid (gas), UK Power Networks (electricity), British Telecom, and Anglian Water were consulted on the proposals. At the time of writing (November 2012) only UK Power Networks has responded, stating that it had no objection to the proposals.

## Conclusions

63. Maulden Footpath No. 28 was added to the Definitive Map and Statement in 1997 by a Definitive Map Modification Order based on evidence of long public use. Following the construction of Mr. Bowers' new house and subsequent diversion of the footpath in 2006, the footpath was eventually opened up for public use in 2009. Monitoring equipment has shown that the path was used an average 9.8 times per day between September 2010 and September 2011.
64. Two previous attempts by Mr. Bowers to have the footpath extinguished under the TCP Act and Highways Act have seen extinguishment orders not confirmed by independent Inspectors following two local public inquiries. Reasons for the non-confirmation of the orders included the view that the

The proposed extinguishment of Maulden Footpath No. 28.  
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footpath would be used if not obstructed, and that the nearby Bridleway No. 24 was not a suitable alternative to the footpath.

65. Since the last two extinguishment orders were made, several new developments to the east of Footpath No. 28 have occurred (Pennyfathers, Beeches, and Trilley Fields). It is likely that residents from these developments would use Footpath No. 28 to access Maulden Woods as this is their closest right of way.
66. There have been no significant changes in either the condition or utilisation of Mr. Bowers' land or of the bridleway to warrant a third extinguishment order being made. Indeed, the slight realignment of the footpath by the 2010 variation order has resulted in a straight footpath which is adequately surfaced and fenced from the adjoining land. This path is used by members of the public to a significant extent and most probably will continue to be used in the future.

**Appendices:**

Appendix A – Plan of Footpath No. 28

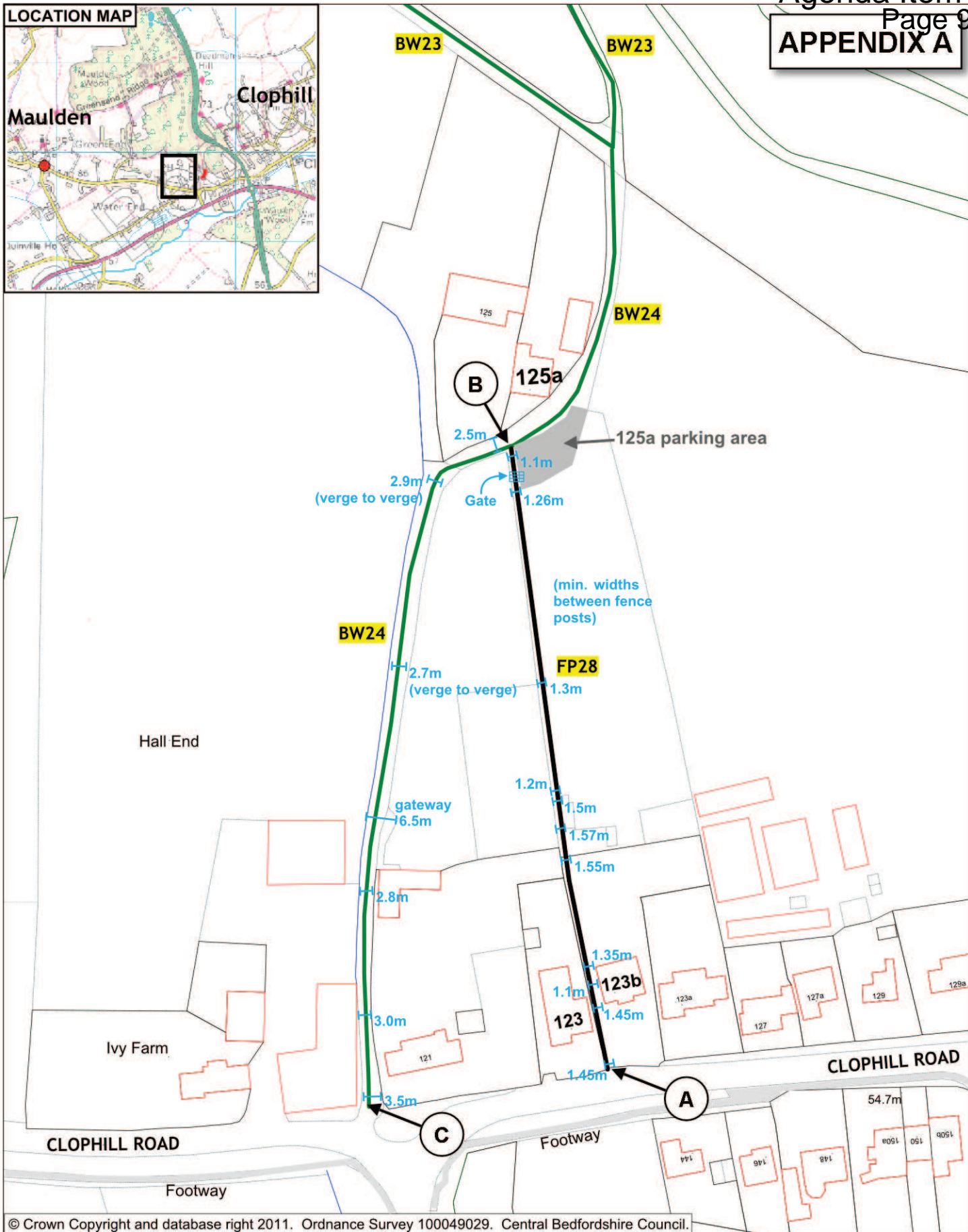
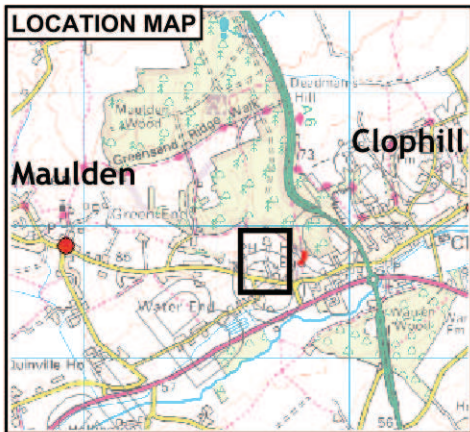
Appendix B – Legal and Policy considerations

Appendix C – Photographs of Footpath No. 28 and Bridleway No. 24

Appendix D – Copy of 26-8-2011 letter to Mr. Bowers regarding installation of a gate

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Highways Act 1980 - Section 118

### Proposed extinguishment of Maulden Footpath No. 28



Footpath to be extinguished  
**A** **B**

Unaffected public bridleways

Path widths in metres

Scale: 1:1250  
 11 January 2012





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## Appendix B

### Legal and Policy Considerations

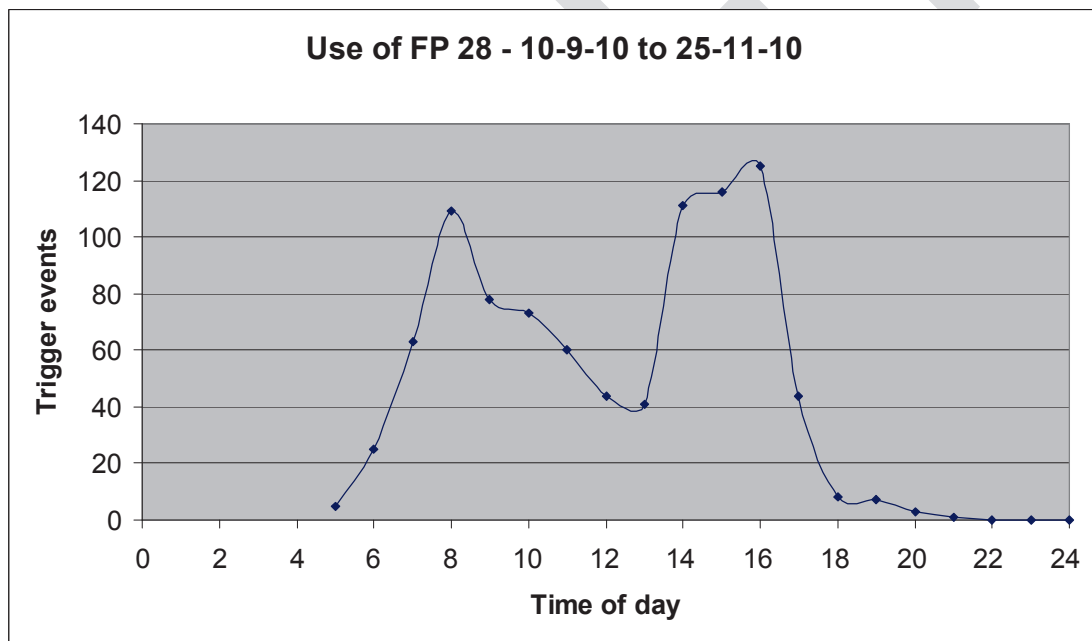
- B.1. Section 118 of the Highways Act 1980 enables Central Bedfordshire Council, as the Highway Authority, to extinguish public footpaths, bridleways, and restricted byways and is paraphrased below:
- (1) Where it appears to a council as respects a footpath, bridleway, or restricted byway in their area... 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.
- B.2. Before the Council makes an extinguishment order under Section 118 of the 1980 Act it has to be satisfied that the path is no longer needed for public use. Footpath No. 28 has been electronically monitored for a total of 363 days between 10-9-2010 and 20-9-2011. During this period the average level of

use was 9.8 trigger events per day (a total of 3540 events). A trigger event is when a person passes along the path past the installed counter. The counter cannot distinguish between members of the public using the right of way and Mr. Bowers or his guests walking along the path. The data captured is summarised below.

Start date	End date	No of days	Number of trigger events	Average daily use
10/09/2010	25/11/2010	76	914	12.0
06/12/2010	16/02/2011	72	590	8.2
16/02/2011	09/05/2011	82	816	10.0
10/05/2011	09/08/2011	91	877	9.6
09/08/2011	20/09/2011	42	343	8.2
<b>10/09/2010</b>	<b>09/08/2011</b>	<b>363</b>	<b>3540</b>	<b>9.8</b>

- B.3. An analysis of the recorded use during the period 10-9-2010 to 25-11-2010 indicates that the two peak periods of use are between 06:00-11:00 and 13:00-16:00 and accounted for 42% and 39% of use respectively. There was no use between 22:00 and 04:00.

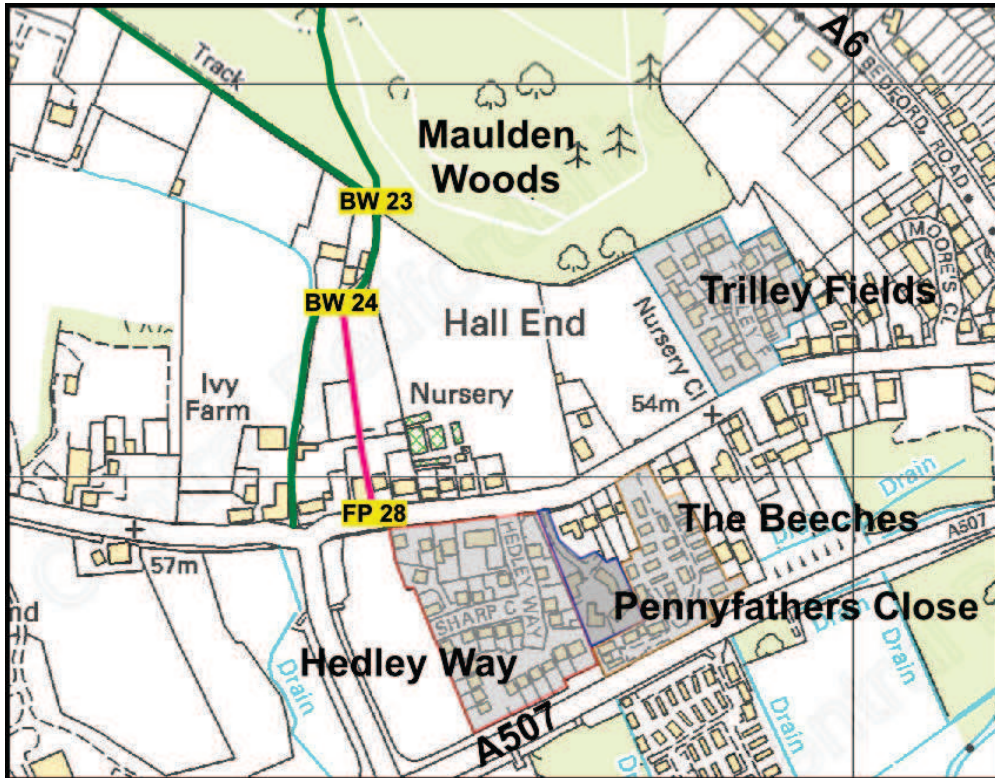


- B.4. The electronic monitoring indicates that Footpath No. 28 is used to a significant degree. Consequently it would be difficult to argue that it is not needed for public use. Were the footpath not extinguished, it is very likely that public use of a similar level would continue in the future.
- B.5. A consideration in determining whether a right of way can be extinguished is whether there is an alternative route available. The junction of Footpath No. 28 with Clophill Road (point A) is some 59 metres from the junction of Bridleway No. 24 with Clophill Road. The distance A-B along Footpath No. 28 is approximately 157 metres. The alternative route to point B via Bridleway No. 24 is approximately 239 metres – an increase in distance of approximately 82 metres. Footpath No. 28 is a well set out path, being bounded between either by panel fencing and brick wall or by post and rail

fencing with gravel or grass surfacing and a width of between 1.1 – 1.6 metres (see Appendix 2). Bridleway No. 24 has some degree of surface dressing and has surfaced width of approximately 2.5-3.5 metres with hedges to either side at its southern end, becoming enclosed by post and rail fencing for its northern half. Whereas the footpath only permits pedestrian use, the bridleway provides equestrian and cycle access to Maulden Woods as well as vehicular access to a small number of properties but appears to not be intensively trafficked.

- B.6. There is a significant difference between need and desire. A way is needed for use if there is no suitable or accessible alternative. A way may be desired in preference to an alternative route if it is prettier, shorter or better surfaced for example. This is addressed in Section 118(2) of the 1980 Act which requires that the Council be satisfied that the extinguishment is expedient having regard to the extent that the path would be used apart from the order.
- B.7. Hodgson J. in *R. v The Lake District Special Planning Board ex parte Bernstein* (1982) commented that “need” could be distinguished into that “...of the stranger visiting the area for the first time: it would not matter which path was to be closed because his only requirement would be a clearly indicated track...”, and “...the local person familiar with the local rights of way: such a person would wish to use the familiar path...”.
- B.8. In determining whether an extinguishment order should be confirmed, the Inspector appointed by the Secretary of State for the Environment, Food and Rural Affairs has to have regard to the extent that the path would be used “apart from the order”. The potential future use of the Footpath No. 28 does not preclude the confirmation of an extinguishment order however.
- B.9. This was addressed by Philips J. in the *Barry Stewart* case who stated the following “...One can see this under section 110 (2) : “ The [Secretary of State] shall not confirm ... unless he is satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him that the path would ... be likely to be used by the public ...” — so that confirmation is not necessarily ruled out by the fact that the path is, or is going to be, used to something more than a minimal extent, whereas the test that the Secretary of State has applied, which is that he shall not confirm unless he is satisfied that the path is not needed for public use, precludes confirmation if there is any more than minimal public need: “ need,” as distinct from “ use.” There are cases, however, and to some extent this case is one of them, where the test adopted by the Secretary of State would favour the would-be stopper-up, because it would mean that he could confirm, although the path was likely to be used, if he thought that, despite the fact that it was likely to be used, it was not needed— because, for example, there was another path.” Consequently, it is possible for the Secretary of State to confirm an extinguishment order if he considers that, despite the fact that a path was likely to be used, it was not needed if there was another path that could be used instead.
- B.10. The map overleaf sets out the hinterland to Maulden Bridleway No. 24 and Footpath No. 28. The four recent developments are shaded grey and identified by their principle road name. The developments contain in total about 80 dwellings. Of the four, Pennyfathers Close, The Beeches, and Trilley Fields have all been built since the former District Council made its

extinguishment orders. As can be seen from the map, there is very little development to the west of the footpath. Consequently most pedestrian traffic will approach from the east.



Locations of nearby estates likely to use Footpath No. 28.

- B.11. The Council recognises that Bridleway No. 24 could potentially be utilised as an alternative route – and may already be used in preference by walkers approaching from the west. However, the entrance to the Headley Way estate is some 95 metres to the east of Bridleway No. 28. Residents of this estate, and of the adjoining Pennyfathers Close and Beeches developments and the nearby Trilley Fields estate are all likely to use Footpath No. 28 as the primary access route to Maulden Woods and, in doing so, would benefit from both its proximity and vehicle-free nature. However, in accordance with the cases of Bernstein and Barry Stewart, the Council considers that members of the public from these developments are unlikely to be significantly disadvantaged by having to use the nearby Bridleway No. 24.
- B.12. Given the evidence that Footpath No. 28 is used to a significant extent and would undoubtedly continue to be used, the Council has to consider, despite the fact that the bridleway would not significantly disadvantage the aforementioned residents, whether it is expedient for an order to be made to extinguish the footpath. There is a strong presumption in favour of not doing so based on the decisions of the two independent Inspectors who heard the 1995 order made under the Town and Country Planning Act 1990 and the 2000 order made under the 1980 Act. In both cases the Inspectors, in determining not to confirm the extinguishment of Footpath No. 28, concluded that Bridleway No. 24 was not a suitable alternative to the footpath. To my knowledge there have not been any significant alterations to the bridleway to

make these conclusions redundant or to warrant the Council considering it expedient to make a new order under the same legislation for the same outcome.

- B.13. Section 26(3A) of the 1980 Act imposes a duty on Central Bedfordshire Council to have regard to any material provisions within a Rights of Way Improvement Plan when determining whether or not to confirm an unopposed creation, diversion or extinguishment order. The proposals do not conflict with the aims of the Council's Outdoor Access Improvement Plan.
- B.14. 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. The effect of the extinguishment would be to extinguish a fenced-off field edge footpath thus potentially allowing the fence to be removed and a larger area of land to be made available for grazing – should Mr. Bowers so wish.

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### Appendix C

## Photographs of Maulden Footpath No. 28 and Bridleway No. 24

### Maulden Footpath No. 28



Point A - The junction of Footpath No. 28 with Clophill Road looking north.



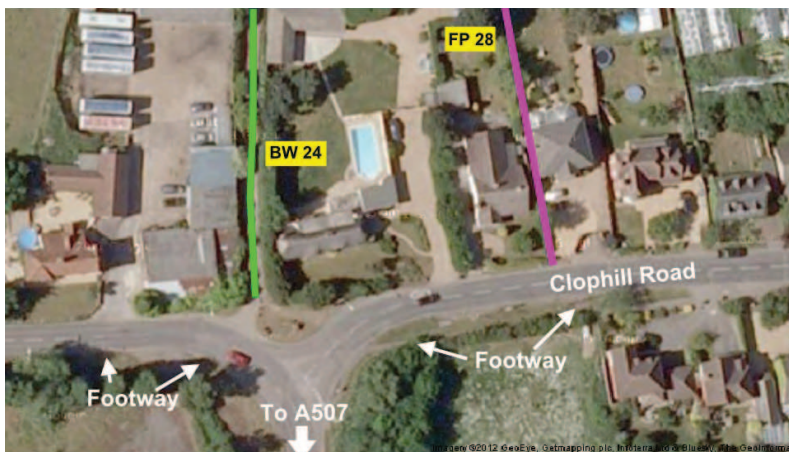
Looking south along Footpath No. 28 towards point A.



Looking south along Footpath No. 28 towards point A.



Point B - Looking south along Footpath No. 28 towards the rear of Nos. 123 and 123b Clophill Road.



Aerial photograph showing 3-way road junction, footpath, bridleway, and locations of footways.

**Maulden Bridleway No. 24**



Point A – Looking west along Clophill Road towards the road junction. NB new warning sign evident.



Looking west along Clophill Road towards the road junction and point C (behind bins and chevrons).



Point C – Looking north from Clophill Road along Bridleway No. 24.



Looking north along Bridleway No. 24.



Looking north along Bridleway No. 24 towards point B.





A.J. Bowers  
Ein-Ty  
123b Clophill Rd.,  
Maulden

3<sup>rd</sup>. August 2010

Tel. [REDACTED]

E.mail: [REDACTED]

Mr. D.Leverington  
Right of Way Team Leader  
Central Bedfordshire Council  
Priory House, Monks Walk  
Chicksands  
Shefford  
Beds.  
SG17 5TQ

Ref. Footpath28 Maulden

Dear Mr. Leverington,

With reference to our telephone conversation a few weeks ago, regarding erecting kissing gates at either end of the path. People are now using the path to ride bicycles, I therefore request that you erect the gates, which you suggested, as soon as possible to deter people from riding bicycles down the path.

My next door neighbour, Mrs. McParlin is particularly distressed at people riding along the path and looking over into her property.

I would be grateful if you could inform me of what and when you propose to do anything.

Yours sincerely,

[REDACTED]  
Alan Bowers.

Unaffordable unless  
damage is being caused  
to surface of path.

Cycling is trespass against  
the landowner - nothing to do  
with us.

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The proposed stopping up of Maulden Footpath No. 28 by a court order.  
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15/01/13 17:17

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**Meeting:** Development Management Committee  
**Date:** 13 February 2013  
**Subject:** The consideration of an application to seek a Magistrates' Court order to stop up Maulden Footpath No. 28 under Section 116 of the Highways Act 1980  
**Report of:** Head of Service for Transport Strategy and Countryside Services  
**Summary:** The report examines the application to seek the stopping up of Maulden Footpath No. 28 by Magistrates' Court order. Members are asked to come to a view on whether the application should be approved or refused in light of evidence of recent use, the legislation contained within the Highways Act 1980, and the Council's adopted policy on such applications.

---

**Advising Officer:** Trevor Saunders, Assistant Director of Planning  
**Contact Officer:** Adam Maciejewski – Senior Definitive Map Officer - Countryside Access Team - 0300 300 6530  
**Public/Exempt:** Public  
**Wards Affected:** Ampthill ward  
**Function of:** Council

## CORPORATE IMPLICATIONS

### Council Priorities:

This proposal meets the following Council priorities:

- Creating safer communities – by providing a public right of way with a safe crossing point on Clophill Road
- Promoting healthier lifestyles by encouraging use of the countryside by providing easy access to the countryside from local residential developments.

### Financial:

1. Section 117 of the Highways Act 1980 ("the Act") empowers anybody to request that the Council makes an application to the Magistrates' Court for a court order to stop up or divert a public right of way. The application to court under Section 116 of the Act is a discretionary function of the Council and consequently the Council may charge any fee it deems reasonable. The fee that an applicant would pay includes: Council administration and officer time, the cost of advertising the making of an application, any legal and court costs, and the costs of any works related to the court order. Where the Council does not make an application, any administration costs already incurred are borne by the authority. Should the Magistrates' Court not make a court order, the applicant



The proposed stopping up of Maulden Footpath No. 28 by a court order.  
Last saved by Adam Maciejewski  
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will still be liable for all administration, advertising, legal, and court costs incurred by the Council. Costs for the application are envisaged to total approximately £3000 exclusive of any works.

**Legal:**

2. The Council can use Section 116 of the Act to apply to the Magistrates' Court for a court order stopping up a public right of way. Defra's Rights of Way Circular 1/09 and the Council's own Applications Policy relating to public rights of way both consider that non-vehicular rights of way should be extinguished by means of an application for a public path extinguishment order – rather than by an application to the Magistrates' Court. Furthermore, the Applications Policy stipulates that a request that the Council applies to the Magistrates' Court for an order to stop up a footpath or bridleway will only be approved if it resolves an acknowledged error or network anomaly, results in a public benefit, or meets the needs of network management or aims of the Council's Outdoor access Improvement Plan. The proposal to stop up Footpath No. 28 would not meet any of these criteria.
3. Independent legal advice obtained by the Council suggests that the Magistrates' Court could not refuse to consider an application made by the Council solely on the basis of the earlier Inspectors' decisions to not confirm the previous two extinguishment orders. However, it is likely that the court, in determining the application, would have regard to these decisions in coming to a view on whether the footpath was unnecessary, and whether a suitable alternative route existed. A decision by the Magistrates' Court to consider the application would not preclude its decision to not make a stopping up order.
4. An application for a stopping up order can only be made if the local parish council gives written consent to the application and Maulden Parish Council has indicated it would do so. A stopping up order would only be made if two Magistrates consider that the right of way is unnecessary for public use and that all of the statutory requirements have been complied with. These requirements include the submission of a written consent by the local parish council and the advertising of the notice of the making of an application to the court.

**Risk Management:**

5. The existence of Maulden Footpath No. 28 has been disputed by the applicant, who is also the owner of the majority of the land over which the footpath runs, for 20 years. The actions of the former County Council and Mid-Beds District Council, in dealing with this footpath, have been the subject of at least seven complaints to the Local Government Ombudsman ("LGO") by not only the supporters of any attempt to extinguish the footpath, but also by those seeking to retain it. None of these complaints of maladministration by either Council were upheld.

6. Mr. Bowers' application to stop up Maulden Footpath No. 28 has the support of the Police<sup>1</sup>, Maulden Parish Council, the local ward members, and local MP, Mrs. Nadine Dorries. The application does not have the support of local and national user-groups however, which treat this long-running case as a *cause célèbre*. Central Bedfordshire Council, as the Highway Authority, has a duty to act impartially and to determine the application based on the legislative tests of the Act. In doing so it can consider local views as to whether the footpath is needed or necessary.
7. The long-standing dispute between the various parties has so far resulted in five legal orders, three public inquiries, and three prosecutions and a degree of press coverage. Consequently, the Council's decision and any further decision of the Magistrates' Court is likely to receive significant press interest. In summary, the key risks to the Council are:
- Reputational risks,
  - Risk of failure to discharge statutory responsibilities and legislative issues,
  - Risk of further challenge/appeal/legal action/judicial review, or risk of legal action being taken against officers of the former County Council or Central Bedfordshire Council.

**Staffing (including Trades Unions):**

8. Not Applicable.

**Equalities/Human Rights:**

9. Mr. Bowers has requested that the Council applies to the Magistrates' Court for an order stopping up Footpath No. 28 which crosses his property between Clophill Road and Bridleway No. 24. The footpath was originally added to the Definitive Map and Statement, which is the Council's legal record of such rights, in 1997 following a public inquiry into a 1995 Definitive Map Modification Order. This order formally recognised the existence of a previously dedicated public right. The footpath has had its legal line subsequently changed twice in response to building works on the land. The footpath passes along the eastern side of the boundary between Mr. Bowers and his elderly neighbour, Mrs. McParlin. Whilst most of the fence and hedge between Mr. Bowers and Mrs. McParlin is at least 1.8 metres high, there is a short section in front of several of Mrs. McParlin's bungalow's windows which is lower allowing walkers to look into her kitchen and bedroom.
10. Article 8 of the Human Rights Act 1998 relates to the right to respect for private and family life. Section 2 of Article 8 of the Act states that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of (amongst other things) the protection of the rights and freedoms of others. Whilst the stopping up of the footpath would improve the privacy of

<sup>1</sup> The Police's national Secured by Design guidelines state that "public footpaths should not... provide access to gardens, rear yards, or dwellings as these have been proven to generate crime..." and so, by default, the Police support any extinguishment of a public right of way through domestic property.

The proposed stopping up of Maulden Footpath No. 28 by a court order.  
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Mrs. McParlin and possibly improve the security of both her and Mr. Bowers, these improvements must be weighed against the loss of a public right.

11. The 1995 Definitive Map Modification Order which added Footpath No. 28 to the Definitive Map and Statement would have been exempted from the restrictions of the later Human Rights Act as the decision to make the order was made on evidence of the pre-existence of public rights. The decision by the Development Management Committee not to make an application to the Magistrates' Court for a stopping up order would be in accordance with the Council's Rights of Way Applications policy as well as with the Council's duty to protect and assert the public's right to use this right of way.

**Public Health**

12. Not applicable.

**Community Safety:**

13. The report proposes that Maulden Footpath No. 28 be retained from Clophill Road to its junction with Bridleway No. 24. Use of the footpath by local residents removes the requirement for pedestrians to use a bridleway which has occasional equestrian, cycle, and vehicular traffic. Footpath No. 28 has a junction with Clophill Road, Maulden. The road is straight with a footway on the opposite side. Were the footpath to be deleted, walkers would either have to walk in the road for some 43 metres between points A -C or to walk along the footway on the southern side of Clophill Road to cross at the nearby three-way road junction. The Council's Senior Traffic and Safety Engineer has appraised both the current and alternative routes on Clophill Road and considers both to have similar low levels of risk – however, crossing away from the road junction would help to minimise any inherent risk. A road-side sign has also been erected to draw attention to the footpath. Walkers using Footpath No. 28 are constrained within a narrow path between 1.1 and 1.6 metres wide and so would have little space to avoid unauthorised cyclists or an aggressive dog. A gate has been installed at the request of the land owner, Mr. Bowers, to deter cycle use of the footpath. By contrast, Bridleway No. 24 is wider with a surfaced width of between 2.5 and 3.5 metres (measured verge-verge) but pedestrian use is shared with cyclists, equestrians, and motor vehicles. No incidents have been reported on either path.

**Sustainability:**

14. Not Applicable.

**Procurement:**

15. Not applicable.

The proposed stopping up of Maulden Footpath No. 28 by a court order.  
Last saved by Adam Maciejewski  
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**RECOMMENDATION(S):**

**The Committee is asked to:**

1. **Refuse the application by Mr. Alan Bowers for the Council to make an application under Section 116 of the Highways Act 1980 to the Magistrates' Court for a stopping up order for Maulden Footpath No. 28 between points A-B, on the grounds that:**
  - a. **The application does not meet any of the criteria in the Council's Rights of Way Applications Policy for making an application to the Magistrates' Court.**
  - b. **There is evidence demonstrating that members of the public use the footpath – which provides a pedestrian-only route from the new developments to the south of Clophill Road to the bridleway linking into Maulden Woods and consequently it cannot be considered to be unnecessary.**
  - c. **The land occupied by the footpath and the alternative route has not undergone significant change to enable the Council to disregard the earlier decisions by independent Inspectors who concluded that the bridleway was not a suitable alternative to the footpath.**

**Introduction**

16. In 1989 the applicant, Mr. Alan Bowers purchased a plot of land off Clophill Road, Maulden. His fencing of the land and locking of the access gate resulted in a neighbour applying to the former County Council for the Definitive Map and Statement to be modified by the addition of public footpath.
17. In September 1995 the former County Council made a Definitive Map Modification Order to add Maulden Footpath No. 28 to the Definitive Map and Statement, based upon evidence of public use of the route. Details of the evidence and actions of the former County Council are given in a separate report within the agenda which addresses Mr. Bowers' parallel application to delete the footpath using the Wildlife and Countryside Act 1981. By late 1995, Mr. Bowers had already applied for and received planning consent to build his new house, No.123b Clophill Road, over the line of the claimed footpath. Mr. Bowers objected to the modification order which was subsequently heard by an independent Inspector using a process based on exchanges of correspondence. The 1995 order was confirmed in 1997 – by which time Mr. Bowers had almost finished building his new house.
18. Mr. Bowers was advised by the former County Council to apply to the former Mid-Beds District Council for an extinguishment order. In the end, the former District Council made two extinguishment orders, first under the Town and Country Planning Act 1990 ("the TCP Act") in 1995, and then under the Highways Act in 2000. Both orders to extinguish Footpath No. 28 were objected to by a small number of local residents and by user-groups resulting in two public inquiries. The former County Council appeared at the first (TCP

The proposed stopping up of Maulden Footpath No. 28 by a court order.

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Act) inquiry as an interested party and asked that the extinguishment order be modified so that a footpath could be retained within Mr. Bowers' property boundaries. Neither order was ultimately confirmed by the independent Inspectors appointed by the Secretary of State for the reasons discussed at Section 38 below.

19. Following legal advice, the former County Council made a public path diversion order under Section 119 of the Act in July 2004 to divert Footpath No. 28 out of Mr. Bowers' new house onto a route down the western side of his property. Mr. Bowers objected to the order. The Council received 180 other objections. 175 of the responses were copies of a typed proforma adding no individual perspective. Upon contacting these objectors, 16 either claimed they were fraudulent or withdrew their objection when the purpose of the diversion order was explained to them. Contacting objectors is part of the process of preparing an order for forwarding to the Secretary of State for confirmation. The Council has a responsibility to determine the validity and authenticity of objections and to try and seek their withdrawal if possible in accordance with the Defra Rights of Way Circular 1/09 Para. 10.6 "...Once an order has been advertised, local authorities are expected to make every effort to resolve objections and to secure their withdrawal. ...". Consequently all objectors, including the Parish Council, were written to in accordance with this guidance. Overall, 164 people maintained their objections; six of whom were called as witnesses against the 2004 Diversion Order at the ensuing public inquiry. The 2004 Diversion Order was subsequently confirmed in June 2006.
20. In September 2004 Mr. Bowers submitted an application to extinguish Footpath No. 28 either under Section 118 of the Act or at the Magistrates' Court under Section 116. The former County Council had decided that the applications should not be processed until the (as then) current 2004 public path diversion order was completed and the route was opened up and made available for public use. The footpath was finally opened up and made available in 2009 following the prosecution of Mr. Bowers' in the Magistrates' Court; this was begun by the former County Council and concluded by its successor Central Bedfordshire Council.
21. Following the removal of a brick storage building (known variously as "the Hurdle Barn" or "Pound") next to the footpath in 2008, the line of the 2004 diversion order was modified by a variation order made and confirmed in 2010.
22. The current route of Maulden Footpath No. 28 starts at the south-western corner of 123b Clophill Road at the roadside and proceeds due north along an unsurfaced strip approximately 1.1 - 1.6 metres wide (see photographs at Appendix C). The footpath is fenced-off to either side with (generally) 6 feet high panel fencing where it passes between the front gardens, houses, and main rear gardens of Nos. 123 and 123b. To the north of the more formal rear gardens of Nos. 123 and 123b the land is set to paddock. Here the footpath continues due North with a grassed surface between post and rail fencing until a gate where the footpath then crosses the edge of a small parking area to its junction with Bridleway No. 24 at point B (see Appendix A). This gate was installed after



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repeated requests<sup>2</sup> by Mr. Bowers for a structure to deter cyclists from using the path. Mr. Bowers subsequently modified his request so that the structure would be sited to help prevent children running into Clophill Road. However, The Council's Safety Officer did not identify the necessity and, as the requested roadside location proved unsuitable, the gate was eventually installed at the junction with the bridleway to fulfil the original purpose.

23. The level of public use on Footpath No. 28 has been monitored electronically between September 2010 and September 2011 as part of the condition of processing Mr. Bowers' application. Despite technical problems with the equipment which interrupted and curtailed the monitoring period, the data shows that the footpath was used on average 9.8 times per day over a 363 day period, see B.12 - B.14 at Appendix B.
24. Following Mr. Bowers' two unsuccessful attempts to have Footpath No. 28 extinguished, officers at the former County Council suggested that he apply to try and get the footpath deleted by means of a Definitive Map modification order; the grounds of the application being that the original 1996 modification order failed to consider evidence showing the footpath did not exist. Mr. Bowers has also applied to have Footpath No. 28 extinguished on the ground that it is not needed for public use. These applications are the subject of two other agenda items put to this sitting of the Development Management Committee.

### **Legal and policy considerations**

25. Section 117 of the Act enables a member of the public to request that the Council, as Highway Authority, makes an application to the Magistrates' Court under Section 116 of that Act for a court order to stop up a highway. The Council can only apply to the Magistrates' Court if the local parish council gives written support to the application. Maulden Parish Council has already indicated that it supports the proposed stopping up. Two Magistrates must consider that the highway is unnecessary for public use for a stopping up order to be made and that all of the statutory requirements have been complied with. These requirements include the submission of written consent by the local parish council and the advertising of the notice of making an application to the court.
26. Whilst it is ultimately the decision of the Magistrates' Court as to whether the footpath is unnecessary for public use, the Development Management Committee should have regard to this legislative test when determining whether an application to the Magistrates' Court for an order should be made.
27. Central Bedfordshire Council's adopted Rights of Way Applications Policy ("the Applications Policy") specifies that it is the decision of the Rights of Way Team Leader whether to take a case to the Magistrates' Court. However, given the level of local and national interest in this case, it is appropriate for the Development Management Committee, under the Central Bedfordshire Council's Constitution (E2 at Annex C), to determine this particular

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<sup>2</sup> A copy of Mr. Bowers' initial letter is included at Appendix D of the accompanying agenda item relating to his application to have Footpath No. 28 extinguished under S.118 of the Highways Act 1980.



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application<sup>3</sup>.

28. The requirements of the Applications Policy for an application under Section 117 of the Act to the Council requesting that it apply to the Magistrates' Court for a stopping up order are given in full at Appendix B; the main criteria are summarised below.
29. An application under Section 117 of the Act should be refused if an application for a similar result has been refused by the Council, abandoned or an order not confirmed within the last five years – unless there have been significant changes to permit the making of a further Council-generated application to the Magistrates' Court. No such application has been determined within the last five years; Mr. Bowers' parallel application to extinguish the footpath is not affected by this requirement of the Applications Policy, nor does it prevent the Committee approving his Magistrates' Court application if the other criteria are met.
30. The Applications Policy has a presumption that an application to stop up a footpath, bridleway, or restricted byway will be dealt with by means of an application under Section 118 of the Highways Act – rather than by application to the Magistrates' Court. This presumption reflects Government guidance<sup>4</sup>. For this presumption to be overturned, and the application approved, the application must meet one or more of the following criteria:
  - a. Where the proposal would result in a recreational benefit to the public;
  - b. Where the proposal would resolve a Definitive Map anomaly;
  - c. Where the proposal would rectify an acknowledged error of this or another local authority;
  - d. Where the proposal is in the interests of the efficient management of the rights of way network;
  - e. Where the proposal would contribute to the implementation of the Outdoor Access Improvement Plan;
31. Addressing the above criteria, it is clear that the stopping up of Footpath No. 28 would not provide a recreational benefit to the public, nor would it resolve a Definitive Map anomaly in the local public rights of way network. Whilst the sections of footpath and bridleway from Clophill Road can be considered parallel routes which meet at the same point (Point B at Appendix A), they have different statuses and consequently are not considered to be duplicates or anomalous.
32. Neither the former County Council nor Central Bedfordshire Council has made an error (legal or administrative) which would meet criterion (c) above. The parallel agenda item relating to Mr. Bowers' application for a Definitive Map Modification Order to delete the footpath reaffirms the findings of both the former County Council and the independent Inspector appointed by the Secretary of State for the Environment that Footpath No. 28 should be

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<sup>3</sup> The determination of Mr. Bowers' Section 117 application should not set a precedent for the determination of future applications elsewhere in the Authority's area.

<sup>4</sup> Department for the Environment, Food and Rural Affairs Rights of Way Circular 1/09

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recorded on the Definitive Map. Consequently there is no acknowledged error in the Definitive Map and Statement – although Mr. Bowers disputes this finding. However, if Members consider that the footpath is recorded incorrectly, the appropriate course of action is to seek the correction of the map through the making of a Definitive Map modification order to delete the footpath.

33. The Countryside Access Team manages the public rights of way network and considers that Footpath No. 28 is a useful part of its network and should be retained as it provides a pedestrian only alternative to the nearby bridleway. The Council's Outdoor Access Improvement Plan is currently being re-written. Until the new plan is adopted the old plan is still in force. The stopping up of the footpath does not contribute to the implementation of any identified action within either the old plan or the new one.
34. It is my view, that Mr. Bowers' application does not meet any of the above criteria for permitting the Council to make an application to the Magistrates' Court. The case of Ashbrook (2002) related to the failure of Essex County Council to take material considerations of its own policies into account when determining whether to make an order (see Sections B.7-B.9 at Appendix B). Applying this case to Mr. Bowers' application requires Members of the Committee to evaluate all of the criteria within Section 7 of the Applications Policy before coming to a view on whether the Council can apply to the Magistrates' Court for a stopping up order. As mentioned in Sections 26 above and 36 below, the Committee also needs to have regard to whether the application meets the legislative test of Section 116 – that Footpath No. 28 is unnecessary for public use.
35. Mr. Tebbutt owns the northern-most section of the footpath and is indifferent to whether the path is stopped up or retained. He would most likely consent to the stopping up if asked to do so. Mr. Bowers' application has received written consent from Mrs. McParlin whose property abuts the footpath and from Maulden Parish Council which has long supported the extinguishment of the footpath. The application must also be approved by the Council.
36. The Council has sought independent legal advice in respect of Mr. Bowers' application under Section 117 of the Act. The advice indicates that there is no duty imposed on the Council to apply to the Magistrates' Court on Mr. Bowers' behalf and that, in considering whether to apply to the Magistrates' Court, the Council needs to be satisfied that Footpath No. 28 is firstly unnecessary, and secondly, that it is desirable to stop it up. The case of Ramblers Association v. Kent (1990) (see B.11 at Appendix B) held that the question of whether a path was unnecessary had to be considered purely in the interests of those members of the public entitled to use it and without regard to the interests of the landowner. In that case Woolf L.J. stated further that the Magistrates should hold the path unnecessary for the sort of purposes which they would reasonably expect the public to use the path. Woolf L.J. went on to state that where there was evidence of public use it would be difficult for Magistrates to come to a conclusion that a path was unnecessary unless they were going to be provided with a reasonably suitable alternative.

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37. Footpath No. 28 has been electronically monitored for a total of 363 days between 10-9-2010 and 20-9-2011. During this period the average level of use was 9.8 trigger events per day (a total of 3540). A trigger event is when a person passes along the path past the installed counter. The counter cannot distinguish between members of the public using the right of way and Mr. Bowers or his guests walking along the path. The electronic monitoring indicates that Footpath No. 28 is used to a significant degree. Consequently it would be difficult to argue in court that that the footpath is unnecessary for public use.
38. The extinguishment of Footpath No. 28 has already been addressed twice at public inquiry. The conclusions of the first Inspector in not confirming the 1995 order made under the TCP Act were: the use of Bridleway No. 24 as an alternative route to the footpath was not an acceptable alternative to retaining the footpath, and that the leaving of a dead-end path had no value (the extinguishment only affected the southern half of the footpath). The conclusions of the second Inspector in not confirming the 2000 order made under the Highways Act were essentially three-fold:
  - The fact the footpath was obstructed by the newly built house was not a consideration as the house could be removed.
  - The representations made at the inquiry indicated that "...the footpath would be likely to be used, and to a significant extent, by the public..." if not obstructed.
  - That the nearby Bridleway No. 24 was not a suitable alternative route as it could pose problems of conflict of shared use, and had been subject to flash flooding.
39. The Committee should have regard to the Inspectors' decisions when considering whether the footpath is unnecessary and, if it is unnecessary, whether there are any other reasons why a stopping up order should not be made. In considering whether Footpath No. 28. is unnecessary, Committee Members should have regard to the fact it is used on average 9.8 times every day, see Appendix B. Members should also take a view on whether Bridleway No. 24 is a suitable, or reasonably suitable alternative to the footpath (see below).
40. Independent legal advice for the Council suggests that the Magistrates' Court could not refuse to consider an application made by the Council solely on the basis of the previous Inspectors' decisions. However, it is likely that the Court, in determining the application, would have regard to these decisions in coming to a view on whether the footpath was unnecessary, and whether a suitable alternative route existed.

### **Alternative routes**

41. The issue of the public being able to use Bridleway No. 24 as an alternative to Footpath No. 28 has been raised at both previous public inquiries held for the previous two extinguishment orders made by the former Mid-Beds District Council and is something that would likely be raised at the Magistrates' Court. The independent Inspectors appointed by the Secretary of State for both

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orders decided not to confirm the extinguishment orders, citing that the bridleway was not a suitable alternative route to the footpath as being one reason for not doing so.

42. Bridleway No. 24 starts at the three-way junction of Clophill Road with the A507 spur at point C at Appendix A (see also photographs at Appendix C). The bridleway, which has some degree of surface dressing, has a surfaced width of approximately 2.5 - 3.5 metres wide with hedges to either side at its southern end, becoming enclosed by post and rail fencing for its northern half. A ditch runs along the western edge of the bridleway. This has been piped in three locations along the southern half of the bridleway. The piped areas tend to be overgrown and currently have spoil from ditch clearance dumped on them and are not currently suitable as pedestrian refuges. Approximately 73 metres north of point C a gate in the bridleway and associated turning area widens the bridleway at this point to 6.5 metres. The bridleway provides vehicular access to a small number of properties but appears to not be intensively trafficked.
43. Walkers accessing Maulden Woods from the west would probably approach using the footway on the south side of Clophill Road (there is no northern footway). They would then have the opportunity of crossing Clophill Road at the corner of the junction at the dropped kerb to access the tarmaced entrance to the bridleway. Walkers wishing to use the footpath in preference to the bridleway would probably cross the A507 spur on the corner at the dropped kerb and then continue along the southern footway of Clophill Road until opposite Footpath No. 28 before crossing to use the footpath. Any walkers approaching from the A507 would also probably use the bridleway in preference due to its proximity.
44. Walkers accessing Maulden Woods from the east (including the Headley Way estate, the adjoining Pennyfathers Close, the Beeches, and the newer Trilley Fields developments) would probably approach using the footway on the south side of Clophill Road until opposite Footpath No. 28 before crossing on this straight section of road to use the footpath. To access Bridleway No. 24 walkers would need to either cross to the north side of Clophill Road and walk into oncoming traffic for about 35 metres until reaching the grassed area adjacent to Bridleway No. 24 or, more likely, carry on walking westwards along the southern footway of Clophill Road to cross the road at the dropped kerb approximately 10 metres before the junction with the A507 spur and then to walk over the grassed area adjacent to the bridleway. Additionally, only pedestrians are permitted on the footpath whereas walkers may encounter cyclists, horse riders, and motor vehicles on the bridleway.
45. Mr. Bowers has argued that use of Footpath No. 28 by users of the new estates should be disregarded as they did not use the paths during the time of its deemed dedication (1936-1956) and that use of a public right of way is for the public at large – not just an estate. However, the footpath is a public right of way and so the effect of it being stopped up on the nearby new estates is material consideration as these estates (and the surrounding houses) are where the public most likely to use the footpath would live.

46. The Council's Senior Traffic and Safety Engineer, Mr. Paul Salmon, has

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looked at the approaches to the junctions of the bridleway and footpath with Clophill Road and at the utilisation of the southern footway to the dropped kerb near the three-way road junction. He considers that the current and alternative routes along/across Clophill Road have a similar low level of risk. Following concerns raised by Mr. Bowers as to the safety of pedestrians exiting Footpath No. 28 onto the road, Mr. Salmon also looked at this aspect. Following a site visit, he concluded "...[the footpath has] at least a metre of footpath which is clear from obstruction before reaching Clophill Road, thus allowing clear visibility of traffic in both directions.....it is felt that this footpath does not pose a significant risk to someone exiting straight in to the highway without being aware of the road itself... ..To mitigate the risk of anyone inadvertently running directly on to the highway a hazard warning sign may be installed on the existing post at the entrance/exit of the [footpath] [This has been done]. In addition and to support this, pedestrian warning signs may be erected on Clophill Road to alert motorists that Non Motorised Users may be entering/exiting the footpath. It is not felt necessary that at this stage any type of barrier be installed on the footpath...". However, at Mr. Bowers' insistence, and after writing repeatedly to Central Bedfordshire Council, a gate was installed on the footpath principally to deter/prevent cyclists from using it. However, this was eventually installed close to the junction of the footpath with Bridleway No. 24 owing to problems digging the footings of the gate at the roadside.

47. Bridleway No. 24 could be utilised as an alternative route – and may already be used in preference by walkers approaching from the west. However, residents of the three developments to the east and south side of Clophill Road are probably more likely to use Footpath No. 28 as the primary access route to Maulden Woods and, in doing so, benefit from both its proximity and vehicle-free character. It is unlikely that members of the public from these developments would be significantly disadvantaged by having to use the nearby Bridleway No. 24 if Footpath No. 28 was stopped up.
48. Electronic monitoring has shown that Footpath No. 28 is used to a significant extent and is consequently not considered unnecessary by those users. The Council has to weigh up competing factors and reach a decision in the light of this evidence (accepting the likelihood that use of the bridleway would not significantly disadvantage potential users), whether it is expedient for an application to be made to the Magistrates' Court for an order stopping up the footpath. In my view the impact of stopping up the footpath would not be significantly detrimental, however there is a strong presumption in favour of not doing so based on the Council's own policies and the decisions of the two independent Inspectors who heard the 1995 TCP Act extinguishment order and the 2000 Highways Act extinguishment order. In both cases the Inspectors, in determining not to confirm the extinguishment of Footpath No. 28, concluded that Bridleway No. 24 was not a suitable alternative to the footpath.
49. The Council has not been made aware of any significant alterations to the bridleway to make the above conclusions redundant, or to warrant the Council considering it expedient to make an application to the Magistrates' Court for a court order stopping up the footpath – especially now that monitoring has clearly shown the footpath is used. Mr. Bowers has stated that works have



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improved the bridleway by piping the ditch and creating pedestrian refuges. The Council has no record of these works and whilst it is evident that three sections of the ditch alongside the southern half of the bridleway have been piped, these areas are covered by vegetation and spoil from recent ditch clearance works and consequently do not currently form suitable pedestrian refuges. Similar works were proposed in October 2002 but these were never carried out according to Council records. Some minor works to surfacing and to prevent flooding have also been carried out opposite and to the east of No. 125a Clophill Road near Point B at Appendix A. Furthermore, since the 2000 extinguishment order was made, the new Pennyfathers, Beeches, and Trilley Fields developments which all lie to the east of Footpath No. 28 have provided a new local source of users of the footpath requiring access to Maulden Woods. This is especially so as the planning constraints for the Trilley Fields development prohibited a direct link from the estate into the adjoining woods.

### Consultations

50. In January 2012, Central Bedfordshire Council simultaneously consulted on all three of Mr. Bowers' applications. Several of the responses received gave a broad response rather than concentrating on those aspects relevant to each application. In such cases, those aspects of a consultees' response which reflect their general views are given below. A further consultation of the relevant portfolio holders, local Members, Committee Chairman, and Assistant Director – Planning, and Maulden Parish Council was carried out in late January 2012.
51. Mr. Bowers, the applicant, has commented on draft versions of this report. Where relevant, Mr. Bowers' comments have been included in the body of this report and its appendices.
52. Mr. & Mrs. Tebbutt of 125a Clophill Road own a small parking area on the southern side of Bridleway No. 24 which is crossed by the northern-most 10 metres of Footpath No. 28. They were consulted on the proposed extinguishment in November 2012. Mr. Tebbutt responded on 16-11-2012 stating "...I have no real strong view in favour of the footpath remaining as it was not in existence when we moved to this address. Very few people use the footpath as in the summer it is over grown with nettles - my two boys generally end up walking down the [bridleway] as do any walkers who are not aware of its existence or they are wearing shorts. In my view (taking aside local views) - the footpath is un maintained and pointless... ..don't get me wrong I will be glad to see the end of the footpath...". Mr. Tebbutt added to his comments on 19-11-2012, stating:"...Your counter would be correct in saying my kids use it for school runs but they are perfectly capable of walking down the [bridleway] if the nettles are out of hand or if the path is extinguished. I really have no view either way on the up keep of it or indeed its existence or non existence as the case may be - my comments were merely an observation that it is really a couple of walkers and my kids using it which really deems it pointless . I hope this information is of some help in bringing this to a conclusion - a conclusion which really does not effect us at 125A which ever way it goes...".



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53. In response, whilst Mr. Tebbutt clearly is not concerned about the fate of the footpath and considers that the connecting bridleway is an acceptable alternative he has stated that his children use the path as part of their journey to school.
54. Mrs. Sylvia McParlin of No. 123 Clophill Road, whose property abuts Footpath No. 28, was consulted and wrote a letter dated 14-2-2012 in support of the extinguishment, stating "...The access to the path is on a main road whereby you step straight out onto the main road, as no path exists on that side. Cars stop over the entrance thus blocking the view of oncoming traffic... A perfectly good bridleway not 50 mtrs [sic] with good access has always been used in the past...".
55. Mr. & Mrs. Fenton of No. 121 Clophill Road, whose property abuts the northern half of Footpath No. 28 has been consulted but has not yet responded.
56. Maulden Parish Council was consulted and responded on 4-2-2012 stating that it "...feels very strongly that this footpath should be extinguished on the grounds that it is unnecessary and supports Mr. Bowers and your Council in an application to the Magistrates' Court for an extinguishment order...".
57. The three local ward members were consulted. Cllr. Blair responded stating "...I have to stand by Mr. Bowers' right to have made this application under s.116...". In commenting on the draft Applications Policy Cllr. Blair stated with regard to Mr. Bowers "...it does appear to make common sense for all concerned, for resort to the Magistrates Court under s116, only to be contemplated if procedures under Sections 118 and 119 have been exhausted... ...I must assume the proposed liability of the applicant for 'all costs including court costs irrespective of outcome' to be a reflection of this Guidance, rather than just proposed CBC policy. Given this, the further financial burden on Mr. Bowers could be substantial, and therefore to be avoided if at all possible. However, I would say that if the application is to 'rectify an acknowledged error of this or another local authority', then costs being borne by the Applicant – unless it is the Authority itself – would hardly seem justifiable... ... in view of the history of the case, it should be determined by the Development Management Committee, rather than at a senior officer level. ...". From this and other comments it appears Cllr. Blair is in support of an application to the Magistrates' Court.
58. Cllr. Smith responded on 31-1-2012, stating "...Having been at Maulden's Parish Council Meeting last Monday (attended by Mr Bowers) I support the Parish Council's view that the footpath should be extinguished. I would hope that the Development Control Committee would also endorse this view...". From this it appears Cllr. Smith is in support of an application to the Magistrates' Court.
59. Cllr. Duckett responded on 13-1-2012, stating "...I wholly support this deletion as it is a path that goes nowhere and serves no purpose...". From this and from meetings with Cllr. Duckett it is clear that he supports an application to the Magistrates' Court.
60. In response – Footpath No. 28 has been recorded on the Definitive Map following the making of a Definitive Map modification order in 1995 which was

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confirmed by an independent Inspector after evaluating the available evidence. Whilst there are no records of either the former County Council or this Council undertaking any work to improve the bridleway, it does appear that three sections of the ditch alongside the bridleway have been piped at some time in the past. The piped sections are not currently suitable as pedestrian refuges due to vegetation and spoil from recent ditch clearance works. Data from the installed people counters indicate that the footpath is used on a frequent basis and can therefore be argued that the route is not unnecessary – which is the test of Section 116.

61. Cllr. Dalgarno, Deputy Executive Member for Sustainable Communities – Services, was consulted on the proposal and the question of whether the Development Management Committee was a more appropriate forum for the determination of Mr. Bowers’ application. Cllr. Dalgarno stated “...Having reviewed the history of the footpath and the previous decisions by inspectors I believe that taking this matter to the Development Management Committee would be the best option. This would enable the public to be fully engaged in the process and allow Mr Bowers to fully express why he feels the route should be removed...”.
62. Mr. Trevor Saunders, Assistant Director Planning, was consulted on the proposal and supports the determination of Mr. Bowers’ application within the constraints of the new Applications Policy by the Development Management Committee.
63. Mrs. Nadine Dorries M.P. has been supporting Mr. Bowers’ case for many years and, in a letter dated 11-1-2012, stated “...the public would not be inconvenienced in any way by the removal of Footpath No. 28 due to the presence nearby of a bridleway. Indeed as the bridleway has been recently upgraded and has a better junction with the road, it is in fact safer for the public to use this than Footpath 28.... ..Footpath 28 was created erroneously and maintained by incompetence...”.
64. In response – the Council’s Senior Traffic and Safety Engineer has inspected to the footpath and its junction with Clophill Road and, in an e-mail dated 16-11-2010, stated “... I felt that this footpath does not pose a significant risk to someone exiting straight in to the highway without being aware of the road itself... ..to mitigate the risk of anybody inadvertently running directly on to the highway a hazard warning sign may be installed on the existing post at the entrance to the footway...”. This sign has since been erected. The engineer has also evaluated the safety of the alternative crossing points on Clophill Road and the route between the two paths and considers these all to have similar low levels of risk. Whilst Mr. Bowers considers the footpath to be inherently more dangerous than the bridleway however, owing to its narrower width; this though has to be weighed against the fact that the bridleway carries equestrian, cycle, and vehicular traffic – albeit with a low frequency. The addition of Footpath No. 28 by means of the 1995 Definitive Map modification order went through the full statutory process and right to appeal. The footpath was held to exist and was added to the Definitive Map and Statement. The subsequent attempts by the former Mid-Beds District Council to extinguish the footpath also went through the full statutory process and right to appeal. Mrs. Dorries’ assertions of erroneousousness and incompetence are therefore

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incorrect.

65. The Ramblers was consulted and their local Footpaths Officer stated in his detailed response, received 7-2-2012, that "...The path is a pleasant and eminently useable route, giving easy access to the extensive network of paths and tracks within the area of Maulden Wood... ...An examination of the grass surface of the path indicates that the route is well-used and it would appear to be a popular route for local pedestrians and others... ...Extinguishment or deletion will have a negative effect on the local public Right of Way network... ...I have walked the parallel BW24 route and I do not consider this to be an acceptable alternative to FP28. The track along which the BW runs is used by vehicles to gain access to several properties to the rear, and as a result the surface is uneven with water-filled depressions. It presents a much less pleasant route for pedestrians.....A further point to be taken into account regarding the bridleway is that access to it from the southern end is in very close proximity to a road junction. The road at this point carries traffic from Maulden to the A507. This could be potentially hazardous in the case, for example, of families with young children forced to use the bridleway to access the area to the north. There is no footway on the north side of Clophill Road between the FP and the BW... ...there appear to be no material changes since earlier attempts by the applicant to close this path were rejected....".
66. The Open Spaces Society was consulted and responded in a letter, dated 16-2-12, stating: "...We strongly oppose its extinguishment or deletion... ...clearly the path is needed for public use and it would not meet the tests [of the Highways Act]... we would oppose this [application to the Magistrates' Court] since it is an incorrect use of the s116 procedure and, in any case, there is no suitable alternative...". The Open Spaces Society has been opposed to the potential extinguishment of the footpath since it was first recorded on the Definitive Map and has threatened the former County Council with legal action when it considered making a third extinguishment order.
67. The Bedfordshire Rights of Way Association ("BRoWA") was consulted and in its response, dated 11-2-2012, stated that "...We have no need to tell you that the Secretary of State frowns upon the use of the Magistrates' Court to extinguish footpaths and bridleways. It is clear from your recent policy on making public path orders that it will only make an application to the Magistrates' Court where a succession of Highways Act 1980 orders have failed to bring about an outcome beneficial to the public. In this case only Mr. Bowers [the applicant] would benefit...".
68. In response – BRoWA appears to have misinterpreted the new policy - which is detailed at Appendix B. In brief it does allow members of the public to apply for footpaths and bridleways to be stopped up at the Magistrates' Court. However, the presumption is that, for a footpath and bridleway, this would be done under other legislation (Section 118 of the Act) unless specified criteria benefitting the public could be met – and not until at least five years after a similar application had failed.
69. Bedfordshire Police have not been consulted on the proposed stopping up as there is no requirement or practice to do so. However, Mr. Bowers did submit a letter from PC Knowles which stated "... I have written to you twice

The proposed stopping up of Maulden Footpath No. 28 by a court order.

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previously... ..indicating the support of Bedfordshire Police for [Footpath No. 28's] extinguishment. I would advise that this position remains unchanged, and is consistent with national Secured by Design scheme guidance; 'Footpath design... 4.1 Routes for pedestrians, cyclists and vehicles should not be segregated from one another. Networks of separate footpaths to unsupervised areas facilitate crime and anti-social behaviour and should also be avoided... 4.2 Public footpaths should not run to the rear of, and provide access to gardens, rear yards, or dwellings as these have been proven to generate crime...".

70. In response – the Police's Secured by Design guidelines are a set of national guidelines targeted at crime reduction and do not consider either the merits of public rights of way or their benefit to the general public. Sgt. Andy Rivers of Ampthill & Flitwick Area Neighbourhood Policing Team researched the crime figures relating to the area around Footpath No. 28. No reported crimes or incidences of anti-social behaviour have been reported since January 2011 which is as far back as he searched.
71. National Grid (gas), UK Power Networks (electricity), British Telecom, and Anglian Water were consulted on the proposals. At the time of writing (November 2012) only UK Power Networks has responded, stating that it had no objection to the proposals.

## Conclusions

72. Maulden Footpath No. 28 was added to the Definitive Map and Statement in 1997 by a 1995 Definitive Map Modification Order based on evidence of long public use. Following the construction of Mr. Bowers' new house and subsequent diversion of the footpath in 2006, the footpath was eventually opened up for public use in 2009.
73. Two previous attempts by Mr. Bowers to have the footpath extinguished under the TCP and Highways Acts have seen extinguishment orders not confirmed by independent Inspectors following local public inquiries. Reasons for the non-confirmation of the orders included the view that the footpath would be used if not obstructed, and that the nearby Bridleway No. 24 was not a suitable alternative to the footpath.
74. Since the last two extinguishment orders were made several new developments to the east of Footpath No. 28 have occurred (Pennyfathers, Beeches, and Trilley Fields). It is likely that residents from these developments would use Footpath No. 28 to access Maulden Woods as this is their closest right of way.
75. There have been no significant changes in either the condition or utilisation of the land occupied by the footpath, or of the bridleway since these orders were made. The slight realignment of the footpath by the 2010 variation order has resulted in a straighter footpath which is adequately surfaced and fenced from the adjoining land.
76. Monitoring equipment has shown that the path was used an average 9.8 times per day between September 2010 and September 2011. This level of use for

The proposed stopping up of Maulden Footpath No. 28 by a court order.  
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the environs of the path suggests that it is used to a significant extent. With this level of use it is difficult to say that the footpath is unnecessary – which is the legislative test of the Highways Act that would be addressed at the Magistrates' Court. In my view, having to use the nearby Bridleway No. 24 would not significantly inconvenience walkers who currently use of the footpath, however, the previous Inspectors' decisions were that the bridleway with its potential for equestrian and vehicular use was not a suitable alternative.

77. The Council's new Applications Policy for rights of way requires that the application to the Magistrates' Court must fulfil at least one of five criteria which seek, amongst other things, to: resolve anomalies, rectify errors, or provide a public benefit. Mr. Bowers' application does not meet any of the required criteria.
78. Mr. Bowers has submitted a parallel application to extinguish Footpath No. 28 under Section 118 of the Act which is the subject of another agenda item put to this committee. Under the Applications Policy, this parallel and simultaneous application does not restrict the Committee in determining whether an application should be made to the Magistrates' Court beyond there being a general presumption that Section 118 of the Act should be used instead of Section 116 of the Act to extinguish a footpath.
79. The Council's Applications Policy and relevant legislative tests of Section 116 of the Act both lead to the conclusion that Mr. Bowers' application should not result in an application to the Magistrates' Court for a stopping up order.

**Appendices:**

Appendix A – Plan of Footpath No. 28

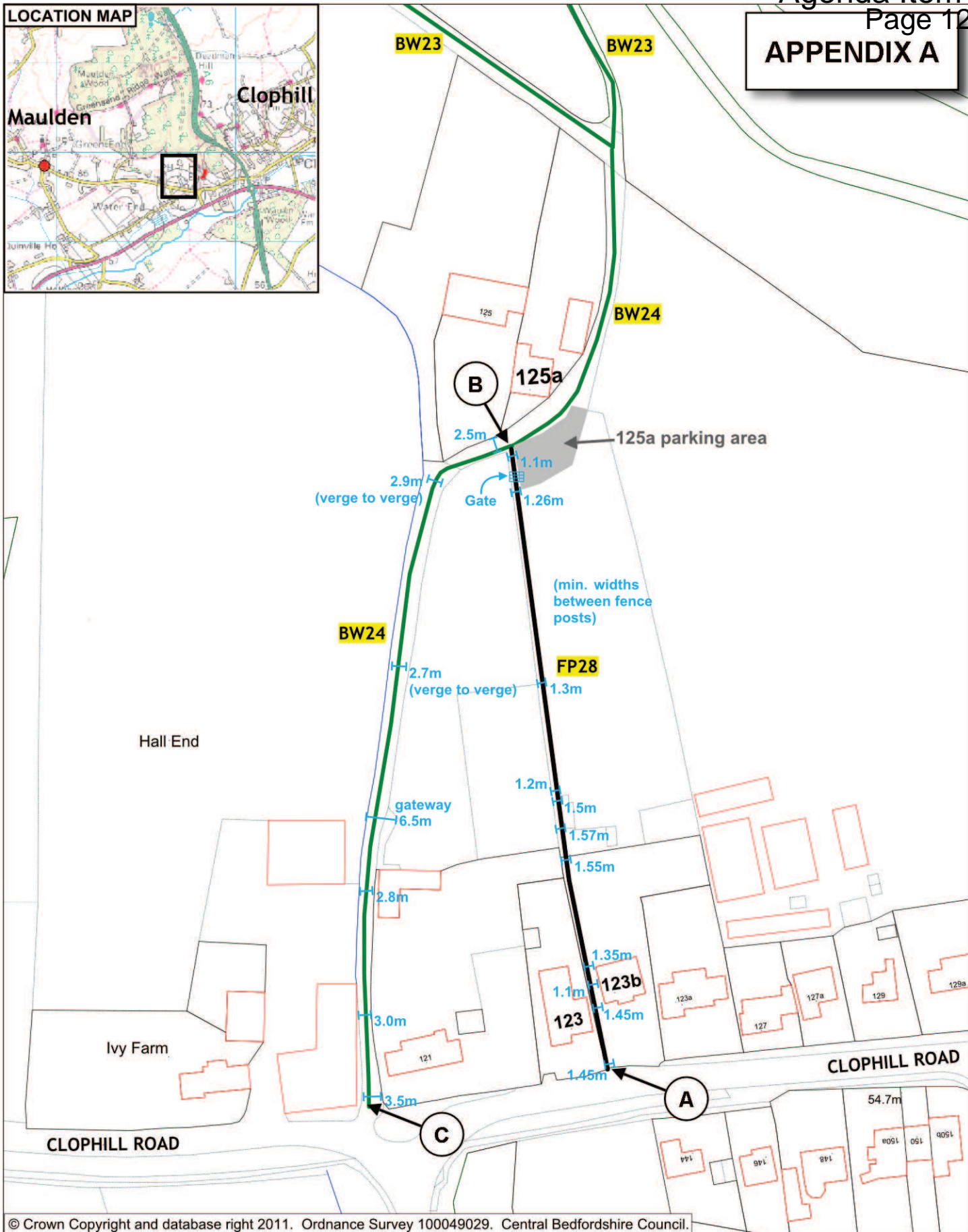
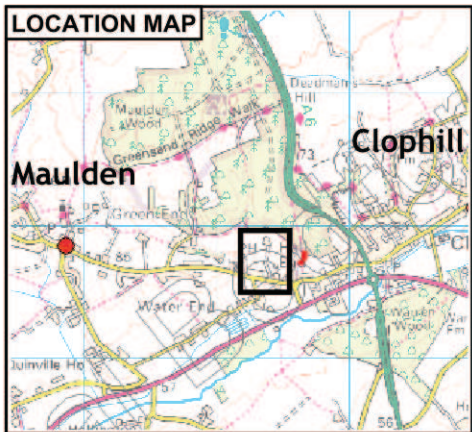
Appendix B – Legal and Policy considerations

Appendix C – Photographs of Footpath No. 28 and Bridleway No. 24

**Background Papers:** (open to public inspection)

- Central Bedfordshire Council's Applications Policy - Public Path Orders, Definitive Map Modification Orders, and Town & Country Planning Act 1990 Orders – available from the Countryside Access Team, Technology House, 239 Ampthill Road, Bedford, MK42 9BD, or Tel. 0300 300 8085, or e-mail [rightsofway@centralbedfordshire.gov.uk](mailto:rightsofway@centralbedfordshire.gov.uk).  
or [www.centralbedfordshire.gov.uk/rightsofway](http://www.centralbedfordshire.gov.uk/rightsofway)





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Highways Act 1980 - Sections 117 and 116

## Proposed application to the Magistrates' Court to stop up Maulden Footpath No. 28



Footpath to be stopped up by court order

**A** **B**

Unaffected public bridledways



Path widths in metres



Scale: 1:1250

11 January 2012



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## Appendix B

### Legal and Policy Considerations

- B.1. Section 117 of the Highways Act 1980 empowers a member of the public to request that Central Bedfordshire Council, as the Highway Authority, makes an application to the Magistrates' Court under Section 116 of the Act for an order to stop up or divert a public footpath, bridleway, restricted byway, or byway open to all traffic (BOAT) and is set out below:
- 117 Application for order under section 116 on behalf of another person
- A person who desires a highway to be stopped up or diverted but is not authorised to make an application for that purpose under section 116 above may request the highway authority to make such an application; and if the authority grant the request they may, as a condition of making the application, require him to make such provision for any costs to be incurred by them in connection with the matter as they deem reasonable.
- B.2. Section 116 of the Highways Act 1980 enables the Council to make an application to the Magistrates' Court for an order to stop public footpaths, bridleways, restricted byways, and or BOATs and is set out below:
- 116 Power of magistrates' court to authorise stopping up or diversion of highway
- (1) Subject to the provisions of this section, if it appears to a magistrates' court, after a view, if the court thinks fit, by any two or more of the justices composing the court, that a highway (other than a trunk road or a special road) as respects which the highway authority have made an application under this section—
- (a) is unnecessary, or
- (b) can be diverted so as to make it nearer or more commodious to the public,
- the court may by order authorise it to be stopped up or, as the case may be, to be so diverted.
- (2) *(repealed)*
- (3) If an authority propose to make an application under this section for an order relating to any highway (other than a classified road) they shall give notice of the proposal to—
- (a) if the highway is in a non-metropolitan district, the council of that district; and]
- (aa) *(omitted)*
- (b) if the highway is in England, the council of the parish (if any) in which the highway is situated or, if the parish does not have a

separate parish council, to the chairman of the parish meeting;  
and

(c) *(omitted)*;

and the application shall not be made if within 2 months from the date of service of the notice by the authority notice is given to the authority by the district council or Welsh council or by the parish or community council or, as the case may be, by the chairman of the parish meeting that the council or meeting have refused to consent to the making of the application.

- (4) An application under this section may be made, and an order under it may provide, for the stopping up or diversion of a highway for the purposes of all traffic, or subject to the reservation of a footpath, bridleway or restricted byway.
- (5) An application or order under this section may include 2 or more highways which are connected with each other.
- (6) A magistrates' court shall not make an order under this section unless it is satisfied that the applicant authority have given the notices required by Part I of Schedule 12 to this Act.
- (7) On the hearing of an application under this section the applicant authority, any person to whom notice is required to be given under paragraph 1 of Schedule 12, any person who uses the highway and any other person who would be aggrieved by the making of the order applied for, have a right to be heard.
- (8) *(omitted)*
- (9) Every order under this section shall have annexed to it a plan signed by the chairman of the court and shall be transmitted by a justices' clerk to the proper officer of the applicant authority, together with any written consents produced to the court under subsection (8) above.
- (10) Part II of Schedule 12 to this Act applies where, in pursuance of an order under this section, a highway is stopped up or diverted and, immediately before the order is made, there is under, in, upon, over, along or across the highway any apparatus belonging to or used by any statutory undertakers for the purpose of their undertaking.
- (11) In this section "statutory undertakers" includes operators of driver information systems.

B.3. Central Bedfordshire Council has recently adopted a new Rights of Way Applications Policy for Public Path Orders, Definitive Map Modification Orders, and Town & Country Planning Act 1990 Orders which includes requests for the Council to apply to the Magistrates' Court. The relevant sections of the new policy are set out below:

7 Applications to the Magistrate's Court

7.1 *(omitted)*

7.2 A member of the public may request that a public footpath or bridleway be diverted or extinguished by submitting the generic public path order application form. Unless the applicant explicitly requests that the matter

be dealt with by means of an application to the Magistrates' Court<sup>1</sup>, the application will be treated as a request for an order under Sections 26, 118, and 119 of the Highways Act as appropriate. If the application explicitly requests that an application be made to the Magistrates' Court, then it must be determined on its merits and in accordance with this policy.

- 7.3 Government guidance, as embodied in the Department for the Environment, Food and Rural Affairs Rights of Way Circular 1/09, is: *"...There may be specific circumstances where it is appropriate to use the magistrates' court procedure under section 116 of the 1980 Act. It is considered, however, that authorities should make use of the other powers available to extinguish or divert rights of way unless there are good reasons for not doing so..."*. In light of this guidance, the Council's position is that there is a presumption in favour of using Sections 26, 118, and 119 of the Highways Act in preference to Section 116 for footpaths, bridleways and restricted byways. For this presumption to be overturned, an application must meet one or more of the criteria detailed in Section 7.6 below and be supported by the Council.
- 7.4 Applications to the Magistrates' Court will, however, be considered at any time where a BOAT is involved. It will remain at the Council's discretion whether any other paths associated with the application are sent to the Magistrates' Court, or dealt with by means of other powers under the Highways Act for diversions and extinguishments.
- 7.5 A common reason for a member of the public to request that we make an application to the Magistrates' Court is that a council has already tried unsuccessfully to achieve the outcome the applicant wishes by means of an order under Sections 118 or 119 of the Highways Act. The Council will not make an application to the Magistrates' Court if a similar application for a Public Path Order has been refused by the Council; or a Public Path Order made as the result of an application for the same, or very substantially similar, outcome has been abandoned or not confirmed within the last five years. The exception to this is if there have been significant changes to the circumstances to permit the Council to make a Council-generated application to the Magistrates' Court.
- 7.6 An application made by a member of the public requesting that the Council apply to the Magistrates' Court will only be considered if it meets one or more of the following criteria:
- Where the proposal would result in a recreational benefit to the public;
  - Where the proposal would resolve a Definitive Map anomaly;
  - Where the proposal would rectify an acknowledged error of this or another local authority;
  - Where the proposal is in the interests of the efficient management of the rights of way network;
  - Where the proposal would contribute to the implementation of the Outdoor Access Improvement Plan;
- 7.7 The application must be approved by and supported by the Council.
- 7.7 The application must also receive written consent from:

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<sup>1</sup> Section 117 of the Highways Act allows members of the public to request that the Council take a case to the Magistrates' Court.

The proposed stopping up of Maulden Footpath No. 28 by a court order – Appendix B

- All affected and adjoining land owners and occupiers;
- Anybody with a legal interest<sup>2</sup> in the land, including any statutory undertaker with equipment under, along or over the affected path;
- The local town or parish council or meeting.

7.9 If the consent of all of the above parties cannot be supplied in writing, the application will be refused.

7.10 The decision to apply to the Magistrates' Court will be taken by the Rights of Way Team Leader in consultation with the following: the relevant Portfolio Holder of the Council, the local Ward Members of the Council, the chairman of the relevant Council committee, the relevant Assistant Director, and the local town or parish council.

7.11 Applications from members of the public for a Magistrates' Court order will be processed and charged for in a similar manner to other ordinary Public Path Order applications as described above, and in Section 117 of the Highways Act and detailed in the accompanying document *Application for a Public Path Order to change the Public Rights of Way Network - Guidance on Costs*.

7.12 The applicant will be liable for all costs including administrative charges, legal fees, and court costs irrespective of the outcome.

B.4. Mr. Alan Bowers' application made under Section 117 is for the stopping up of a footpath. Policy point 7.3 explicitly states that there will be a presumption that such an application will be dealt with using other legislative provisions in the Highways Act unless it meets one or more of the criteria in policy point 7.6. The application would not provide a recreational benefit to the public as it would be extinguishing a well used link, nor would it resolve a Definitive Map anomaly in the local public rights of way network as none exists. The parallel agenda item relating to Mr. Bowers' application for a Definitive Map modification order to delete the footpath reaffirms the findings of both the former County Council and the independent Inspector appointed by the Secretary of State for the Environment that Footpath No. 28 is a right of way and therefore should be recorded on the Definitive Map. Consequently there is no acknowledged error which requires resolution. The Countryside Access Team manages the public rights of way network and considers that Footpath No. 28 is a useful part of its network and should be retained as it provides a pedestrian only alternative to the nearby bridleway. The Council's Outdoor Access Improvement Plan is currently being re-written; however, the stopping up of the footpath is unlikely to contribute to any implementation of either the old plan or the new one. Mr. Bowers' application does not therefore meet any of the above criteria for permitting the Council to make an application to the Magistrates' Court.

B.5. It has been more than five years since the former Mid-Beds District Council's two orders to extinguish Footpath No. 28 on Mr. Bowers' behalf were not confirmed. Mr. Bowers submitted a further extinguishment application in September 2004. However, as this application is to be determined at the same sitting of the Development Management Committee as this agenda item, it has no material effect on policy point 7.5 of the Applications Policy, nor

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<sup>2</sup> Including any mortgage company or bank and those parties with sporting or other rights.

does it prevent the Committee approving his Magistrates' Court application if the other criteria are met.

- B.6. Mr. Bowers is reluctant to expend any more money on attempting to rid himself of the footpath across his land. Policy points 7.11 – 7.12 state that the applicant will be liable for all costs incurred by the Council in making an application irrespective of the outcome. This cost is could exceed £3000.
- B.7. The case of *The Queen (on the application of) Ashbrook v East Sussex County Council* [2002] EWCA Civ 1701 (20 November 2002) examined whether a County Council had complied with its own guidance when considering whether to forward an opposed diversion order to the Secretary of State for confirmation. The footpath in question had been deliberately obstructed and the obstructions not removed despite a Magistrates' Court order to do so. Dyson L.J. in his judgment stated at Paragraph 59:
- I agree that the court should be slow to interfere with the way in which the Council exercises its discretion in applying the policy set out in its Guidance Note. But it seems to me that in the present case the Council failed to take into account a material consideration when it decided that the removal of the obstructions was not "reasonably achievable". I accept that it was open to the Council to decide in the light of all the circumstances that it was not reasonable to require the obstructions to be removed. The fact that the Magistrates Court had made the Order that it had made, and the Council had earlier served notices under section 143 did not preclude a submission to the Secretary of State while the path remained obstructed. Like Schiemann LJ, I would reject the submission of Mr Laurence QC that, in view of the section 143 notices served on 20 March 2000, and the decisions of the Magistrates Court on 20 March 2001, the Council was bound to conclude that it was reasonable to require the removal of the obstructions when it submitted the Order to the Secretary of State. It had a discretion, but in exercising its discretion, the Council had to take into account all material considerations. The refusal to comply with the notices and the Magistrates Court Order were material considerations. In the present case, where the obstructions were deliberate and the refusal to comply was deliberate and flagrant, it was a consideration of some importance which the Council had to weigh carefully in the balance. In my view, its failure to do so requires the decision to be quashed, and the matter remitted for reconsideration.
- B.8. The Court of Appeal's judgment can be summarised as the Council had acted unlawfully in not fully taking into account a material consideration of a policy in respect of its decision relating to the making of orders under the Highways Act.
- B.9. The application of the Ashbrook (2002) case to Mr. Bowers' application dictates that Members of the Committee need to have regard to all of the criteria within Section 7 of the Council's Applications Policy before coming to a view on whether an application can be made to the Magistrates' Court for a stopping up order.



- B.10. Once the Committee decides that an application under Section 117 of the Highways Act meets the required Policy criteria for determination, it needs to address whether the application meets the legislative tests of the Act in order for an application to be made to the Magistrates' Court. In coming to a decision the Council needs to have regard to the case of R. (Spice) v Leeds City Council [2006] EWHC 661 Admin in which Ousely J. stated:

It seems to me that the question which is required to be answered under section 116, and hence to which the Highway Authority addresses its mind under section 117, just as it would address its mind when deciding itself whether to seek an order under section 116, is: what is the highway function being performed by that part of the highway which is the subject of the requested application? Is it unnecessary for that function to be performed by that part or whole of the highway? If the answer to that is that it is unnecessary for that function to be performed, the second question is: if it is unnecessary for the highway to perform those functions, are there any other reasons why a stopping up order should not be made?

- B.11. Before approving Mr. Bowers' application under Section 117, the Committee therefore must firstly be satisfied that Maulden Footpath No. 28 is unnecessary and, if it is found unnecessary, the Committee must then be satisfied that there are no other reasons why the footpath cannot be stopped up.

- B.12. The case of Ramblers Association v Kent (1990) 60 P&CR 464 gives further guidance on the issue of whether a right of way can be considered unnecessary. Here, Woolf L.J. gave the following guidance:

First of all I consider that magistrates, in deciding whether or not a highway is unnecessary, should bear in mind the question for whom the highway is unnecessary. It is to be unnecessary for the public. It is the public who have the right to travel up and down the way in question, and it is the public with whom the justices should be concerned because the right is vested in them... ..Then the justices might ask themselves, in considering an application under section 116, the question for what purpose should the way be unnecessary before they exercise their jurisdiction. So far as that is concerned, it should be unnecessary for the sort of purposes which the justices would reasonably expect the public to use that particular way. Sometimes they will be using it to get primarily to a specific destination—possibly here the shore. Another reason for using a way of this sort can be for recreational purposes... ..In my view, where there is evidence of use of a way, prima facie, at any rate, it will be difficult for justices properly to come to the conclusion that a way is unnecessary unless the public are or are going to be provided with a reasonably suitable alternative way. In deciding whether an alternative way is reasonable, it must be a way which is protected, so far as duration is concerned, in the same way as the existing way is protected. It must also be suitable, or reasonably suitable, for the purpose for which the public were using the existing way.

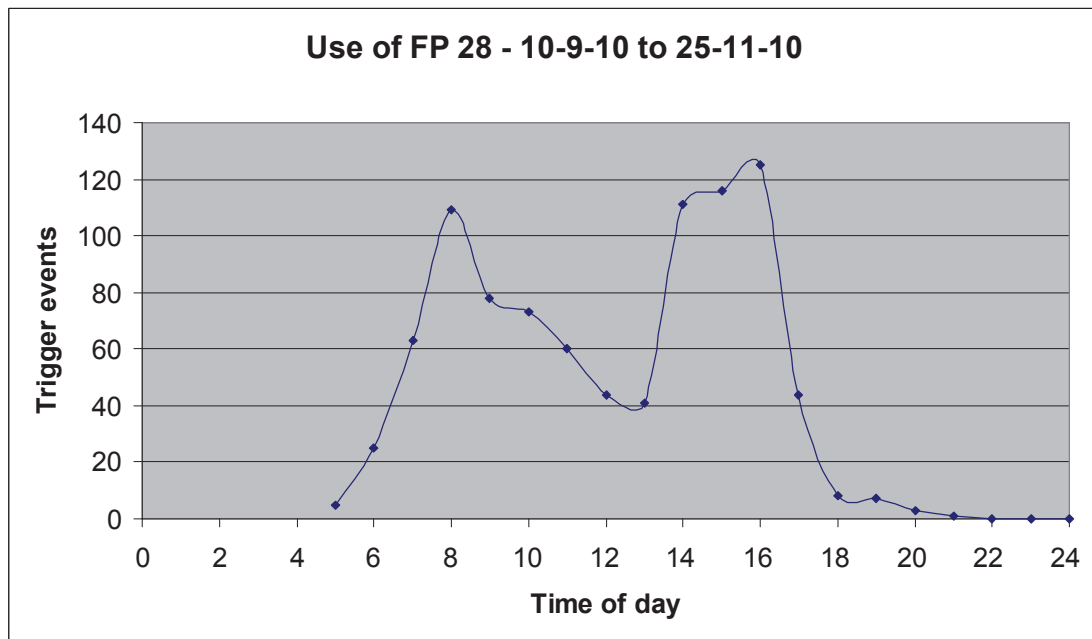
- B.13. In determining whether Footpath No. 28 is unnecessary the committee must therefore have regard to the level of public use. The footpath was

The proposed stopping up of Maulden Footpath No. 28 by a court order – Appendix B

electronically monitored for a total of 363 days between 10-9-2010 and 20-9-2011. During this period the average level of use was 9.8 trigger events per day (a total of 3540 events). A trigger event is when a person passes along the path past the installed counter. The counter cannot distinguish between members of the public using the right of way and Mr. Bowers or his guests walking along the path. The data captured is summarised below.

Start date	End date	No of days	Number of trigger events	Average daily use
10/09/2010	25/11/2010	76	914	12.0
06/12/2010	16/02/2011	72	590	8.2
16/02/2011	09/05/2011	82	816	10.0
10/05/2011	09/08/2011	91	877	9.6
09/08/2011	20/09/2011	42	343	8.2
<b>10/09/2010</b>	<b>09/08/2011</b>	<b>363</b>	<b>3540</b>	<b>9.8</b>

B.14. An analysis of the recorded use during the period 10-9-2010 to 25-11-2010 indicates that the two peak periods of use are between 06:00-11:00 and 13:00-16:00 and accounted for 42% and 39% of use respectively. There was no use between 22:00 and 04:00.



B.15. The electronic monitoring indicates that Footpath No. 28 is used to a significant degree. Consequently it would be difficult to argue that it is unnecessary for public use. Were the footpath not stopped up, it is very likely that public use of a similar level would continue in the future.

B.16. A consideration in determining whether a right of way can be stopped up on the ground that it is unnecessary is whether there is an alternative route available. The junction of Footpath No. 28 with Clophill Road (point A) is some 59 metres from the junction of Bridleway No. 24 with Clophill Road. The distance A-B along Footpath No. 28 is approximately 157 metres. The alternative route to point B via Bridleway No. 24 is approximately 239 metres – an increase in distance of approximately 82 metres. Footpath No. 28 is a

well set out path, being bounded between either by panel fencing and brick wall or by post and rail fencing with gravel or grass surfacing and a width of between 1.1 - 1.6 metres. Bridleway No. 24 has some degree of surface dressing and has a surfaced width of approximately 2.5 – 3.5 metres with hedges to either side at its southern end, becoming enclosed by post and rail fencing for its northern half. Whereas the footpath only permits pedestrian use, the bridleway provides equestrian and cycle access to Maulden Woods as well as vehicular access to a small number of properties but appears to not be intensively trafficked.

- B.17. The Council recognises that Bridleway No. 24 could be utilised as an alternative route – and may already be used in preference by walkers approaching from the west. However, the entrance to the Headley Way estate is some 95 metres to the east of Bridleway No. 28. Residents of this estate, and of the adjoining Pennyfathers Close and Beeches developments are all likely to use Footpath No. 28 as the primary access route to Maulden Woods and, in doing so, would benefit from both its proximity and vehicle-free nature. However, it is unlikely that members of the public from these developments would be significantly disadvantaged by having to use the nearby Bridleway No. 24 instead.
- B.18. Given the evidence that Footpath No. 28 is used to a significant extent and would undoubtedly continue to be used, the Council has to consider, despite the fact that the bridleway would not significantly disadvantage the aforementioned residents, whether it is expedient for the Council to apply for a court order to stop up the footpath. There is a strong presumption in favour of not doing so based on the decisions of the two independent Inspectors who heard the 1995 order made under the Town and Country Planning Act 1990 and the 2000 order made under the Highways Act. In both cases the Inspectors, in determining not to confirm the extinguishment of Footpath No. 28, concluded that Bridleway No. 24 was not a suitable alternative to the footpath. To my knowledge there have not been any significant alterations to the bridleway to make these conclusions redundant or to warrant the Council considering it expedient to apply for a stopping up order.

### Appendix C

## Photographs of Maulden Footpath No. 28 and Bridleway No. 24

### Maulden Footpath No. 28



Point A - The junction of Footpath No. 28 with Clophill Road looking north.



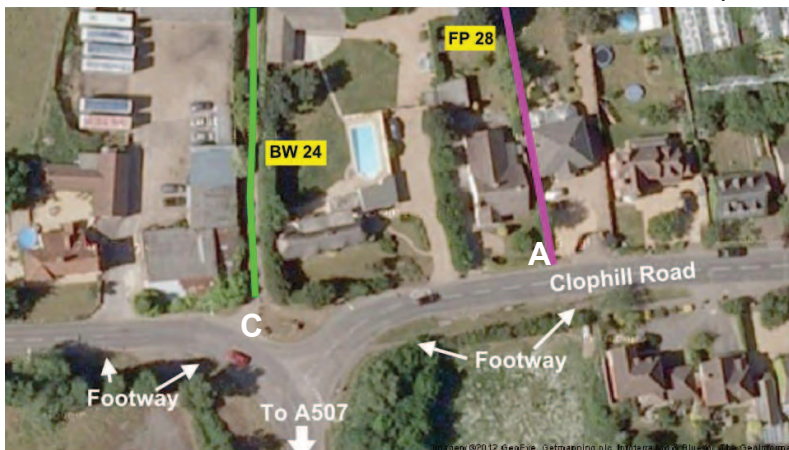
Looking south along Footpath No. 28 towards point A.



Looking south along Footpath No. 28 towards point A.



Point B - Looking south along Footpath No. 28 towards the rear of Nos. 123 and 123b Clophill Road.



Aerial photograph showing 3-way road junction, footpath, bridleway, and locations of footways.



**Maulden Bridleway No. 24**



Point A – Looking west along Clophill Road towards the road junction. NB New road sign evident.



Looking west along Clophill Road towards the road junction and point C (behind bins and chevrons).



Point C – Looking north from Clophill Road along Bridleway No. 24.



Looking north along Bridleway No. 24.



Looking north along Bridleway No. 24 towards point B.



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	Date: 26:November:2012	
	Grid Reference: 491872; 223607	
Scale: 1:5000	Retail Park at Grovebury Road, Leighton Buzzard, LU7 4UX	



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<b>Item No. 9</b>
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<b>APPLICATION NUMBER</b>	<b>CB/12/02071/OUT</b>
<b>LOCATION</b>	<b>Retail Park at Grovebury Road, LU7 4UX</b>
<b>PROPOSAL</b>	<b>Development of the site for retail warehousing development within Class A1 (retail) to comprise 5,575sqm with 2,090sqm mezzanine floorspace and 929sqm garden centre enclosure and a restaurant/cafe/public house of 372sqm within Class A1/A3/A4/A5 use</b>
<b>PARISH</b>	<b>Leighton-Linslade</b>
<b>WARD</b>	<b>Leighton Buzzard South</b>
<b>WARD COUNCILLORS</b>	<b>Cllrs Berry, Bowater &amp; Dodwell</b>
<b>CASE OFFICER</b>	<b>Adam Davies</b>
<b>DATE REGISTERED</b>	<b>08 June 2012</b>
<b>EXPIRY DATE</b>	<b>07 September 2012</b>
<b>APPLICANT</b>	<b>Claymore Group and CC Trading Ltd</b>
<b>AGENT</b>	<b>Blue Sky Planning</b>
<b>REASON FOR COMMITTEE TO DETERMINE</b>	<b>Town Council objection to major application</b>
<b>RECOMMENDED DECISION</b>	<b>Outline Application - Granted</b>

**Site Location:**

The application site forms part of a broadly triangular-shaped parcel of undeveloped land on the eastern side of Grovebury Road, on the southern side of Leighton Buzzard. The land currently comprises rough grassland with hedges and a centrally located copse. The eastern-most corner of the land has been excluded from the 2.9ha application site. The northern-most corner of the site is traversed by 400kW overhead power lines which run in an east-west direction with the existing vehicular access from Grovebury Road positioned below the power lines, adjacent to a single electricity pylon. The site is located immediately north of Union Court and the Browns retail and trade centre which operates as an agricultural engineers and an angling centre. To the north, the land is bordered by storage and industrial units, other commercial uses and associated car parking. Further to the east of the Browns site and to the north east of the neighbouring commercial uses are land at Grovebury Farm and Brickyard Quarry which have outline planning permission for residential and associated development plus a local centre and community land. To the west of Grovebury Road are Tiddenfoot Waterside Park and the adjoining riverside meadows. The site forms part of a Main Employment Area as defined on the Proposals Map of the South Bedfordshire Local Plan Review 2004.

**The Application:**

Outline planning permission is sought for a retail warehouse development with a gross floor area of 8,594 square metres providing a total of 6,132 square metres of

net tradable floor space, including mezzanine levels and a garden centre enclosure.

The scheme would include an 'anchor' DIY unit with a ground floor retail area of 3,252 square metres gross (2,602 square metres net); a mezzanine floor area of 929 square metres gross (743 square metres net); and a garden centre of 929 square metres gross. Four smaller A1 retail units are proposed, two offering a floor space of 697 square metres gross (558 square metres net) with mezzanine levels of 348 square metres gross (278 square metres net); and two offering a floor space of 465 square metres gross (372 square metres net) with mezzanine levels of 232 square metres gross (186 square metres net). A restaurant/café/public house of 372 square metres gross floor area is also proposed.

It is proposed that the retail floorspace would be used for the sale of DIY goods; furniture; carpets and floor coverings; household fabrics; office equipment and stationary; motor vehicle parts and accessories; cycles and ancillary goods; electrical goods and gas appliances; pets and pet supplies.

Two vehicular accesses are proposed from Grovebury Road. One would provide access to the public parking area and the other would serve a service yard. All matters, except those relating to access, are reserved for subsequent approval. As such the precise details of the siting, design, landscaping and appearance of the development would need to be determined at the approval of reserved matters stage.

An indicative site layout plan provides shows how the retail development could be arranged. The five Use Class A1 retail units are shown positioned towards the east and north east sides of the site and fronting onto a public parking area. The restaurant/café/public house is shown as a stand-alone unit positioned within the south west corner of the site. A total of 318 parking spaces and 36 cycle parking spaces are shown. A service yard is shown at the rear of the Class A1 retail units. A new public footpath is proposed to run from the future housing development on land at Grovebury Farm, along the north east boundary of the site, to Grovebury Road to the west of the site.

## **RELEVANT POLICIES:**

### **National Planning Policy Framework (March 2012)**

The National Planning Policy Framework (NPPF) was published on 27th March 2012 and replaced the previous national planning policy documents. The following sections of the NPPF are considered relevant to this application:

Section 1: Building a strong, competitive economy

Section 2: Ensuring the vitality of town centres

Section 4: Promoting sustainable transport

Section 7: Requiring good design

Section 8: Promoting healthy communities

Section 10: Meeting the challenge of climate change, flooding and coastal change

Section 11: Conserving and enhancing the natural environment

Section 12: Conserving and enhancing the historic environment

### **South Bedfordshire Local Plan Review Policies**

SD1: Sustainability Keynote Policy

BE8: Design Considerations

T10: Controlling Parking in New Developments  
E1: Providing for B1-B8 Development within Main Employment Areas  
R14: Protection and Improvement of Informal Recreational Facilities in the Countryside

*The NPPF advises of the weight to be attached to existing local plans for plans adopted prior to the 2004 Planning and Compulsory Purchase Act, as in the case of the South Bedfordshire Local Plan Review. Due weight can be given to relevant policies in existing plans according to their degree of consistency with the framework. It is considered that Policies BE8 and R14 are broadly consistent with the Framework and carry significant weight. Policies T10 and E1 carry less weight but are considered relevant to this application.*

### **Development Strategy for Central Bedfordshire**

Policy 1: Presumption in Favour of Sustainable Development  
Policy 6: Employment Land  
Policy 7: Employment Sites and Uses  
Policy 11: Town Centre Uses  
Policy 12: Retail Strategy  
Policy 15: Leighton Buzzard Town Centre  
Policy 19: Planning Obligations and the Community Infrastructure Levy  
Policy 23: Public Rights of Way  
Policy 24: Accessibility and Connectivity  
Policy 25: Capacity of the Network  
Policy 26: Travel Plans  
Policy 27: Car Parking  
Policy 28: Transport Assessments and Travel Plans  
Policy 43: High Quality Development  
Policy 44: Protection from Environmental Pollution  
Policy 45: The Historic Environment  
Policy 49: Mitigating Flood Risk  
Policy 56: Green Infrastructure  
Policy 57: Biodiversity and Geodiversity  
Policy 59: Woodlands, Trees and Hedgerows

*Having regard to the National Planning Policy Framework, significant weight is given to the policies contained within the emerging Development Strategy for Central Bedfordshire, which is consistent with the NPPF. The draft Development Strategy is due to be submitted to the Secretary of State in May 2013.*

### **Supplementary Planning Guidance**

Design in Central Bedfordshire - A Guide for Development - adopted by the Luton & South Bedfordshire Joint Committee on 23 July 2010

Luton and Central Bedfordshire Core Strategy - adopted for Development Management purposes by the CBC Executive on 23 August 2011

CBC Emerging Parking Strategy, Appendix F, Central Bedfordshire Local Transport Plan, endorsed for Development Management purposes by Executive October 2012

Grovebury Road Industrial Estate Enhancement Plan, August 2012

White Young Green Evidence Base Retail Study 2009

Central Bedfordshire Retail Study, 2012

Land South of High Street Development Brief, GVA, March 2012

Bridge Meadow Development Brief, GVA, March 2012

CBC Medium Term Plan, "Delivering Your Priorities" 2012-2016

### **Planning History**

The following relevant planning history relates to the application site:

Tree Preservation Order 11/2003 Provisional woodland Tree Preservation order placed on the woodland at the application site on 29 September 2003. Tree Preservation Order not confirmed.

The following planning application relates to the land immediately north of the application site:

CB/12/03290/OUT Outline Planning: Proposed non food retail park of up to 10,775 sqm (116,000sqft) Gross retail floorspace, up to 600 sqm (6,460 sqft) storage up to 604 sqm (6,500 sqft) pub/restaurant, up to 167 sqm (1800sqft) drive thru restaurant, new vehicular access and associated highway works, associated car parking; hard and soft landscaping and associated infrastructure works. Under consideration. On the same Committee Agenda.

The following relevant planning history relates to land immediately south and south east of the application site:

SB/06/00137/FULL Erection of B1 office units (two and three storeys) with ancillary car parking and erection of B2 industrial/B8 warehouse unit (part two storey with ancillary car parking and service area. Permission granted. Not implemented.

SB/03/00340/FULL Erection of two industrial units with ancillary display area, car parking and service area. Permission granted. Implemented.

*(Officer Note: This permission relates to the Browns retail and trade centre on Grovebury Road. Following the proposed residential redevelopment of the former Browns site at Mentmore Road, Browns proposed to relocate to the Grovebury Road site. Whilst this development involved an element of out of centre retail within the Main Employment Area, given the requirement for Browns to relocate and the employment generation resulting from the proposed mixed use scheme, the proposal was considered acceptable).*

The following application relates to Houghton Regis North Site 1:

CB/12/03613/OUT Outline planning permission with the details of access, appearance, landscaping, layout and scale reserved for later determination. Development to comprise: up to 5,150 dwellings (Use Class C3); up to 202,500 sqm gross of



additional development in Use Classes: A1, A2, A3 (retail), A4 (public house), A5 (take away); B1, B2, B8 (offices, industrial and storage and distribution); C1 (hotel), C2 (care home), D1 and D2 (community and leisure); car showroom; data centre; petrol filling station; car parking; primary substation; energy centre; and for the laying out of the buildings; routes and open spaces within the development; and all associated works and operations including but not limited to: demolition; earthworks; engineering operations. All development, works and operations to be in accordance with the Development Parameters Schedule and Plans. Under consideration.

*(Officer note: It is envisioned that this development would provide a maximum of 30,000 square metres of retail uses. This application therefore represents a material consideration for the Grovebury Road retail proposals in relation to matters of retail demand and viability.)*

The following planning history relates to the existing Tesco and Homebase stores at Vimy Road, Leighton Buzzard:

CB/10/04238/FULL Demolition of existing Class A1 retail warehouse (Homebase) and construction of extension (2,850 sqm) to existing Class A1 foodstore (Tesco) with additional car parking and landscaping. Construction of freestanding canalside Class A3 restaurant/cafe unit with public realm enhancements on Leighton Road frontage. Permission. Not implemented. Expires 28 May 2015.

*(Officer note: If implemented, this development would involve the demolition of the existing Homebase store at Vimy Road. Importantly however Homebase are not identified as named operators as part of the current application. It is presently unknown whether the Tesco extension will be implemented or whether Homebase would be required, or seek, to relocate. Whilst the Tesco permission remains extant until 28 May 2015, it should be noted that Tesco have most recently submitted a planning application for a customer collection canopy to serve internet customers [detailed below]. This recent application does not appear to reflect the intention to extend the Tesco store in line with the previous planning permission).*

CB/13/00241/FULL Proposed Customer Collection Canopy. Under consideration.

**Representations:**

Town Council Recommend refusal. Inappropriate use of a green field site, potential historic nature of the site (ancient Theedway route), a development of this size and nature in this location would have a detrimental impact on the town centre. The Committee asked that if Central Bedfordshire

Council was minded to approve the application, that consideration be given to adding restrictions on the four retail units to lessen the potential impact on the town centre.

Billington Parish Council Concerns are raised regarding the potential for additional litter as a result of food takeaway units in the area.

Neighbours 23 objections have been received which can be summarised as follows:

- The proposal would reduce spending in the town centre and affect its viability, leading to shops closing and jobs lost.
- The development would jeopardise the plans to develop the land south of the High Street for retail which should be progressed as soon as possible as an enhancement to the town centre.
- The mix of retailers for this type of retail park is not appropriate for an out of centre location and would duplicate goods sold in existing furniture shops, pet shops and takeaways within the town.
- The proposal would reduce pedestrian traffic in the town centre.
- The Town Council and CBC have signed up to the Portas Pilot scheme. The Mary Portas review highlighted the importance of High Street centres as a social and community hub and the harm which retail parks can have on town centres.
- The development would not be accessible for non-car users. The town centre is the only major shopping area which is accessible for non-car users.
- The land should be developed for employment purposes, particularly given the increased requirement for jobs due to the significant increase in the number of homes within the town.
- The town centre is not as healthy as it may appear. The proposal would have a very harmful impact on the retail and night time economies.
- It is questioned whether the figures provided within the application, including the anticipated number of jobs to be created are correct. Local retailers are unable to enlist professional companies to challenge the assumptions set out within the application.
- Permission should not be granted because of concerns regarding the costs of appeal.

- Local people and retailers did not support the expansion of the Vimy Road Tesco store as it was considered that this would be detrimental to smaller retailers. The relocation of the Homebase store to Grovebury Road would be to the further detriment of the town centre and mean it will be inaccessible to non-car users.
- Neighbouring towns with out of centre retail parks have a high percentage of empty shop units in the town centre. The proposal would have a similar impact in Leighton Buzzard.
- Given the economic climate, retail parks are not automatically viable. There is a growing movement away from large format, out of centre retail towards smaller format, town centre stores where there is greater variety and choice.
- Traditional town centre retailers are more robust than larger, discount based retailers likely to occupy a retail park.
- The Tesco expansion is uncertain and it is not guaranteed Homebase would wish to relocate.
- There are other suitable sites within the town for a DIY type store.
- The application does not adequately address any archaeological implications arising from the proposal.
- The development would increase vehicle movement and congestion increasing harmful emissions.
- The design of the development is generic and would not reflect its location.
- Companies such as Harvester, Starbucks, Costa, KFC and Burger King would prefer town centre locations.
- The proposal would result in the loss of wildlife habitats.
- Given the forthcoming A5-M1 link road, it would make more strategic sense to protect employment land and direct new businesses to this site.

A petition with 72 signatures of those wishing to object to the proposal has been received.

A total of 144 third party representation forms, headed "Help Save Your High Street", have been submitted. A number of those who had completed forms have also commented by way of objection, as summarised above. A number of those who had completed did not provide full

addresses. The forms state that there are two retail development options within Leighton Buzzard; Option 1, an extension to the existing retail centre on land south of the High Street or Option 2, a retail development on Grovebury Road. Of the 144 forms received;

- 136 indicated a preference for development on land south of the High Street.
- 4 indicated a preference for neither development
- 3 indicated a preference for the proposed retail park development.
- 1 indicated a preference for both developments.

Two letters/emails of support have been received from local residents/businesses which can be summarised as follows:

- Given its accessible location, the proposal would not increase traffic congestion in the town and may reduce traffic in the town centre.
- A greater mix of shops are needed in Leighton Buzzard.
- The site would provide employment.
- The proposed restaurants/food uses would provide a service to neighbouring businesses and their staff.
- The retail park would attract shoppers normally using retail parks in other towns.
- Empty warehouse units would not be attractive at the entrance to the town.
- The majority of local objection to development outside of the High Street is from vocal retailers and is not representative of the views of others in the town.
- A refusal would send an anti-business message.

A petition with 115 signatures of those wishing to support to the proposal has been received.

#### Buzzcycles

The development should be linked with the Grovebury Farm Bridleway in order to fulfil the aims of the Ouzel Valley Park development of Cycle Infrastructure. As Grovebury Road is a major entry artery for the town, there must be a 3 metre wide pedestrian and cycle path along the site frontage and provision for a safe crossing to the Tiddenfoot Narrows Bridge and Waterside Park. Additional employee cycle parking with security measures to protect cyclists from machinery is required.

#### Voluntary and Community Action

No reference is made to Section 106 contributions. If permission is granted a contribution should be made to

Group the running of a community house as part of the housing development on Site 17.

### Consultations/Publicity responses

Council's independent retail consultant (GVA Grimley) GVA Grimley has been instructed by the Council to carry out an independent assessment of the retail planning issues raised by the two retail proposals. GVA Grimley's Retail Review of the proposals is attached as an appendix to this report.

Highways There are no convenient bus services serving the site. The report states that the applicant is in discussions with local bus companies regarding opportunities to divert a local bus service closer to the site, but no information or evidence is provided and no new bus stops are proposed. Clarification of these proposals is required.

The opportunity should be taken to provide a half bus lay-by somewhere on Grovebury Road along the frontage of the application site. This can be dealt with by way of a condition.

In terms of HGV access, the surrounding area is commercial and Grovebury Road is the main vehicular corridor from the south for Leighton Buzzard. I am therefore content that these junctions are suitable to serve the site.

In terms of Council parking standards, 398 parking spaces are required. At 318 spaces, proposed parking is therefore approx. 80% of that permitted by the parking standard. A parking accumulation study has been undertaken. Maximum parking demand is 144 spaces.

The capacity assessments are not considered to be robust for the following reasons:

- No account has been taken for re-routing of traffic along Grovebury Road due to the Billington Road Transport Corridor scheme;
- No committed development traffic has been taken into consideration (e.g. Southern Leighton development Sites 15C, 15D & 17, Brickyard Quarry);
- No analysis of the Stanbridge Road/Grovebury Road/Lake Street junction has been included;
- Assessments have been undertaken for 2017 flows only.

In Highway terms; without these matters being addressed I would be unable to recommend that this application be approved.

Sustainable Transport

A framework travel plan (FTP) has been submitted aimed at influencing staff travel to and from the site. As a travel plan, the submission falls short of the information that we would require to be presented and various improvements are required.

It is stated that there are currently no easily accessible bus or rail facilities from the site and presently no direct footways or cycleway to the site. The TA states that this is not a critical issue as the bulky non retail nature of the proposals lends itself to customers using private car/van anyway. However part of the proposals for the site are for a restaurant for which sustainable modes of transport may well provide an option. It is proposed to extend the footway along Grovebury Road to the site. I would support this proposal and clarify that I would expect the footway along Grovebury to be continuous from the town to that towards the Browns site and this to be delivered through a S278 agreement alongside the access proposals for the site. This path should be suitable for cyclists and needs to connect to the Black Bridge cycle route that runs between Grovebury Road and Mentmore Gardens such that this would provide a safe cycle route away from main road from the Linslade area to Grovebury Road and beyond. A financial contribution would also be need to be secured to upgrade the length of existing footway to the toucan crossing at junction of Chartmoor and Grovebury Roads to provide a continuous shared use facility. It is expected that as part of the highways proposals this cycle route will be signed in accordance with the cycle town signage that utilises times rather than distances for pedestrians and cyclists.

The existing 30mph speed limit on Grovebury Road needs to be extended beyond the site boundary.

The proposal to preserve the right of access along the northeast side of the site is to be welcomed as this links to the proposed south Leighton development at Grovebury Farm. However the proposed diversion around the site is not supported as the alignment of the route in its current form offers real potential to link to the southern Leighton development and then on towards the canal tow path and the Tiddenfoot meadows. The highway works to develop the site access also needs to support a crossing such that this link connects to the canal towpath across the Tiddenfoot Bridge. *(Officer Note: The alignment of the right of access from the Grovebury Farm development has now been revised in response to the comments of Sustainable Transport and Countryside Access. A new public footpath/cycle path is now proposed along the*



*north east boundary of the site, to Grovebury Road to the west of the site. The applicants have expressed a willingness to provide for appropriate crossing works linking the site to public pedestrian/cycle routes to the west as part of Section 278 works associated with the development.)*

The Public Transport Technical Note details the proposal to link the development site to the public transport service financed through the south Leighton exemplar site.

Option 1 utilises a future public transport proposal that would access south Leighton Buzzard via Grovebury Lane, however, it is not know when that facility will be implemented as the extension to Grovebury Road via Grovebury Lane is dependent upon future build out rates for the south Leighton development.

Option 2 suggest that the site could be connected to southern Leighton in the vicinity of BW37, again the timescales of the development at Grovebury Farm would potentially preclude this from being a workable possibility in the short term.

It is therefore suggested that the only feasible option would be to secure a public transport contribution that is directed to meeting the needs of this site specifically rather than tying it in with a development proposal over which it has no control. I would therefore propose that a contribution is secured that covers the costs of a service for a 3 year period.

Should the appropriate linkages from south Leighton Buzzard be developed within this timeframe it will then be used to extend the Dash Direct service to the site if appropriate.

- |                    |   |
|--------------------|---|
| Highways Agency    | Various changes are required to improve the Framework Travel Plan. This can be dealt with by planning condition.  |
| Environment Agency | No objection subject to conditions to deal with the potential risk to controlled waters on site from historical and current land use.   |
| Urban Design       | Out of centre retail developments do not satisfy many of the accepted urban design objectives. However, I accept that in planning policy terms these types of development may be appropriate. This proposal needs to be considered in the context of the adjoining site to the north. If both proposals were to be allowed, then they should be designed comprehensively and the layouts would need to relate better to each other, e.g. access |

between the two sites, location of servicing. Landscaping (both soft and hard) will be important to reduce the impact of the buildings and the car parking to the front. Tree planting and landscaping should be provided within the car park to reduce the dominance of parked vehicles. The use of different paving materials would help to break up the large area of black tarmac. The existing hedgerow should be retained and extended along the Grovebury Road frontage to help define the edge of the road and visually contain the site. The Design and Access statement states that the nearest bus route is 10 minutes walking distance to the north of the site. It is not sustainable for shoppers to have to walk 10 minutes to the nearest bus route. The re-routed 'strategic link footpath' involves quite a detour which is unlikely to be attractive to users of the existing route. The footpath doesn't appear to be a public right of way, but if the route is to be accommodated, it would be better directed through the application site rather than around the edge. The side elevation of Unit E provides a poor frontage to Grovebury Road. Given the nature of the building, it will be difficult to create a more active and interesting elevation. Consequently, substantial planting should be provided to screen this elevation. Units B to E would read better if there was greater symmetry in the elevations, i.e. units E & D placed at each end of the block. It is not clear from the Design and Access Statement why the existing road to the south of the site, which forms part of the immediate context, has not been utilised.

Public Art

Recommends provision is made on site for public art integrated into the development itself. Examples of this could be treatments to streetscapes, floors, panels to buildings, glasswork, windows, lighting and so on. A condition is recommended to secure written details of how public art would be integrated and commissioned. It would be expected that the developer appoints artists at the detailed design stage so the artistic feature can be integrated into the development. In this vein, the art should aim to link the site with the town itself and the history, culture and materials of Leighton Buzzard thinking about how the site links with the rest of the town/area and flow from the retail park to the town centre. *(Officer Note: It is proposed to set aside funds of up to £10,000 towards the cost of a public art strategy to provide for public art element(s) as part of the development).*

Public Protection

No objection.

Building Control

There is inadequate amount of disabled car parking. Numbers of bays and sizes should be provided in

accordance with BS 8300: 2009 para. 4.2.1.3.

Buckingham and River  
Ouzel Internal Drainage  
Board

It is intended to dispose of storm water runoff by means of a sustainable drainage system. The applicant should note that any discharge of storm water to adjacent watercourse and/or the IDB statutory district must be limited to the appropriate Greenfield rate and any direct discharge will require the Board's statutory consent. If the method of storm water disposal is to be by way of soakaways then it is essential that the ground conditions be investigated and if found satisfactory the soakaways constructed in accordance with the latest BRE Digest 365.

Bedfordshire Police  
Architectural Liason  
Officer

No objection in principle. Raises concern that the Design and Access Statement does not adequately address community safety.

Countryside Access

The site sits at the heart of an area where a number of access and greenspace proposals come together including Tiddenfoot Waterside Park and the proposed Grovebury Quarry open space. The development should provide an off road link through the site. The development should allow for the public to safely cross Grovebury Road to access Tiddenfoot Waterside Park, the National Cycle Route, the middle and lower schools and the Linslade area. (Officer Note: The alignment of the right of access from the Grovebury Farm development has now been revised in response to the comments of Sustainable Transport and Countryside Access. A new public footpath/cycle path is now proposed along the north east boundary of the site, to Grovebury Road to the west of the site. The applicants have expressed a willingness to provide for appropriate crossing works linking the site to public pedestrian/cycle routes to the west as part of Section 278 works associated with the development).

Trees and Landscaping

I am in general agreement with the findings and conclusions of the submitted Arboricultural Report.

The Sycamore, Ash and Field Maple trees, which mostly make up the copse, were provisionally protected by a woodland Tree Preservation Order some years ago, but after severe rabbit damage incurred during the following winter, the members decided not to confirm the TPO at the subsequent tree panel sub-committee meeting. This meeting was convened following objections from the site owners after the TPO was served.

I understand that the trees have deteriorated since then, and there would be no further justification to seek the protection and retention of these trees in the

circumstances.

I therefore have no objection to the outline application, and would welcome the commitment to landscaping, as indicated in Section 4.10 and 4.11 of the Design and Access Statement supporting the application, as prepared by AJA Architects, dated 6th June 2012.

#### Ecology

I am satisfied that the proposals will not result in harm to a protected species. However the site does provide a habitat resource to the local area, not least in the form of a rookery. The ecological appraisal makes a number of recommendations to ensure no net loss of biodiversity and I think that these are reasonable and could easily be achieved. As such I would hope that the proposed enhancement measures form a condition to any planning permission granted. In addition I would also request that informatives are included to cover aspects identified in the appraisal, including mammal ramps in open trenches and avoidance of the bird nesting season when clearing trees / hedgerows.

#### Archaeology

The proposed development is located within rich archaeological landscape containing evidence of occupation from earliest times onwards. Immediately to the south finds of Roman burials and other finds were made during quarrying (HER 10727). The line of the Thiodweg, a Saxon and medieval long distance routeway associated with the salt trade (HER 10843), with possible earlier origins, runs close to the southern boundary of the site. In the wider surrounding area there have been finds of Palaeolithic artefacts and evidence of Mesolithic occupation. To the south there is the major site of Grovebury with occupation from the Saxon to post-medieval periods occupation, including a royal manor (HER 1870). These are all heritage assets with archaeological interest as defined by the *National Planning Policy Framework*.

The proposed development site has the potential to contain archaeological remains, in particular relating to the finds of Roman burials and the Thiodweg. However, extensive quarrying of the site in the mid 20th century will have probably already destroyed any archaeological deposits the site may have contained. Therefore, the proposed development is unlikely to have any affect on archaeological remains or on the significance of the heritage assets with archaeological interest the represent. Consequently, I have no objection to this application on archaeological grounds.

English Heritage	Application should be determined in accordance with national and local policy and on the basis of specialist conservation advice.
Landscape	Fully support the landscape principle to enhance the landscape frontage of Grovebury Road as part of the development. It is suggested that photo views / wire frames could be provided describing the building height and mass from views within the Ouzel Valley, Grand Union Canal and Tiddenfoot Country Park the valley / Park to gauge if there is likely to be visual impact. There are opportunities for appropriate landscaping at the reserved matters stage. Lighting needs to be considered in terms of design, layout and lighting levels especially as the site is within the context of a Country Park and wider countryside which is an important habitat area - and remarkably dark at night.

### **Determining Issues**

The main considerations of the application are;

1. Planning policy and background
2. Employment land allocation
3. Retail impact
4. Pedestrian and cycle links, public transport and highways matters
5. Landscape, biodiversity and archaeology
6. Design concept
7. Other matters
8. Conclusions

### **Considerations**

#### **1. Planning policy and background**

The application site is located on the southern edge of Leighton Linlade and forms part of a designated Main Employment Area. In line with South Bedfordshire Local Plan Review Policies E1 and E2, and Policies 6, 7 and 8 of the emerging Development Strategy for Central Bedfordshire, the Council seeks to maintain an appropriate portfolio of employment land within Central Bedfordshire. Accordingly the Council would not wish to see current employment land lost to non-employment uses. However, in order to provide flexibility, choice and the delivery of a range of employment opportunities, proposals for employment generating non-B uses on employment sites will also be considered on a site-by site basis in relation to detailed considerations as set out in Development Strategy Policies 7 and 8.

In line with the 'town centres first' approach advocated by the National Planning Policy Framework (NPPF), the Council seeks to support the role and function of the town centres. Policy 11 of the emerging Development Strategy sets out that proposals for retailing outside of town centre boundaries should be considered against a sequential test. The sequential test should take account of available and suitable sites located in town centres, edge of centre locations and then out

of centre locations. Only if suitable sites are not available should out of centre sites be considered. For proposals over 500 square metres gross external floorspace that are outside a designated town centre boundary, the development should be considered against a retail impact test. The retail impact test should consider the impact on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal. The impact on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made will also be considered. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.

It is therefore necessary to consider whether the proposal is acceptable in terms of the employment land allocation and retail impact, having regard to the sequential and impact tests. These assessments take account of the Retail Review undertaken by the Council's independent retail consultant and the advice of internal and external consultees. Whilst the application is made in outline and points of detail relating to siting, design, landscaping and appearance will be dealt with at reserved matters stage, regard should also be had to various detailed considerations at the outline stage.

This application has been made shortly before the submission of a similar retail warehouse proposal on the adjoining site to the north. These schemes should be regarded as separate proposals and each application must be considered on its own planning merit. However regard should be had to the potential for combined impacts in the event of both sites coming forward for similar retail developments. As such these applications have been considered in parallel and are included on the same Committee agenda.

These proposals have emerged following the grant of planning permission for the erection of an extension to the existing Tesco store at Vimy Road, Leighton Buzzard which, if implemented, would involve the demolition of the adjacent Homebase store. Importantly however, Homebase are not identified as named operators as part of either proposal. Additionally it is presently unknown whether the Tesco extension will be implemented or whether Homebase would be required, or seek, to relocate. Whilst the Tesco permission remains extant until 28 May 2015, it should be noted that Tesco have most recently submitted a planning application for a customer collection canopy to serve internet customers. However this recent application does not appear to reflect the intention to extend the Tesco store in line with the previous planning permission. The applicants have identified a number of retailers likely to be targeted as potential occupiers, based on the range of goods which would be sold as part of the development and have submitted copies of correspondence from retailers who would consider locations within the area. However at present none of the identified operators have publically expressed a commitment to the proposals.

## **2. Employment land allocation**

The Council's 2012 Employment Land Review identifies a significant amount of vacant (employment) land in Central Bedfordshire. There is presently an oversupply of between 75 and 100 hectares of industrial land, although office land supply is broadly in balance. The level of industrial land supply is currently in excess of demand. It is important to note however that a high proportion of



vacant employment land is identified to include poor sites which may affect the attractiveness of the employment land market across the area. A number of allocated and unallocated employment sites are not necessarily prime employment sites and are not considered sufficient in scale and quality to be the strategic employment locations needed in order to achieve the Council's job growth aspirations. These types of sites are better suited to service local needs and whilst they have historic employment uses, the likelihood of future strategic employment is questionable given the lack of strategic and market drivers.

Leighton Buzzard has a mixture of large and small industrial estates, located predominantly around Stanbridge Road and Grovebury Road. The application sites are located within an employment allocation concluded as being in adequate condition for B Class employment with some potential for redevelopment taking account of factors including the quality of stock, access to amenities, the adequacy of site servicing, strategic road access and public transport provision. Whilst the review concludes that the quality of the employment land in the area where the application sites are located is 'good', the Council must balance the current supply of industrial land, with future land requirements, the encouragement of inward investment and the need for employment growth.

In connection with this, it should be noted that approximately 16 hectares of new employment land, creating up to 2,400 new jobs, is expected to come forward as part of the East Leighton Buzzard Urban Extension allocation of the emerging Development Strategy.

In relation to existing allocated employment sites, the Council therefore seeks to provide flexibility, choice and the delivery of a range of employment opportunities, in line with national guidance contained within the NPPF and will therefore consider proposals for employment generating non-B uses on employment sites on a site-by site basis.

It is noted that part of the land to the south of the application sites has previously been developed as the Browns retail and trade centre site at the junction with the A505/A4146. Following the proposed residential redevelopment of the former Browns site at Mentmore Road, Browns proposed to relocate to the Grovebury Road site. Whilst this development involved an element of out of centre retail within the Main Employment Area, given the requirement for Browns to relocate and the employment generation resulting from the proposed mixed use scheme, the proposal was considered acceptable.

In terms of the detailed considerations to be applied to non-B uses on employment sites, emerging Development Strategy Policy 7 sets out that proposals should have regard to marketing and viability appraisals of the B class uses; the suitability and impact of the proposal in relation to the location and neighbouring land uses; any increase in the number of jobs that can be delivered; and the potential to strengthen existing clusters through the delivery of complementary employment generating uses.

In this case the application site has been allocated for employment development since the adoption of the South Bedfordshire Local Plan in 1995, yet has remained undeveloped. The application was accompanied by a supporting

statement by Smiths Gore which sets out the history of employment use marketing initiatives for the application site and the adjoining employment land to the south which was previously within the same ownership, part of which has been developed as the Browns retail and trade centre.

In 2002 there was an enquiry from a Dunstable based business but the site was deemed to be unsuitable and the interest was withdrawn. Further collaboration with Saxon Developments culminated in the Browns development on the southern part of the site. Saxons subsequently maintained marketing initiatives for the development of the smaller site to the east of the Browns development (to the south of the application site).

At this time Saxon instructed Lambert Smith Hampton to market the property to identify potential occupiers. The marketing effort continued throughout 2006. In 2007, Saxon sought to acquire the land from CC Trading subject to obtaining planning permission for identified prelets or presales occupiers. Saxon and Lambert Smith Hampton continued to market the property but was unable to continue to operate as developer and promoter of the land beyond the end of 2007.

In 2008 the smaller area of land adjacent to the Browns development was acquired by Chartmoor who also entered into negotiations regarding the application site. Chartmoor marketed the smaller area adjacent to the Brown site through the agents Brown and Lee during 2008. Having offered the site for development through Saxon and Chartmoor and given the changing economic climate, CC Trading took the decision not to commit further resources towards development initiatives during 2009 and 2010.

CC Trading were approached by the applicants in early 2011 with a proposal to promote a DIY and 'bulky goods' retail development.

The applicant has also provided an Employment Land Use/Market Assessment Report by Lambert Smith Hampton which again sets out the marketing history of the site over the preceding ten years.

The Report states that the Leighton Buzzard commercial market is characterised by a largely local demand with take-up and supply being concentrated in the sub 6,000 square metre size range. It is suggested that the current supply of vacant sites within Leighton Buzzard comprises approximately 69,799 square metres of floor space which represents approximately 5.5 years supply of employment floor space based on present demand. Additional pipeline development is likely to add to the overall supply within the area. As such, Lambert Smith Hampton consider there are very limited opportunities for speculative employment development within Leighton Buzzard. It is indicated that, given current rental values, it is very difficult for developers to justify high costs of development on a prelet basis. With no significant opportunity for prelet development within the town in the past ten years, any speculative industrial/storage development is not considered to be viable.

This suggests that the development of the application site for employment uses is not viable at the current time and indicates that there is limited prospect of a future use for the site which would provide a B-Class use.

The proposed retail warehouse would generate a significant element of employment on the principle parcel of this remaining employment land. Additionally, the eastern-most corner of this land has been excluded from the application site as the applicant has proposed that the development would secure the funding of servicing, access arrangements and marketing for the retained employment site in order to encourage the delivery small business/industrial units on the adjacent site (estimated costs of £53,000).

Taking account of the current supply of employment land within the area, the site's history of employment development initiatives and the opportunities for employment creation which would result from the proposal, the proposed non-B Class development is considered acceptable in terms of the employment land allocation and Policy 7 of the emerging Development Strategy.

In accordance with The Town and Country Planning (Consultation) (England) Direction 2009, Local Planning Authorities in England are required to consult the Secretary of State before granting planning permission for certain types of development. This Direction applies in relation to any application, received by a planning authority on or after 20 April 2009, for "development outside town centres" which is not in accordance with one or more provisions of the development plan in force and where the floor space to be created by the development is 5,000 square metres or more. The purpose of the direction is to give the Secretary of State an opportunity to consider whether to exercise call-in powers under Section 77 of the Town and Country Planning Act 1990. The Town and Country Planning (Development Management Procedure) (England) Order 2010 gives the Secretary of State power to issue directions restricting the grant of planning permission by a Local Planning Authority, either indefinitely or during such a period as may be specified in the directions. Notwithstanding the above conclusions in relation to emerging Development Strategy Policy 7 and the NPPF, the proposals are in conflict with Policy E1 of the South Bedfordshire Local Plan Review 2004. Irrespective of the weight to be attached to the employment policies contained with the Local Plan Review Policy 2004, given this conflict, the proposal constitutes "development outside town centres" for the purposes of the 2009 Direction. Therefore the Local Planning Authority is required to consult the Secretary of State, prior to granting planning permission.

### **3. Retail impact** Sequential test

In line with the Council's broad objective to support the role and function of the town centres, proposals for retailing outside of town centre boundaries will be considered against a sequential test as required under Policy 11 of the emerging Development Strategy and NPPF guidance. The sequential test should take account of available and suitable sites located in town centres, edge of centre locations and then out of centre locations. Only if suitable sites are not available should out of centre sites be considered favourably.

Both applications acknowledge need for a sequential approach, due to their out of centre location, and the applicantss have undertaken an assessment of the availability and suitability of other sites within Leighton Buzzard. These include the planned developments at land south of the High Street and the Bridge Meadow site, for which the Council has endorsed Planning and Development

Briefs. The briefs set planning frameworks to guide the future regeneration of the two sites and set down appropriate land uses and development principles.

Land south of the High Street is identified as providing an opportunity to extend the town centre to improve facilities for the town's current and future population. Development on this site is an objective within the council's Medium Term Plan, "Delivering Your Priorities 2012-2016". Accordingly the Council are committing substantial resources and have commenced, and in some cases concluded, the assembly of key land parcels for land south of the High Street. As such this site should be considered available within the plan period.

This site is located within the historic core of the town, adjacent to the Leighton Buzzard Conservation Area which incorporates a large number of listed properties. Notwithstanding the potential scope for a single larger anchor store in line with the Council's Development Brief, the scale, detailed design and format of new commercial units provided as part of the town centre extension scheme would need to be compatible with properties along the historic High Street which is largely characterised by smaller retail units. In terms of their format scale and design, the warehouse retail developments proposed would not be appropriate within this context taking account of the historic pattern of the development within the town centre. Due to the aspirations of the Development Brief and the complexity of wider planning considerations within the town centre, this site is considered to be unsuitable and unviable for bulky goods retailing as proposed under the terms of the sequential test as set out within the NPP.

As with the land south of the High Street, any future scheme for the Bridge Meadow site would need to be in line with the objectives of the Development Brief. The Brief identifies opportunities for development which could incorporate a mix of uses including further education, health, recreation and residential. The Bridge Meadow Development Brief envisages a limited amount of retail in restricted unit sizes as part of a wider mixed use scheme. Given this, and the complex land assembly and tenancy issues, the Bridge Meadow site should be regarded as unavailable, unsuitable and unviable for the proposals being put forward.

The Council has received details of a "third retail park" proposal as referred to within the recent local press. This relates to a proposal, made on behalf of EDS (Holdings) Ltd, concerning land west and north west of Grovebury Road known as the "Camden site", which falls within the Main Employment Area and the adjacent Green Belt field. The proposal sets out two options for development; a mixed use scheme comprising retail and employment development, or an extension of the existing employment area at the "Camden Site" to include the adjacent Green Belt field. In connection with this, it would be proposed to dedicate a parcel of the land for use as recreational open space. Following a public presentation to the Town Council, the details of the proposal were submitted to Central Bedfordshire Council through its Call for Sites consultation, undertaken towards the beginning of last year. This process directly informed the preparation of the Development Strategy. This proposal has not been advanced as part of the Development Plan process and has not been put forward by the Council as a site allocation identified within the emerging Development Strategy. It is not currently subject to a planning application and is lacking in sufficient detail to carry significant weight for the purposes of this application.

The proposal would be in conflict with current and foreseeable planning policy and, like the current Grovebury Road application proposals, would involve out of centre retail development in the Grovebury Road area. In relation to the sequential test, this site cannot therefore be considered preferable to the application sites.

In sequential terms, the two application sites should be regarded as equal and one should not be regarded as preferable to the other purely on retail grounds.

Therefore, in terms of retail impact, neither application fails the sequential test under the terms of the NPPF.

#### Impact test

In accordance with NPPF guidance and Policy 11 of the emerging Development Strategy, the proposals should be also considered against a retail impact test which examines the impact on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal and the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made.

In particular, due consideration must be given to retail proposals on land south of the High Street and the Bridge Meadow site. The proposed retail developments must demonstrate that the proposals will not compromise either of these planned schemes from coming forwards over the plan period.

In general terms the Retail Impact Assessments submitted in support of the applications indicate that Leighton Buzzard continues to perform well, and overall is a vibrant and healthy centre. It is suggested that the health of Leighton Buzzard town centre is not substantially reliant on DIY and 'bulky goods' trade. These conclusions are in line with the Council's own retail studies and the advice of the Council's retail consultant.

On the basis of the aspirations for the Bridge Meadow site (a limited amount of retail in restricted unit sizes as part of a wider mixed use scheme) and the timescales of this development, the Council is advised that neither proposal would impact upon the deliverability of the Bridge Meadow development.

Additionally both proposals are considered complementary to the aspirations for the development at land south of the High Street, which is likely to be focused on higher order specialist/niche operators, fashion retailers and eating/drinking destinations. Given the different aspirations of the application proposals and those for the town centre expansion site, the developments are unlikely to impact on the marketability of the land south of the High Street. The Council's retail consultant notes that both proposals include A3/A4/A5 units and has considered the potential impact of this element of the proposals on the future aspirations for the town centre. The proposals, on their own or together, would be unlikely to impact on planned town centre investment given that they have different target markets.

The Council's 2012 Retail Study shows there is a substantial amount of comparison goods leakage (65%) from Zone 8, the area in which Leighton

Buzzard is located and the Study does highlight opportunities to 'clawback' some of this trade to increase market share through new retail development. The Retail Study has identified a need for only 2,521 square metres of net comparison in Leighton Buzzard by 2016, even when incorporating a 3% market share uplift. This figure grows to 5,775 square metres net by 2021, 7,043 square metres net by 2026 and 8,643 square metres net by 2031.

The development at land south of the High Street is intended to provide around 2000 square metres of comparison floor space. In combination with an expansion to the Vimy Road Tesco store, this planned development would fulfil all of the identified need over the next five years, and 3,014 square metres net of identified need by 2021, leaving a residual need of 2,761 square metres net by 2021. This would not be sufficient to support one of the Grovebury Road application proposals.

It is envisioned that the North Houghton Regis 1 development would provide a significant element of retail development. Whilst the appropriateness and impact of this should be considered separately, this development clearly also has the potential to impact upon retail need within the wider area. Overall, there is a clear lack of baseline need for the comparison goods floorspace sought.

Under the terms of local planning policy and the NPPF need cannot any longer be cited as a reason for refusal. However deficiencies can lead to greater levels of impact and this is therefore a relevant consideration under the impact test. Both proposals would be reliant on trade diversion, both from Leighton Buzzard town centre and elsewhere. It is necessary to consider whether the proposals would give rise to acceptable levels of trade diversion, without leading to any unacceptable impact upon the vitality and viability of the town centre. It is important to consider whether the town centre could withstand the levels of trade diversion being suggested; either individually or in parallel if both schemes came forward. In some circumstances the loss of one or two key retailers in a town centre could commence the process of gradual and continued decline, either through national economic trends, or new development and a consequent significant impact. Recent rises in national town centre vacancy rates and the loss of several important national multiple retailers should be noted. At this stage, the Council's retail consultant does not suggest Leighton Buzzard town centre is vulnerable to this.

The current leakage of comparison goods trade from Leighton Buzzard and opportunities for 'clawback' trade within Leighton Buzzard are identified within the applications. In light of the Council's 2012 Retail Study, the Council's retail consultant concludes there is little 'bulky goods' trade opportunity within Leighton Buzzard above that being leaked to Milton Keynes retail parks. Any trade diversion from elsewhere in the Study area would more likely result in the creation of unsustainable shopping patterns and this would not be in line with the broad objectives of the NPPF. The applications are therefore reliant on 'clawback' trade from the four Milton Keynes retail parks. Whilst the Council's retail consultant anticipates there would be sufficient 'clawback', this would be marginal and is dependent upon both schemes being subject to appropriate restrictions as 'bulky goods' developments. If both schemes were to proceed on this basis, there would be an element of 'mutual impact' whereby the retail warehouse schemes would impact upon each other, and would be less reliant



on 'clawback' from other areas. The Council's is advised that the impact identified is material, but not, in itself, significant in NPPF terms. The Council's retail consultant is comfortable that the type of scheme being proposed is largely complementary to the existing town centre offer and planned town centre investment. Again, this is in the context of appropriate restrictions being placed on any consent restricting the sale of goods as a greater level of flexibility in the range of goods is unlikely to be unacceptable in impact terms.

Despite this conclusion, the range of goods proposed for retail sale includes items which are not 'bulky goods'. In this respect the proposals are not consistent with the emerging Development Strategy Policy DS7 which states that, as an exception to employment land policy, proposals for 'bulky goods' and other forms of specialist retailing less suited to a town centre location will be considered. However, given the clear conclusion regarding the impact of the proposals, it is not considered that an objection purely upon retail policy grounds could be sustained. Nevertheless, it is inevitable that there will be some product overlap with the town centre, including some businesses that would be directly affected such as those primarily focused around the furniture, floor coverings and home interiors and soft furnishings sectors and there are a few operators selling sports goods and toys. This may in time reduce town centre turnover, the range of operators within the main retail area and impact more generally upon the health of the centre. The applicants will therefore need to satisfy that appropriate Section 106 contributions would be forthcoming to support the attractiveness of the town centre, in order mitigate against this impact.

As it is unlikely that there would be sufficient 'bulky goods' demand to let both schemes in the present market or the foreseeable future, the grant of planning permission for both schemes might leave one site vacant and unimplemented creating a retail value (higher than B Class use value) that cannot be realised. This could lead to undermine the value of the vacant land for future B Class uses and pressures to relax restrictions in the future. However this is not in itself a reason to refuse the specific schemes subject of these applications. Any future proposals for retail developments seeking an alternative or broader range of retail goods should be assessed on their own merits.

#### Town centre contributions

In order to mitigate against the town centre impact identified, appropriate Section 106 contributions are required to support the ongoing vitality and viability of the main shopping area and assist in the delivery of the land south of the High Street for redevelopment as a direct extension to the main shopping area. This is in line with Policy 15 of the emerging Development Strategy.

Through its 2011 Portas Pilot Bid, Leighton Linlade Town Council has identified a number of priority initiatives, developed to enhance the attractiveness of the town centre as the main retail quarter, that require financial investment. The Town Council has allocated some funding to meet these objectives and identified that a further £100-150,000 is required for the following:

- Summer Sundays Programme – funding to support the employment of an event manager to coordinate a programme of summer events held on Sundays and fund the provision of barriers, pop-up stalls, staging and other important items of infrastructure.
- Street Screen Project – funding to developing a “24 hour High Street”

concept allowing smart phones and near field communication technology to interact with retail stores, expanding retail hours and creating more dynamic window displays.

- Twice Weekly Market traffic management and infrastructure - traffic management and infrastructure-related costs associated with relocating the twice weekly market, bringing it into the centre of the High Street
- Town Centre Hub Celebrations – funding to develop the concept of the town centre as a hub for the celebration of the town’s local history, where trails, time-lines and mobile and web technologies are used draw people into and augment their experience of exploring the High Street and its offer.

In connection with these, there is a need to reinforce public links between land south of the High Street and the Main Shopping Area through environmental improvements to courts and alleyways and signage.

In order to inform decisions relating to land assembly and assist in the development of site-specific proposals for the land south of the High Street, architectural and feasibility work relating to the potential relocation of the fire station is needed. This would need to take account of the practical requirements of the Fire Service and other existing land owners in terms of the service and interface requirements as well as public safety issues. It would need to examine various parking and access configurations. A contribution towards these costs would assist the Council in bringing forward land south of the High Street for redevelopment involving retail more quickly and support the development of the town centre as the primary retail area.

A contribution of £245,000 is proposed to support these and other related town centre initiatives. This is considered appropriate and proportionate to the retail impact identified.

#### Sections 106 controls

In relation to the above considerations it is also necessary to control range of goods sold from the proposed retail park and, as far a possible, ensure that it is complimentary to the town centre. The Council’s retail consultant has given consideration to control of development by way of planning condition or by Section 106 Agreement as appropriate. It is considered that the development should be subject to Section 106 controls as any Legal Agreement would offer greater control over the specific detail of retail offering and the manner in which the site would operate. The development would be subject to similar Section 106 restrictions to those imposed at White Lion Retail Park, Dunstable.

Having regard to the proposed range of goods to be sold as part of both schemes, the advice of the Council’s retail consultant and the above conclusions regarding retail impact, it is considered appropriate that both developments be restricted to the retail sale of DIY goods; plants, garden products and outdoor furniture; furniture and home furnishings; housewares; fabrics and floor coverings; seasonal goods such as Christmas decorations; motor vehicle parts and accessories; leisure and sports goods; arts, crafts and stationary; toys; home technology and electrical goods; cycles and cycling accessories; and camping goods. The ancillary A3/A4/A5 elements would provide for the ancillary sale of hot and cold beverages and food confectionary for consumption in or

outside the floorspace.

It is considered appropriate to impose additional restrictions to control, for example, the number of units selling specific type of goods and ensure any sports 'clothing' sold remains ancillary to a sports equipment operator. This would assist in the protection of the town centre now and in the future as a possible consequence of changing economic circumstances, market demand and operator formats etc. The Council's retail consultant have advised that the unit sizes proposed as part of the application are broadly in accordance with the expectations of retailers looking to acquire space in bulky goods categories. The size of retail units would also need to be controlled with size restriction for each individual retail unit along with suitable restrictions on sub-division, the merging of units, and the extent of eating/drinking facilities. This would enable control over any future aspirations at the developments if planning permission were granted, allowing the Council to consider changes on a case by case basis.

**4. Pedestrian and cycle links, public transport and highways matters**

In terms of the Council's current parking standards, 398 parking spaces are required as part of the development. A total of 318 spaces are proposed and this represents approximately 80% of the parking standard. In line with the emerging Parking Strategy, a parking accumulation study has been undertaken which demonstrates maximum parking demand would be 144 spaces. No objections are therefore raised in relation to parking.

Highways do not consider that the submitted capacity assessments are sufficiently robust and it will be necessary for the applicants to provide additional information to support the highway network capacity assessments.

Notwithstanding the lack of identified demand for two retail warehouse schemes as proposed, in terms of highway capacity, the potential for combined impacts should also be considered, in the event of both retail developments coming forward. As the capacity assessments submitted in support of the proposals do not address this Officers have requested that additional information to examine highway capacity in relation to a potential combined impact. The combined impact of the proposals should be considered in relation to the capacity of the road network itself but also the combined impact of the established use on the brownfield site and an alternative employment generating development on the greenfield site.

There is currently no public footpath/cycleway linking the site to the existing footpaths/cycleways along Grovebury Road. The development would need to meet the costs of providing these connections. This can be secured by Section 106 Agreement.

The Council's Grovebury Road Industrial Estate Enhancement Plan is presently at a final draft stage and includes suggested enhancement measures for this location as well as the wider estate. The Plan sets out a range of objectives for various environmental and public access improvements including a potential public route running through the application site and the land to the east which is also within the control of the application. This 'strategic' link is an important off road route that could provide a direct, safe link between the Southern Leighton Buzzard housing developments and community development with the proposed

Grovebury Quarry open space to the south and Tiddenfoot Waterside Park and National Cycle Route No 6 to the west. The proposal represents an opportunity to secure an important public pedestrian and cycle link across the site. Following discussion with Council Officers, the application has been revised to incorporate this public right of way as part of the development.

The applicants has expressed a willingness to provide for appropriate crossing works linking the site to public pedestrian/cycle routes to the west as part of Section 278 works associated with the development.

A new bus stop would be required to serve the southern end of Grovebury Road. The applicants have identified scope to include a bus stop within the proposed retail park utilising the car park as a terminus. This would be delivered as part of the development and it would be appropriate for this to be secured by way of legal agreement.

Sustainable Transport and the Highways Agency have identified that various changes are required to improve the Framework Travel Plan which has been submitted in support of the application. This can be dealt with by planning condition.

Sustainable Transport advise that due to uncertainty over the timing of the adjacent housing development at Grovebury Farm and a second route being added to the existing Dash Direct bus service, it would be appropriate for the development to fund a dedicated bus service from the retail park to the town centre.

The applicants consider that the level of patronage generated by a retail warehouse development on Grovebury Road is unlikely to be sufficient to support a dedicated service in its own right. It is also suggested by the applicants that the introduction of a competing service may affect the viability of the existing Dash Direct service. A one-off contribution to support the planned second Dash Direct route (D2) is therefore proposed as an alternative. It is suggested that the purchase of a new bus would be a key factor leading to the implementation of D2 and this would have an estimated cost of £99,000. The applicants have confirmed their client's willingness to enter into a planning obligation to meet this cost.

Sustainable Transport have raised concerns that this offer would not support the running costs associated with an extension to the Dash Direct service and these costs can not currently be met by adjacent housing development as this is dependant upon future residential build-out rates. As noted the timing of this is presently uncertain and is unrelated to the retail development now proposed. Concerns are also raised that an extension to the Dash Direct service would be harmful to attractiveness of existing service which is focused on providing a short 25 min trips to the town centre. Sustainable Transport have advised that the requested contribution is intended to provide a dedicated service connecting the Grovebury Road sites and southern edge of Leighton Buzzard with Linslade and the town centre. The proposed Dash Direct extension would not fulfil this requirement as it would not provide a service for staff and customers on western side of the Leighton Linslade. If directed towards the running of a dedicated service between the western side of Leighton Linslade and the town centre, rather than towards

an extension to the Dash direct service as proposed, the £99,000 contribution offered would not be sufficient to support anything more than very sporadic service which would not be attractive to users. This type of service is therefore unlikely to be viable unless supported by sufficient funding as requested. Given its edge of town location, the development would be considered unsustainable unless it was served by a suitable bus service.

In light of the above, Officers are presently engaged in discussions with the applicants with regard to appropriate transport contributions. Notwithstanding this, as addressed below, the proposed transport contribution should be considered as part of an overall package of planning obligations which are required and those which are offered as part of the development.

## **5. Landscape and biodiversity**

Due to the location of the site at the southern edge of Leighton Linlade and its close proximity to key public open spaces, the potential impact of lighting on the wider landscape would represent a key consideration at the reserved matters stage. Reserved matters proposals would need to provide suitable detail by way of light spill plans and lux level drawings. Taking account of its location between the existing Browns development to the south, and existing commercial development to the north east, and the long term objective for this site developed for employment purposes, it is considered that an acceptable lighting scheme could be achieved if carefully designed at the reserved matters stage.

The Tree and Landscape Officer notes that the existing copse of trees on this site was previously protected by a provisional woodland Tree Preservation Order which was not confirmed. Given present condition of trees their protection is now not considered to be justified. A detailed scheme of hard and soft landscaping would be required by condition. The detailed landscaping proposals would need to be developed, having regard to the importance of suitable soft planting along site frontage and within public parking areas in light of the comments of the Urban Design Officer and the Council's Grovebury Road Industrial Estate Enhancement Plan.

Notwithstanding the comments of the Tree and Landscape Officer, this undeveloped site provides a habitat resource to the local area. The application was accompanied by an Ecological Appraisal which sets out a range of recommendations to ensure that the development would not result in a net loss to biodiversity. The Council's Ecological Officer is satisfied that the appraisal sets out appropriate protection for existing and creation of replacement wildlife and supporting habitats opportunities and that these could be secured by condition.

## **6. Design concept**

The indicative site layout plan shows how the retail development could be arranged. Five Use Class A1 retail units would be positioned towards the east and north east sides of the site and fronting onto a public parking area. The restaurant/café/public house is shown as a stand-alone unit positioned within the south west corner of the site. A service yard is shown at the rear of the Class A1 retail units. A new public footpath is proposed to run from the future housing development on land at Grovebury Farm, along the north east boundary of the site, to Grovebury Road to the west of the site.

The site is located north of the Browns retail and trade centre and south of storage and industrial units, other commercial uses and associated car parking. To the east of the Browns site and the north east of the neighbouring commercial uses, are land at Grovebury Farm and Brickyard Quarry which have outline planning permission for residential and associated development plus a local centre and community land. Within this context it is considered that an acceptable scheme could be achieved in terms of amenity and the impact upon the character and appearance of the locality. The comments of the Urban Design Officer are noted including the importance of suitable landscaping and the need to create active and interesting elevation to Grovebury Road. However the application is made in outline only and points of detail relating to siting, design, landscaping and appearance will be dealt with at reserved matters stage.

Reserved matters applications would also need to adequately address community safety. All buildings and public spaces will need to incorporate measures to reduce crime opportunities. Design of car parking areas will need to be carefully addressed at the reserved matters stage.

As noted, it is proposed to set aside funds of up to £10,000 towards the cost of a public art strategy to provide for public art element(s) as part of the development. A framework public art strategy would need to be agreed with the Council prior to the reserved matters applications and should inform the detailed design of the proposal. This can be secured by condition.

**7. Other matters**

As the application is made in outline, full details of disabled facilities for staff and customers have not been provided. Suitable arrangements for disabled users including adequate disabled parking provision, WCs and disabled lifts for internal mezzanine levels would need to be demonstrated at reserved matters stage in line with guidance of Building Control regarding disability requirements under Building Regulations.

**8. Conclusions**

Taking account of the current supply of employment land within the area, the site's history of employment use marketing and development initiatives and the opportunities for employment creation which would result from the proposal, the proposed non-B Class development is considered acceptable in terms of the employment land allocation and Policy 7 of the emerging Development Strategy. In relation to retail impact, both retail warehouse proposals are considered to pass the sequential test, having regard to the availability and suitability of other sites within Leighton Buzzard. The identified retail impact would be marginal but not significant in NPPF terms.

Prior to Development Management Committee, it will be necessary for the applicants to provide additional information to support the highway network capacity assessments. Subject to this, it is considered that an acceptable scheme could be achieved at the reserved matters stage, having regard to the relevant detailed considerations for this outline proposal.

In terms of the individual merits of the two proposals, the brownfield scheme



would involve the redevelopment of the existing Use Class B8 site. This would be in line with Local Plan Review Policy SD1 and the core planning principles within the NPPF which seeks to encourage the effective use of land by reusing land that has been previously developed (brownfield land) (paragraph 17). Whilst one of the proposals would involve the development of a previously undeveloped site, this does not render the greenfield scheme unacceptable in planning terms, particularly given the longstanding objective for this site to be developed for employment purposes. Similarly any associated benefits which could only be secured through greenfield development (funding for retained employment land, public access across north eastern boundary etc.) do not render the brownfield scheme unacceptable.

Although the brownfield scheme would not be able to deliver these benefits, it would not be appropriate for the Council to seek larger Section 106 contributions towards other areas from the brownfield scheme to offset these benefits. The schemes should be determined on their individual planning merits rather than on the basis of a bidding competition.

In connection with the greenfield scheme, excluding those specific benefits which could only be achieved as part of the development, a contribution of £399,000 is proposed towards the town centre and transport requirements. This compares with a proposed contribution of £489,088 towards town centre and transport requirements for the brownfield scheme. Having regard to their relative scale and likely individual impacts, it is considered that the proposed town centre/transport contributions for the two schemes are broadly proportionate to each other. On the basis of the current Section 106 proposals, the transport contribution offered as part of the greenfield development is inadequate, whereas the town centre contribution offered as part of the brownfield scheme is insufficient. The suitability of the proposed transport/town centre contributions, and the manner in which these monies are apportioned will need to be determined on the basis of the package of contributions put forward by the applicants and an appropriate package of Section 106 contributions will need to be secured in discussion with the applicants.

The applicant currently proposes to enter into a Legal Agreement to secure the following:

- A total contribution of £245,000 to support the vitality and viability of the town centre comprising; (1) £150,000 towards Town Council Portas Pilot Schemes; (2) £70,000 towards improvements to courts and alleyways and signage; (3) £25,000 towards cost associated with architectural and feasibility work relating to the relocation of the fire station; and (4) £25,000 towards the costs of providing temporary car parking at land south of the High Street.
- A contribution of £99,000 to fund the delivery of a public bus service to serve the site and other sites along Grovebury Road.
- A contribution of £55,000 to meet the costs of providing public foot/cycle path connections linking the site to the existing public foot/cycle path along Grovebury Road/Grovebury Lane.
- The creation of a public link along north eastern boundary in line with the Grovebury Road Industrial Estate Enhancement Plan (estimated cost £29,000).
- The funding of servicing, access arrangements and marketing for the

retained employment site to encourage the delivery of small business/industrial units on the adjacent site (estimated cost £53,000).

- The funding of a public art strategy as part of the development.

The Legal Agreement would also need to secure the following:

- Appropriate controls over goods sold. The developments should be restricted to the retail sale of DIY goods; plants, garden products and outdoor furniture; furniture and home furnishings; housewares; fabrics and floor coverings; seasonal goods such as Christmas decorations; motor vehicle parts and accessories; leisure and sports goods; arts, crafts and stationary; toys; home technology and electrical goods; cycles and cycling accessories; and camping goods. The ancillary A3/A4/A5 elements would provide for the ancillary sale of hot and cold beverages and food confectionary for consumption in or outside the floorspace.
- Appropriate controls over the number of units selling specific types of goods and ensure any sports 'clothing' sold remains ancillary to a sports equipment operator.
- Appropriate controls over the size of the retail units along with suitable restrictions on sub-division, the merging of units, and the extent of eating/drinking facilities.
- The creation of a bus stop and half bus lay-by on Grovebury Road as part of the development and provision of real time passenger information on site.

## **Recommendation**

That, subject to the prior consultation of the Secretary of State, in accordance with The Town and Country Planning (Consultation) (England) Direction 2009, and the completion of a prior Section 106 Agreement, that the Head of Development Management be authorised to GRANT Planning Permission subject to the following:

## **CONDITIONS**

- 1 An application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

Reason: To comply with the provisions of Section 92 (2) (a) and (4) of the Town and Country Planning Act 1990.

- 2 Approval of the details of the appearance, landscaping, layout and scale of the development (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced. Plans and particulars of all of the reserved matters referred to above shall be submitted in writing to the Local Planning Authority and the development shall be implemented as approved.

Reason: To enable the Local Planning Authority to exercise control over the said matters which are not particularised in the application for planning permission in accordance with Section 92 of the Town and Country Planning Act 1990 and Town and Country Planning (General Development Procedure) Order 1995.

- 3 The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason: To comply with the provisions of Sections 92 (2) (b) and (4) of the Town and Country Planning Act 1990.

- 4 **Before development begins, details of the materials to be used for the external walls and roofs of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.**

**Reason: To protect, as far as possible the character of the locality. (Policy BE8 S.B.L.P.R and Policy 43 D.S.C.B).**

- 5 **Before development begins, a landscaping scheme to include any hard surfaces and earth mounding shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide details of any existing trees and hedgerows to be retained as part of the development and details of protection measures for the retained trees and hedgerows. The approved scheme shall be implemented by the end of the full planting season immediately following the completion and/or first use of any separate part of the development (a full planting season means the period from October to March). The new and retained trees, shrubs and grass shall subsequently be maintained for a period of five years from the date of planting and any which die or are destroyed during this period shall be replaced during the next planting season and maintained until satisfactorily established.**

**Reason: To ensure a satisfactory standard of landscaping. (Policy BE8 S.B.L.P.R and Policy 43 D.S.C.B).**

- 6 **Before developments begins, a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:**

**1) A preliminary risk assessment which has identified:**

- All previous uses,**
- Potential contaminants associated with those uses,**
- A conceptual model of the site indicating sources, pathways and receptors, and**
- Potentially unacceptable risks arising from contamination at the site.**

**2) A further site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to controlled waters as the Environment Agency are not confident that the initial site investigation sampling and the results of the risk assessment provides sufficient evidence to prove that there is no risk to controlled waters on**

site.

**3) The results of the site investigation and detailed quantitative risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.**

**4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.**

**Any changes to these components require the express written consent of the Local Planning Authority. The scheme shall then be implemented as approved.**

**Reason: To protect and prevent the pollution of controlled waters (particularly the River Ouzel and the Woburn Sands Formation (Principal aquifer) below the site which is part of the Upper Bedford Ouse Woburn Sands waterbody) from potential pollutants.**

- 7 Prior to the initial public use of the development, a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall then be implemented as approved.

Reason: To protect and prevent the pollution of controlled waters (particularly the River Ouzel and the Woburn Sands Formation (Principal aquifer) below the site which is part of the Upper Bedford Ouse Woburn Sands waterbody) from potential pollutants.

- 8 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted a remediation strategy to the Local Planning Authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the Local Planning Authority. The remediation strategy shall then be implemented as approved.

Reason: To protect and prevent the pollution of controlled waters (particularly the River Ouzel and the Woburn Sands Formation (Principal aquifer) below the site which is part of the Upper Bedford Ouse Woburn Sands waterbody) from potential pollutants.

- 9 **Before development begins, a scheme for surface water disposal shall be submitted to and approved by the Local Planning Authority. The scheme shall then be implemented as approved. Infiltration systems should only be used where it can be demonstrated that they will not pose a risk to groundwater quality.**

**Reason: To protect and prevent the pollution of controlled waters.**

- 10 **Before development begins, a Foundation Works Risk Assessment Report shall be submitted to and approved by the Local Planning Authority. The report shall detail the method of foundation construction, avoiding piling, and making use non-invasive methods, such as rafts, where possible. Where there is no alternative to piling, a method should be selected that minimises the risks of groundwater pollution or gas migration. Appropriate mitigation measures and/or environmental monitoring shall be incorporated into the design. The development shall then be carried out in accordance with the approved details.**

**Reason: To protect and prevent the pollution of controlled waters.**

- 11 Prior to the initial public use of the development, a revised Framework Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Framework Travel Plan shall include the following:

- Targets for trip reduction and modal shift
- The methods by which these targets will be met
- The mechanisms for monitoring and review;
- The mechanisms for reporting;
- The penalties to be applied in the event that targets are not met;
- Timescales for the implementation of the travel plan;
- Mechanisms to secure variations to the travel plan following monitoring and review;
- Mechanisms for managing the travel plan and coordinating with other travel plans in the area.
- Details of Individual Travel Plans (ITPs) for site occupants
- Details of how the travel plan will be funded.
- A requirement to produce of staff induction packs containing travel information and incentives to travel by sustainable travel.
- Commitments to set up a site-wide car-share database, provide a guaranteed lift home scheme for staff, allocated staff car-share parking bays, permit scheme/bay patrol by TPC and the promotion of CBC Travel Plan Guidance and National Liftshare Week or Central Beds and Luton Lift Share.
- A commitment to provide cycle parking in compliance with CBC cycle parking guidelines, or commit to the provision of a 'cycle to work' salary sacrifice scheme or promotion of national sustainable travel events for walking and cycling.
- A commitment that the TPC will seek to negotiate a site-wide bus season ticket discount scheme for staff.

The Framework Travel Plan shall then be fully implemented in accordance with the approved details.

Reason: In the interests of highway safety, to reduce congestion and to promote the use of sustainable modes of transport.

- 12 **Before development begins, a Public Art Strategy shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall include written details of how public art would be commissioned and integrated as part of the development, setting out details of community engagement/consultation undertaken, timeframes for the creation and advertisement of an artists brief, the artist shortlisting and agreement process, and a maintenance plan for any artworks created including funding for long term maintenance. The strategy shall then be fully implement in accordance with the approved details.**

**Reason: To ensure a satisfactory and appropriate artistic feature(s) or element(s) are integrated into the development itself and thereby enhance, as far as possible the character of the locality. (Policy BE8 S.B.L.P.R. and Policy 43 D.S.C.B).**

- 13 The development shall be carried out in accordance with the ecological enhancement/compensation measures set out in section 5.3 of the submitted Land off Grovebury Road, Leighton Buzzard, Ecological Site Appraisal by Urban Edge Environmental Consulting, dated May 2012 and in accordance with the generic migration strategies set out in section 5.2 of this appraisal.

Reason: To ensure the appropriate protection of existing and creation of replacement wildlife and supporting habitats opportunities (Policy BE8 S.B.L.P.R and Policy 43 D.S.C.B).

- 14 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plan number 5195 – 33 received by the Local Planning Authority on 21 January 2012.

Reason: For the avoidance of doubt.

**Statement required by the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 - Article 31**

Planning permission has been granted for this proposal. The Council acted pro-actively through positive engagement with the applicant at the pre-application stage and during the determination process which led to improvements to the scheme. The Council has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012.

**Reasons for Granting**

Having regard to the current supply of employment land within the area, the site's history of employment use marketing and development initiatives and the opportunities for employment creation which would result from the proposal, the proposed non-B Class development is considered acceptable in terms of the site's employment land allocation.



Taking account of the availability and suitability of other sites within Leighton Buzzard and the impact on existing, committed and planned public and private investment, subject to appropriate town centre contributions, the identified retail impact is considered to be marginal but not significant in NPPF terms. Subject to the delivery of a public bus service to serve the site and other sites along Grovebury Road, the proposed development is capable of achieving an acceptable scheme in terms of the impact upon the character and appearance of the locality and incorporating adequate landscaping, road, cycle and footpath links and parking areas. The proposal is therefore in conformity with Supplementary Planning Guidance contained within Central Bedfordshire Design Guide: A Guide for Development 2010, the development plan policies comprising the South Bedfordshire Local Plan Review and the emerging Development Strategy for Central Bedfordshire and national guidance contained in the National Planning Policy Framework.

### Notes to Applicant

1. The development is subject to a Legal Agreement under Section 106 of the Town and Country Planning Act 1990.
2. In accordance with Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, the reason for any condition above relates to the Policies as referred to in the South Bedfordshire Local Plan Review (SBLPR) and the emerging Development Strategy for Central Bedfordshire (DSCB).
3. This permission relates only to that required under the Town & Country Planning Acts and does not include any consent or approval under any other enactment or under the Building Regulations. Any other consent or approval which is necessary must be obtained from the appropriate authority.
4. Land contamination investigations should be carried out in accordance with BS 5930:1999-2010 'Code of Practice for site investigations' and BS 10175:2011 'Investigation of potentially contaminated sites - Code of Practice' as updated/amended. Site investigation works should be undertaken by a suitably qualified and experienced professional. Soil and water analysis should be fully MCERTS accredited. Any further site investigation, demolition, remediation or construction works on site must not create new pollutant pathways or pollutant linkages in to the underlying principal aquifer to avoid generating new contaminated land liabilities for the developer. Clean drilling techniques may be required where boreholes, piles etc penetrate through contaminated ground.
5. The CLAIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated material arising from site during remediation and/or land development works are waste or have ceased to be waste. Under the Code of Practice:
  - excavated materials that are recovered via a treatment operation can be re-used on-site providing they are treated to a standard such that they are fit for purpose and unlikely to cause pollution
  - treated materials can be transferred between sites as part of a hub and cluster project

- some naturally occurring clean material can be transferred directly between sites.

Contaminated soil that is, or must be disposed of, is waste. Therefore, its handling, transport, treatment and disposal is subject to waste management legislation, which includes:

- Duty of Care Regulations 1991
- Hazardous Waste (England and Wales) Regulations 2005
- Environmental Permitting (England and Wales) Regulations 2010

The Waste (England and Wales) Regulations 2011.

6. Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, including in line with British Standards BS EN 14899:2005 'Characterisation of Waste - Sampling of Waste Materials - Framework for the Preparation and Application of a Sampling Plan' for waste to be removed from site, and that the permitting status of any proposed treatment or disposal activity is clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays. If the total quantity of waste material to be produced at or taken off site is hazardous waste and is 500kg or greater in any 12 month period the developer will need to register with us as a hazardous waste producer.
7. Soakaways and other infiltration SuDS must not be constructed in contaminated ground. The use of infiltration drainage would only be acceptable if a phased site investigation showed the presence of no significant contamination. The use of non infiltration SuDS may be acceptable subject to our agreement. The Environment Agency would need to be consulted on the results of the site investigation and on any protection measures. Please refer to the Environment Agency website at [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk) for more information.
8. The applicant should note that any discharge of storm water to adjacent watercourse and/or the Buckingham and River Ouzel Internal Drainage Board statutory district must be limited to the appropriate Greenfield rate and any direct discharge will require the Board's statutory consent. If the method of storm water disposal is to be by way of soakaways then it is essential that the ground conditions be investigated and if found satisfactory the soakaways constructed in accordance with the latest BRE Digest 365.

## DECISION

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GVA  
10 Stratton Street  
London  
W1J 8JR

**Central Bedfordshire Council**  
**Retail Review of Planning Applications**  
**Ref: CB/12/03290/OUT & CB/12/02071/OUT**

January 2013



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## Appendices

Appendix I - White Lion Retail Park Legal Agreement

## 1. Introduction

1.1 GVA is instructed to carry out an independent assessment of the retail planning issues raised by two competing retail proposals located adjacent to each other on Grovebury Road, Leighton Buzzard. We refer to the applications as 'Site A' and 'Site B' (Plan 1):

- **Site A:** Proposal for non food retail park and pub/restaurant (Claymore Group and CC Trading Ltd), App Ref: CB/12/02071/OUT;
- **Site B:** Proposal for non food retail park, drive thru restaurant, and pub/restaurant (Barwood Developments Ltd and Invesco PIT Ltd), App Ref: CB/12/03290/OUT;

1.2 Our terms of reference are to carry out a review of the retail issues raised, having regard to the relevant national policy framework (NPPF), and specifically the key policy tests of impact and the sequential approach. As part of this review we have examined the submission material of both applications, and in particular the most up-to-date Retail Assessment submitted by Blue Sky Planning in respect of Site A, and Framptons in respect of site B. A number of clarifications were provided by the applicants during our assessment.

1.3 In the next section, we describe the site and surrounding area and key features of the proposals for each scheme. In Section 3, we summarise the key points of relevance from the NPPF, and set out the local policy context including the main evidence base documents. Sections 4 and 5 set out our analysis of the impact and sequential test and the extent to which the applicants meet the relevant requirements. We draw our conclusions in Section 6.

## 2. Site/Surrounding Area & Proposals

### Site and Surrounding Area

- 2.1 In 2009, Central Bedfordshire District Council was created, merging South Bedfordshire and Mid Bedfordshire District. The three main town centres in the south of Central Bedfordshire include Leighton Buzzard, Houghton Regis and Dunstable. Leighton Buzzard also lies in close proximity – and broadly equidistant – to Milton Keynes, Aylesbury, Hemel Hempstead and Luton, all located outside the district.
- 2.2 The application sites lie adjacent to each other, just over 1 mile south of Leighton Buzzard Town Centre. Whilst they are defined as out-of-centre in retail policy terms they lie within the wider built up urban area around Leighton Buzzard. The immediate surrounding area is characterised by general commercial/industrial uses, and greenbelt land immediately to the west and south. The surrounding commercial area includes the Grovebury Industrial Estate and Browns trade/retail outlet.
- 2.3 The two application sites have the following existing uses:
- **Site A** (Claymore Group and CC Trading Ltd): Measures 2.41 hectares. Undeveloped at present, comprising pasture land with some trees and hedgerows. It is triangular in shape, and currently access is provided from Grovebury Road in the northern corner of the site;
  - **Site B** (Barwood Developments Ltd): Measures 3.43 hectares. Developed and occupied by a row of industrial/commercial units fronting onto the south-east side of Grovebury Road. The existing structure is relatively old and run-down, and currently access is provided from Grovebury Lane on the north east boundary of the site.

### Site A: Proposal

- 2.4 Site A is proposing one anchor DIY retail unit with a ground floor retail area of 3,252 sq m gross (2,602 sq m net); a mezzanine floor area of 929 sq m gross (743 sq m net); and a garden centre of 929 sq m gross.



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- 2.5 The scheme also includes four smaller units, two offering a floorspace of 697 sq m gross (558 sq m net) with mezzanine levels of 348 sq m gross (278 sq m net); and two offering a floorspace of 465 sq m gross (372 sq m net) with mezzanine levels of 232 sq m gross (186 sq m net). **Site A is proposing a total A1 retail floorspace of 8,594 sq m gross (6,132 sq m net)**, including all mezzanine levels and the garden centre.
- 2.6 The submission material (Wilkinson Williams, November 2012) states that the units would be intended for bulky goods retail operators, and names Wickes, Pets at Home and Benson for Beds furniture as likely operators. The applicant has submitted a letter of interest from Wickes, and also notes the possible relocation of Homebase, subject to the Tesco expansion. In paragraph 1.2 of the Retail Statement they state that the scheme has been formulated in response to proposals by Tesco to demolish the Homebase store at Vimy Road, Leighton Buzzard. They add that this will heighten the need for bulky goods retailing in Leighton Buzzard (paragraph 2.8), and their scheme would suit the requirements of Homebase.
- 2.7 The scheme would attract either Homebase or Wickes, not both, and the Wilkinson Williams report therefore identifies a possible three retailers to fill the five proposed retail units. They add that they have not carried out a full marketing campaign at this stage, but on the basis that they are advising on 140+ schemes across the UK with a consequent in-depth knowledge of the market, this appears to represent a limited level of demand from bulky goods operators within this catchment. They anticipate a 65% pre-let prior to construction.
- 2.8 The Retail Statement proposes the following planning condition to limit use of the retail premises to DIY retail and other bulky goods (paragraph 3.7):
- "The retail floorspace hereby approved shall be used predominantly for the sale of DIY related products, equipment, machinery, materials and products related general building, DIY and home/garden improvement (including plants), and for the sale of comparison goods comprising electrical and gas products, furniture, soft furnishings and household textiles, carpets and floor coverings, and pets and pet related products."*
- 2.9 Site A is also proposing an A3 restaurant of 372 sq m gross, 318 car parking spaces and 36 cycle spaces. The November 2012 Wilkinson Williams report lists Burger King, KFC and Starbucks as potential operators. The application is proposing two access points from Grovebury Road (A4012), one for customer vehicles and one for servicing
-

vehicles, and one further pedestrian access point to the public footpath running south of the site.

## Site B: Proposal

- 2.10 Site B is proposing one major DIY retail unit with a ground floor retail area of 1,858 sq m gross (1,300 sq m net); a mezzanine floor area of 159 sq m gross (56 sq m net – see explanation in para.2.13 below), and an external 'project' sales area of 465 sq m gross (326 sq m net).
- 2.11 The applicant was asked to clarify the proposed floorspace figures as part of this assessment, and the information was provided in an email from Framptons on 30 November 2012. In addition to the main DIY unit, the proposals also include eight further retail units, with the following floorspace breakdown:
- Unit 1 to have a ground floor GIA area of 465sq m + 50 % mezzanine;
  - Unit 2 to have a ground floor GIA area of 929sq m + 50 % mezzanine;
  - Unit 3 to have a ground floor GIA area of 697sq m + 50 % mezzanine;
  - Unit 4 to have a ground floor GIA area of 697sq m+ 50 % mezzanine;
  - Unit 5 to have a ground floor GIA area of 697sq m + 50 % mezzanine;
  - Unit 6 to have a ground floor GIA area of 697sq m + 50 % mezzanine;
  - Unit 7 to have a ground floor GIA area of 929sq m + 50 % mezzanine;
  - Unit 8 to have a ground floor GIA area of 418sq m + 50 % mezzanine;
  - Total GIA floor area of 5,530.sq m / Total GIA mezzanine area of 2,764 sq m.
  - Total GIA of 8 units including ground floor and mezzanines = 8,294 sq m.
- 2.12 The **ground floor** retail area of the DIY unit and eight retail units is 7,853 sq m gross (including the outdoor projects area), and 5,496 sq m net assuming a 70% net:gross ratio (including the outdoor projects area).
- 2.13 The gross **mezzanine levels** in each of the eight retail units are described as being 50% of the gross ground floor levels. This equates to a total gross mezzanine floor area in

the eight retail units of 2,764 sq m. Including the mezzanine level in the DIY unit (159 sq m gross), the scheme has a total mezzanine floor area of 2,923 sq m **gross**.

- 2.14 For the mezzanines, the applicant then assumes a 50% net:gross ratio, equating to a mezzanine of 80 sq m net in the anchor DIY unit, and a net floor sales area of 1,383 sq m net in the remaining eight mezzanines. The mezzanines across all nine units have a total of 1,463 sq m net floorspace.
- 2.15 **Site B is proposing a total A1 retail floorspace of 10,775 sq m gross (6,959 sq m net)**, including all mezzanine levels and the outdoor projects area. These figures are based on supplementary information provided by Framptons on 4<sup>th</sup> January 2013. The net sales areas of the mezzanines levels (50% of each mezzanine level) do seem conservative, particularly for the main DIY anchor (80 sq m net). If this scheme were granted consent, the Council should condition the level of ground floor and mezzanine floorspace in each unit rather than for the retail park as a whole.
- 2.16 During ongoing consultation between the Council and the applicants, clarification has been sought in respect to the range of goods intended to be sold from the scheme. During a meeting on 20 November 2012, between the Council and the applicant, we have been informed that the applicant would accept restrictions consistent with those set out in paragraph 7.1 of the White Lion Retail Park (Dunstable) Legal Agreement (attached); with the **addition** of sports clothing, sports footwear and sports equipment, toys and games. The White Lion Legal Agreement agrees, in paragraph 7.1:

*"...not to use or occupy the Retail Buildings other than for the retailing of DIY products (including tools, building supplies, gardening products and ancillary items), furniture, carpets, floor coverings, household fabrics, office equipment and stationary supplies, motor vehicles, cycles and ancillary goods, electrical goods and gas appliances, pets and pet supplies and for the avoidance of doubt no other purpose within Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 provides always that nothing in this clause shall prohibit ancillary sales of hot and cold beverages and food and confectionary for consumption in or outside the Retail Buildings."*

- 2.17 Site B is also proposing a Drive Thru Restaurant Unit with a GIA of 186 sq m (paragraph 2.2), and a public house/restaurant with a GIA of 604 sq m. Paragraph 3.5 of the

Planning Statement confirms that customer car, cycle and pedestrian access to the site would be from two new points of access created on Grovebury Road. Separate HGV service access would be provided from Grovebury Lane. Proposals include 389 car parking spaces, 50 cycle spaces, and a new bus stop on Grovebury Lane.

## Unit Sizes

- 2.18 GVA in-house Retail Agents have contributed to the preparation of this report, and we are able to comment on the appropriateness of unit size in respect of market demand. The Council have asked us to specifically respond to this point based on consultation comments received on the applications.
- 2.19 We conclude that the unit sizes presented are broadly in accordance with retailers acquiring space in the bulky goods categories. Requirements are broadly in the region of 5,000-15,000 sq ft (464.5 sq m – 1,394 sq m), which is reflective of those units submitted on the application drawings.

### 3. Policy Framework

#### National Planning Policy Framework (NPPF)

- 3.1 The NPPF was adopted in March 2012, and makes clear the Government's commitment to securing economic growth in order to create jobs and prosperity and to ensure that the planning system does everything it can to support sustainable economic growth.
- 3.2 The NPPF requires Local Planning Authorities (LPAs) to adopt a positive approach to decision-taking and to apply a presumption in favour of sustainable development. For decision-taking this means that applications which accord with the development plan should be approved without delay and where the development plan is absent, silent or relevant policies are out of date, permission should be granted unless the adverse impacts of doing so would significantly outweigh the benefits of the development when assessed against the policies in the NPPF.
- 3.3 In terms of retail policies, the NPPF maintains the general thrust of PPS4. It advocates a 'town centres first' approach, and requires planning policies to positively promote competitive town centre environments and manage the growth of centres over the plan period.
- 3.4 The application sites are located out-of-centre. The NPPF confirms (paragraph 24-26) that a sequential site and impact assessment is required in support of both proposals. Paragraph 24 confirms that a sequential test should be applied to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. Local authorities should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should 'out of centre' sites be considered.
- 3.5 Paragraph 27 directs local authorities to refuse an application where it fails to satisfy the sequential approach, or is likely to have significant adverse impact on one or more of the factors listed under Paragraph 26, including:
- The impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and

- The impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.

### **Local Plan 2004**

- 3.6 The South Bedfordshire Local Plan was adopted in January 2004; and a number of policies were saved in September 2008 pending preparation of the Local Development Framework. Both application sites are allocated as 'Main Employment Areas', and Policy E1 states that within such allocations, planning permission will not be granted for uses other than B1, B2 or B8.
- 3.7 In terms of the role and performance of Leighton Buzzard, the town centre is identified as one of two main town centres in the District alongside Dunstable, with Houghton Regis performing a more local shopping role. Leighton Buzzard is identified as being well provided for in terms of convenience goods, but with a more limited comparison shopping role with few national multiple retailers. The Local Plan states that its ability to attract national multiples is limited by its relatively small catchment area, the proximity of larger centres and the lack of larger modern and well serviced units. It has nevertheless developed a good range of smaller independent comparison retailers (para.8.13, 2004).
- 3.8 Policy TCS4/7 identifies 'Land South of High Street' as a key town centre regeneration site in Leighton Buzzard; put forward for a mix of town centre uses including retail. This policy has been developed in more recent years, and now forms a Development Brief setting out the Council's development aspirations for the site. We discuss this further below. Policy TCS6 refers to out-of-centre retail and leisure development, but this has not been saved and is not relevant for the purposes of these applications.
- 3.9 We conclude that the document is substantially out-of-date and has been superseded by a number of more up-to-date evidence based documents.

### **White Young Green Evidence Base Retail Study 2009**

- 3.10 This was a joint Study on behalf of Luton Borough Council and South Bedfordshire District Council to assess the 'need' for new retail floorspace across the authority areas. Whilst need is no longer a test with which to assess applications against, the



quantum of spend and shopping patterns across a catchment are key considerations when reaching an overall judgement about the impact of a proposal and also the need for alternative sites beyond those in sequentially preferable locations. We consider that need is a relevant consideration when undertaking both the impact and sequential test.

- 3.11 The WYG Retail Study identified that Leighton Buzzard is an attractive and historic market town, performing well despite the recent economic downturn. There are a small number of multiple retailers offering goods from a number of categories including bulky goods. The Waitrose foodstore is the main convenience offer, although the Study concludes that the town's convenience role has declined as a consequence of the out-of-centre Morrisons foodstore. Overall, paragraph 4.66 concludes that Leighton Buzzard has a good range of shopping and service facilities and displays good levels of vitality and viability.
- 3.12 The Study provides a short qualitative review of out-of-centre non-food retailing; and concludes that the main concentration is Luton Retail Park, Gypsy Lane, comprising ten retail units the majority of which are bulky. Other destinations identified include Chaul End Lane/Dallow Road (five units) and the newer Hatter Way Retail Park (nine units). Leighton Buzzard only has a Homebase DIY store; Table 4.8 lists the Homebase Store within the floorspace schedule, and the supporting text concludes that aside from the White Lion Retail Park in Dunstable there is very little non-food retail warehousing in the (Central Bedfordshire) district.
- 3.13 Paragraph 5.03 acknowledges the growth in proposed and new competing provision in the wider catchment area, including the Junction Retail Park, Aylesbury (18,000 sq m gross bulky goods); the Riverside Shopping Centre in Hemel Hempstead, and the Ikea and Asda stores in Milton Keynes. The study recognises the impact these will have on trade leakage from the Study area, and whilst the focus is primarily on Luton, it concludes in paragraph 5.04 that 'there is a considered need for significant retail development in Luton and the other centres ... to counter the impact of major retail schemes in competing centres...
- 3.14 Section 7 identifies capacity in Leighton-Linslade for £25.3m-£34.4m of comparison good expenditure by 2016, equating to 6,900-9,400 sq m of comparison goods floorspace. The Study does not identify a separate need for bulky goods floorspace, but does identify 'land south of High Street' as a potential opportunity site. Paragraph 7.49 concludes that there is a qualitative need to improve the choice, range and quality of comparison shopping facilities in the town centre through the development

of modern retail floorspace, but recognises that physical opportunities are more limited.

- 3.15 Paragraph 8.66 concludes that meeting longer-term comparison retail floorspace needs within Leighton Linlade may ultimately require a new large out-of-centre retail facility being allocated. Nevertheless, 'land south of High Street' is recognised as being able to accommodate some of the identified floorspace capacity arising over the period to 2016.
- 3.16 This Retail Study has now been superseded by the Roger Tym Retail Study, September 2012, discussed below.

**Pre-Submission Draft Joint Luton & Southern Central Bedfordshire Core Strategy, 2010**

- 3.17 A joint Core Strategy covering the area formerly administered by South Bedfordshire District Council and Luton had reached submission stage before subsequently being withdrawn in September 2011. Despite this, the Strategy was endorsed by Central Bedfordshire's Executive in September 2011 for Development Management purposes.
- 3.18 Policy CS1 sets out the development strategy for the policy area, and allocated East of Leighton-Linslade as a focus for new housing development with up to 2,500 new homes. Policy CS21 is specific to Leighton-Linslade Town Centre and states that mixed use development would be focused on two major sites and land uses would include up to 6,889 sq m (WYG, 2009) of additional comparison goods floorspace. The emerging development briefs are noted (discussed below).
- 3.19 Paragraph 11.54 recognises that opportunities for new employment will continue to be supported and enabled in accordance with Policy CS1, particularly in the Grovebury Road and Stanbridge Road areas.

**Land South of High Street Development Brief, GVA, March 2012**

- 3.20 Driven by previous evidence and policy, Central Bedfordshire commissioned a Development Brief for both Land South of High Street and Bridge Meadow.
- 3.21 Land South of High Street covers land of approximately 2.65 hectares, and adjoins the main shopping area. It is a town centre site in policy terms. The primary purpose of development should be to create a new retail quarter for the town centre which is supported by ancillary uses including car parking, residential and leisure uses. The site should form a seamless extension to the Primary Shopping Area and address the

quantitative and qualitative development needs identified in the 2009 Retail Study, including a significant amount of new comparison goods retail floorspace including larger format stores.

3.22 The document does not identify the amount of comparison goods floorspace that the site could accommodate, but we understand from a report to the Development Management Committee on 7 July 2011 concerning a Tesco extension (CB/10/04238/FULL) that the convenience element could be around 2,400 sq m gross and the remaining shopping (comparison) around 2,880 sq m gross. This figure is broadly consistent with some initial mapping/land use allocation scenarios produced by GVA as part of the Development Brief background work, although it must be noted that there are no definitive 'proposal maps/land use allocations' at this stage.

3.23 The incorporation of a small foodstore is identified as a potential anchor store, and there is no clear intention to accommodate bulky goods retail type warehouse units. Section 9 adds that delivery is dependant on favourable economic conditions, and the Council anticipates that the development will come forward over the next 5 to 10 years. We discuss this further in Section 4.

**Bridge Meadow Development Brief, GVA, March 2012**

3.24 The Bridge Meadows site is edge-of-centre, lying outside the Primary Shopping Area and Town Centre Boundary. The Development Brief proposes to unlock this site to provide a new edge-of-town centre waterside quarter for the town which could accommodate a mix of uses including further education, health, recreation and residential. Use Class A1 retail is included within proposed land uses, identifying it as an appropriate location for up to 1,000 sq m gross with a maximum unit size of 250 sq m.

**Central Bedfordshire Retail Study, September, 2012**

3.25 Roger Tym & Partners was instructed by Central Bedfordshire District Council (CBDC) in January 2012 to undertake a Retail Study to assess future need. Leighton Buzzard, Dunstable and Biggleswade are identified as the larger town centres, and the Household Telephone Survey calculated trade retention of different locations within the survey area. The findings are as follows:

- Luton & Retail Park: 26.1%
- Dunstable & White Lion Retail Park: 8%
- Hitchin: 4.3%

- Biggleswade & Retail Parks: 4.4%
- Leighton Buzzard: 3.3%

3.26 Paragraph 5.27 states that the results of the household survey show that the most popular study area locations to shop for DIY goods, furniture and domestic appliances are in and around Luton and Milton Keynes, which may indicate scope for more of these outlets in Central Bedfordshire.

3.27 Tables 3.1. to 3.4 below set out the market shares for each main destination for the more bulky goods categories, taken from the Roger Tym Household Telephone Survey. We have focused on Zone 8, the Zone in which Leighton Buzzard is located, which demonstrates that the most popular town centre destinations are Milton Keynes, Aylesbury and Leighton Buzzard, with a range of retail parks attracting a reasonable proportion of trade. Milton Keynes and Aylesbury are both outside Zone 8 demonstrating leakage of trade from Leighton Buzzards core catchment area. The attraction of Homebase in Leighton Buzzard is evident from the survey results, attracting around 54% of Zone 8 DIY expenditure.

**Table 3.1: Furniture, Floorcoverings, Household Textiles – Zone 8 Market Share**

Milton Keynes	29.3%
Leighton Buzzard	12.0%
Milton Keynes Retail Parks	10.0%
Aylesbury	5.3%

**Table 3.2: DIY and Decorating Goods – Zone 8 Market Share**

Leighton Buzzard (inc. Homebase)	54.0%
Vale Hundreds Retail Park, Aylesbury	7.3%
Milton Keynes	3.3%
Beacon Retail Park, Bletchley	3.3%

**Table 3.3: Electrical Small Products – Zone 8 Market Share**

Milton Keynes	22.7%
Leighton Buzzard	18.0%
Milton Keynes Retail Parks	10.7%
Aylesbury	6.0%

**Table 3.4: Electrical Large Products – Zone 8 Market Share**

Milton Keynes	25.7%
Leighton Buzzard	14.7%
Milton Keynes Retail Parks	8.0%
Aylesbury	2.9%

- 3.28 Paragraph 5.7 recognises that Leighton Buzzard is trading very well, with a sales density of £6,256 per sq m net. The report states that this possibly indicates a degree of pent up demand in the market, although it is also likely to be a result of small unit sizes in constrained buildings. In terms of 'baseline' floorspace need across the District, the report estimates this to be 1,550 sq m net for comparison goods by 2016, rising to 7,555 sq m net by 2021. This assumes no increase in market share.
- 3.29 Within an increased market share option (of 3%) the forecasts rise to 10,085 sq m net by 2016 and 22,120 sq m net by 2021. Paragraph 5.20 concludes that a market share uplift would only be achievable with the provision of some modern new floorspace to attract larger units to the centre.
- 3.30 Section 8 sets out the recommended development strategy, and concludes that Leighton Buzzard could accommodate 25% of identified need to 2031, equating to 5,553 sq m net by 2021 and 8,645 sq m net by 2031 (in an increased market share scenario). They do not provide any clear methodology for reaching such a conclusion, but provide a general comparison with existing split of turnover and the hierarchy of centres. The figure is intended to provide 'guidance' only.

- 3.31 The Study emphasises that bulky goods is no longer considered a separate category for which a floorspace need should be identified. Paragraph 5.25 states that applications for retail warehouses should be considered on their own merits, and clarifies that the NPPF allows local authorities to 'set policies for the consideration of proposals for main town centre uses which cannot be accommodated in or adjacent to town centres'. They highlight the scope for the Council to set a specific policy to deal with such proposals.
- 3.32 Paragraph 5.26 quotes from the Practice Guide (paragraph 6.31) in its discussion of DIY, furniture, carpets and domestic appliances and states that 'in many cases, these forms of development are regarded as complementary to the role of town centre retailing, and do not generate sufficient sales productivity to trade in prime town centre locations'.

### **Central Bedfordshire Employment Land Review, 2012**

- 3.33 GVA was instructed by Central Bedfordshire Council to carry out a Stage 1 and Stage 2 Employment and Economic Study for the area; Stage 1 undertook a detailed review of the allocated employment sites across Central Bedfordshire to assess the 'appropriateness' of supply compared to forecast demand. Both application sites are allocated as Main Employment Areas the land use will be a consideration the Council will need to make when balancing their overall conclusions on the wider planning issues.
- 3.34 Whilst this report is focusing on retail issues, it is relevant to point out that the employment study has identified a large amount of vacant (employment) land in Central Bedfordshire. A high proportion of this is identified to include poor sites which may affect the attractiveness of the employment land market across the area. The application sites are located within an employment allocation concluded as being in adequate condition for B Class employment with some potential for redevelopment.
- 3.35 Section 7 of the Stage 1 report concludes a significant oversupply of industrial land of between 75-100 Ha, although office land is broadly in balance. The level of industrial land supply, significantly outstrips that of demand. A number of sites, particularly those that are existing allocations or existing sites in employment use, are not necessarily prime employment sites and are not considered sufficient in scale and quality to be the strategic employment locations needed in order to achieve the Council's job growth aspirations. These existing allocations and existing sites in employment use are better suited to service local needs.



- 3.36 The Stage 2 report concludes that such sites have historic employment presence which was appropriate at the time but the likelihood of future strategic employment is questionable given the lack of strategic and market drivers. The implications of this are that Central Bedfordshire Council have to implement a flexible planning policy regime to encourage employment growth while providing sites that are attractive to the market.
- 3.37 There is no specific conclusion to de-allocate the application sites, but whilst the employment land review concludes that the quality of the employment land (LB064) – including the application sites – is ‘good’, the Council must balance the significant oversupply of industrial land, with future land requirements, the encouragement of inward investment and the need for employment growth. The conclusion drawn must be a decision about whether the application sites are needed to achieve these primary objectives.

### **Development Strategy for Central Bedfordshire Pre Submission, January 2013**

- 3.38 The Development Strategy will be the main planning document for Central Bedfordshire. It will set out the overarching spatial strategy and development principles for the area together with more detailed policies to help determine planning applications. It is anticipated that the Plan will be formally adopted in early 2014.
- 3.39 Section 6 sets out the policy framework for employment and the economy and confirms that the Development Strategy will deliver 27,000 new jobs between 2011 and 2031 within Central Bedfordshire. It is anticipated that 45% of new jobs will be from B-Uses with the remaining (55%) being delivered through non-B-Uses. The Council recognises (paragraph 6.20) that B and non B employment generating uses can also be complementary and that there may be opportunities to consider their co-location where appropriate.
- 3.40 Paragraph 6.26 notes that the Stage 2 Economic and Employment Study identifies that in quantitative terms there is sufficient existing supply in Central Bedfordshire to satisfy demand, but that the nature of the supply, in terms of scale, quality and location is unlikely to meet the needs of the warehousing logistics sector in relation to access to major strategic transport routes and the accommodation of the scale of development required. The study also identifies that in order to meet the job targets, the contribution of Non B Class employment generating opportunities must also be considered alongside the delivery of B Class uses.

- 3.41 Both sites are allocated for employment use, and the Council must consider employment within the wider planning issues when considering both applications.
- 3.42 The draft document comments specifically on retail uses, highlighting that the Council would not generally wish to see inappropriate retail uses located on land allocated for employment generating activities; however, the Council acknowledges that some retail uses such as Bulky Goods provision may be more suited to out of centre locations and will need to be assessed on a site by site basis to ensure that such provision will not detrimentally impact upon the town centres.
- 3.43 Policy 7 relates to employment sites and uses:

*"Across the portfolio of employment land within Central Bedfordshire, planning permission will be granted for appropriate B1, B2 and B8 uses.*

*In order to provide flexibility, choice and the delivery of a range of employment opportunities, proposals for employment generating non-B uses on employment sites will also be considered on a site-by-site basis (in relation to a series of criteria).*

*To support the role and function of the town centres, retail uses will not normally be considered appropriate on employment sites. Exceptions will be considered on a site by site basis for bulky goods and other forms of specialist retailing less suited to a town centre location."*

- 3.44 Section 7 focuses on town centres and retailing, and notes from the outset that the housing growth envisaged within this strategy will lead to a considerably increased population in Central Bedfordshire over the next twenty years. Paragraph 7.3 adds that during this period, comparison and convenience retail expenditure is expected to increase significantly. The document endorses the sequential approach, but adds:

*"It is recognised that certain types of retailing, whilst beneficial to the local economy, may not be appropriate within town centres, particularly bulky goods retailing and other forms of specialist retailing. In order to meet the needs of shoppers and ensure a variety of retail offer within Central Bedfordshire, proposals for such uses will be considered on a case by case basis." (para 7.6)*

- 3.45 Policy 11 sets a local floorspace threshold of 500 sq m gross external for Retail Impact Assessments for those proposals outside a 'designated town centre boundary'. Proposals for bulky goods and other forms of specialist retailing outside of town centre boundaries will be considered, in conjunction with Policy 7, on a site by site basis

taking into account the suitability of the site, the impact on the town centre, and the potential increase in traffic generation.

## Summary

- The application sites are both out-of-centre and the NPPF confirms that both applications are required to demonstrate compliance with the sequential and impact test;
- The application sites are both allocated as Main Employment Areas in the 2004 adopted Local Plan. Land South of High Street is identified as a key town centre regeneration site in the adopted Plan;
- The 2009 WYG Retail Study concluded that Leighton Buzzard was performing well, with a good range of shopping and service facilities. The study identifies a need for between 6,900 and 9,400 sq m of comparison goods floorspace; and concluded that whilst Land South of High Street could accommodate some of the identified need, there may be a requirement for a new large out-of-centre retail facility being allocated;
- The most up-to-date Roger Tym's Retail Study (September 2012) identifies a need in Leighton Buzzard of 5,553 sq m net comparison by 2021, growing to 8,645 sq m net comparison by 2031. The Council should be wary of forecasting beyond 2021, and in respect of these applications, 2021 must be viewed as the longer term forecast;
- In broad terms, Land South of High Street could accommodate around 1,750 – 2,100 sq m net comparison on the basis that the scheme will include a foodstore anchor. Following the implementation of Land South of High Street, there remains a residual need for around 3,500 sq m net comparison floorspace in Leighton Buzzard by 2021. This is not in itself sufficient to support either of the applications, which must instead rely on a greater level of claw back than tested by Roger Tym.

## 4. Sequential Test

4.1 The NPPF confirms that local authorities are required to apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. This applies to both applications. Local authorities should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered (para.24). The document adds that when considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre.

4.2 Both applicants acknowledge their out-of-centre location and requirement to adopt a sequential approach. In advance of reviewing their submission material in detail, we have discussed the availability of sites with the Council, a process which has identified Land South of High Street and Bridge Meadow as sequentially preferable sites to the two application sites, in terms of distance:

- Land South of High Street: An edge of centre site, but immediately adjoining the existing Primary Shopping Area. A new retail scheme would be seamlessly integrated creating an enlarged Primary Shopping Area; whilst the site is currently edge-of-centre it would be town centre once developed;
- Bridge Meadows: An edge of centre site, separated from the Primary Shopping Area. The site would remain edge of centre even following redevelopment.

4.3 We have already noted that the NPPF gives preference to accessible sites that are well connected to the town centre. In this case, we consider Land South of High Street to be sequentially preferable to Bridge Meadows. Discussions with the Council did not highlight any further sites in town or edge-of-centre locations to be considered as part of the sequential test, and these should be viewed as sequentially preferable unless demonstrated otherwise.

4.4 We discuss each applicant's sequential site assessment in turn.

### Site A, Blue Sky Planning Retail Statement, June 2012

4.5 Blue Sky Planning considers both Land South of High and Bridge Meadows, both of which are the subject of adopted Development Briefs. They argue that **Land South of**

**High Street** is not available due to the requirement for complex land assembly; that the site is not suitable for the proposals given the overall objectives for convenience and high street clothing retailing; and that the site would not be viable for the retail warehouse proposals on the grounds of costly land assembly and site preparation, and the requirement to meet design aspirations for the Town Centre.

4.6 Similarly, they argue that **Bridge Meadow** is not available due to complex tenancy and ownership issues, is not suitable for the proposals given the aspiration for a total retail area of 1,000 sq m and maximum unit size of 250 sq m, and is not viable due to land assembly and demolition and remediation works.

4.7 Blue Sky Planning makes no reference to the adjoining Site B.

#### **Site B, Framptons Retail Sequential Assessment, September 2012**

4.8 Framptons also considers Land South of High Street and Bridge Meadow. Their assessment dismisses **Land South of High Street** for broadly the same reasons as Blue Sky Planning. Notably, they consider the site to be unavailable due to complex land ownership issues, unsuitable for their retail warehouse proposals, and unviable due to the requirement for a high design quality in the town's heritage setting.

4.9 The Sequential Assessment dismisses **Bridge Meadow** for the same reasons as Land South of High Street. They argue that the site is unavailable due to complex land assembly issues and a 10-15-year lead in timescale as set out in the Development Brief; that the site is unsuitable because the proposals would not meet the aspirations of the Development Brief in which retail is broadly an ancillary use; and that the site is unviable due to a heritage setting and strong design standards, and complex land assembly.

4.10 They dismiss both Land South of High Street and Bridge Meadow as being unsuitable, unviable and unavailable. Framptons also comment on adjoining Site A, concluding it to be available and viable. They conclude, however, that the site is unsuitable for the following reasons:

- Site A is an undeveloped Greenfield site, as opposed to Site B which is an obsolete and underused brownfield site;
- Site A is further from the town centre, residential areas and bus routes;
- Site A has only one road frontage, whereas Site B has two, enabling a separation of service and customer vehicles;



- Site B is an established commercial use and the locality would consequently experience no impact in terms of traffic generation;
- Site B is already developed and there are not any ecological or archaeological considerations to address.

### Land South of High Street: Conclusion

- 4.11 Both applicants dismiss Land South of High Street as unavailable. Whilst the Council acknowledges it is currently unavailable, they have confirmed that they are working to assemble a development site that should become available with an intended start date of 2015/16. The Council already owns a significant part of the site, and they are committing substantial resources and have commenced the assembly of key land parcels.
- 4.12 Both applicants have concluded that the site is unsuitable and unviable. We would concur with this position in respect of the application proposals, on the basis of the very different aspirations for the site set out in the Development Brief. Paragraph 6.46 of the Practice Guidance on Need, Impact and the Sequential Approach states that 'if LPA's suggest alternative, more central sites as being sequentially preferable, they should be satisfied that the alternatives are genuinely likely to be suitable for the scale/form of town centre uses proposed, having regard to their planning policies, their stated intentions for the site, and any other planning conservation or environmental constraints affecting the site'. It is our view that both proposals are inconsistent with the Council's stated intentions for the site.
- 4.13 In terms of viability, we agree that any scheme for Land South of High Street would require strong, quality and high design standards, being a key town centre integrated site. Whilst the Council already owns land, it would be unlikely for either retail warehouse proposal to be viable based on wider planning requirements. Paragraph 6.31 of the Practice Guidance states that 'in many cases, these forms of development (DIY, furniture, carpets and domestic appliances) are regarded as complementary to the role of town centre retailing, and do not generate sufficient sales productivity to trade in prime town centre locations'.
- 4.14 We conclude that whilst the site will become available, it is unsuitable and unviable for bulky goods retailing as proposed by both applicants. This is primarily due to the aspirations of the Development Brief and the complexity of wider planning considerations due to the heritage of the built environment in Leighton Buzzard town centre.





## 5. Impact

5.1 The NPPF states (para.26) that when assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment. This should include assessment of:

- The impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- The impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made.

5.2 In this case, the applicant must give due consideration to retail proposals on Land South of High Street and Bridge Meadow and demonstrate that the proposals will not compromise either scheme from coming forwards over the plan period.

5.3 Our analysis has already demonstrated a 'retail' need over and above the floorspace that could be accommodated on Land South of High Street and Bridge Meadow, but not sufficient to accommodate the full extent of just one of the proposals. Our analysis has also demonstrated, in Section 3, the leakage of 'bulky goods' trade from Zone 8, the zone in which Leighton Buzzard is located, primarily to Milton Keynes town centre and Milton Keynes Retail Parks.

5.4 We review each submission document in turn to analyse their respective impact assessments.

### **Site A: Blue Sky Planning Retail Assessment, June 2012**

5.5 Blue Sky Planning has based their impact assessment on the White Young Green Retail Study (2009) and has not reviewed the most recent Roger Tym Retail Study (September 2012). Nevertheless, we review their methodology and conclusions, but do compare this to the most up-to-date retail evidence base for Central Bedfordshire in drawing our own conclusions.

5.6 Overall, their assessment concludes Leighton Buzzard to be performing well, a conclusion consistent with both the White Young Green (2009) and Roger Tym (2012)

retail evidence. The applicant concludes that the health of the centre is not reliant on bulky goods retailing, a point we would broadly agree with but would caution that there is likely to be some overlap in goods sold from the town centre and a bulky goods destination. This requires further consideration. Overall, we would concur that Leighton Buzzard is a healthy and vibrant town centre, with no evident signs that there is a strong risk of decline.

- 5.7 The applicant concludes that the proposal would not impact on the implementation of Bridge Meadow on the basis that the proposals for the site are for residential led development with a small amount of retail to be provided as part of a mixed use scheme. We agree with this point given qualitative composition and lengthy timescales.
- 5.8 They highlight that Land South of High Street is the only planned investment within the centre that is proposed to include a significant amount of retail development. This is a priority site in Leighton Buzzard and it is crucial that the proposals do not compromise the scheme from coming forwards. Their assessment concludes that given continued difficult economic circumstances the implementation timeframe for Land South of High Street runs beyond the 5-10 year period and the proposals will not therefore impede on a scheme coming forwards given the much shorter timescales envisaged.
- 5.9 We disagree with this point on the basis that land assembly for Land South of High Street has commenced and early investor confidence in the site is crucial. Implementation timescales might be longer, but an emerging scheme and developer and retailer interest is important from the early stages to ensure the emergence of a viable and deliverable scheme. It is important that the Grovebury Road proposals do not impact on retailer interest in the town centre scheme, and an earlier implementation timescale of the Grovebury Road proposal would not in itself prevent this from happening.
- 5.10 Nevertheless, the assessment goes on to highlight the qualitative difference between the town centre aspirations and the application proposals, emphasising the higher order niche retailers and predominantly fashion orientated goods envisaged as part of the town centre strategy, and the sale of bulky goods as part of the application proposals. We concur that there is a complementary role for bulky goods retail warehouse destinations alongside a town centre offer, and the applicant acknowledges the use of conditions to control the range of goods and minimise any impact arising on the town centre and – importantly – planned investment.

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- 5.11 The applicant concludes that there is sufficient expenditure to support their proposals, the Tesco commitment (1,014 sq m net comparison), and planned investment at Land South of High Street, by 2016. This, combined with the qualitative differences in planned investment, leads them to conclude a negligible impact on existing, planned and committed floorspace. This is, however, based on the White Young Green evidence, which is now out-of-date, and we must consider the proposals against the more up-to-date Roger Tym Retail Study (September 2012). We discuss this later.
- 5.12 The applicant sets out their quantitative impact assessing, demonstrating the levels of trade draw and subsequent impact on different destinations. The assessment notes the levels of trade leakage from Zone 7, a tightly defined survey zone around Leighton Buzzard; and they conclude relatively low levels of trade retention for different goods types (8.6% - clothing / 34.5% - electrical goods / 48% - books, toys, gifts etc / 39.5% - furniture and floor coverings). They conclude that the 32.1% DIY trade retention is primarily accountable for by the nearby Homebase store.
- 5.13 The assessment has disregarded the DIY component (the main DIY unit) from the Town Centre impact assessment on the basis that it will draw no trade from the town centre. This clearly mitigates the levels of impact, although we note that the DIY unit will have a turnover of £3.11m which is a small proportion of overall turnover. Nevertheless, Leighton Buzzard town centre clearly has an element of DIY products on sale and the full extent of the proposed scheme should be tested.
- 5.14 The assessment concludes a 1.9% impact on Leighton Buzzard town centre on the basis that 70% of scheme turnover (£4.87m) will be derived from claw-back, and 30% will be diverted from the town centre (£2.09m). They forecast town centre turnover at 2016 to be c.£95m; we consider this to be an over-estimate of turnover based on the most recent Roger Tym figures. Nevertheless, even assuming a lower town centre turnover of around £70m, impact would remain under 3% which we would consider to be an acceptable level, albeit conservative as a consequence of excluding the DIY operator. Their assessment acknowledges some overlap of goods between the two destinations, which we agree to be inevitable, particularly based on the Leighton Buzzard market shares for different goods types set out in Section 3 of this report.
- 5.15 In conclusion, the applicant demonstrates that the town centre is performing well and that provided appropriate conditions are put in place the proposals will provide a retail destination offering goods different to that provided or planned for in the town centre. They emphasise the relatively significant leakage of comparison and bulky goods trade from the core catchment area. We broadly concur with these
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comments and conclusions. They also note the sufficient expenditure to support existing, committed and planned investment in Leighton Buzzard, although this is based on out-of-date evidence, and we discuss this further in the context of the most recent Roger Tym Study later in this section.

### **Site B: Framptons Retail Impact Assessment, September 2012**

- 5.16 The Framptons Assessment was prepared more recently than the Blue Sky Planning submission, and they have therefore had opportunity to consider the findings of the Roger Tym Study when it was produced in Draft. The Roger Tym Study is now final and the quantitative figures remain unchanged from the draft.
- 5.17 Their assessment firstly considers the two planned investments at Bridge Meadow and Land South of High Street, concluding the very different retail offer compared to their proposed retail warehouse scheme. Provided sufficient conditions are put in place on the retail warehouse scheme, we would conclude that the proposed scheme would not deter the effective marketing or delivery of the two preferred town and edge of centre sites. Consideration of a number of other factors must be taken into account, however.
- 5.18 Like Blue Sky Planning, Framptons concluded the health of Leighton Buzzard to be strong; a point we have already concurred with. They note that the proposals would be complementary to the town centre, and again we broadly concur with this view.
- 5.19 Their quantitative impact assessment of trade draw assumes that the Homebase store will continue trading, and we consider this to represent an appropriate worst case scenario. We note that if the Homebase were to close, the proposed retail park would benefit from an element of diversion of trade.
- 5.20 They estimate (letter dated 4<sup>th</sup> January 2013) the turnover of their scheme to be £14.9m, which we consider to be a reasonable assumption; and they emphasise the loss of trade from the core catchment area (65%) as set out in the Roger Tym study, primarily to Milton Keynes and Milton Keynes Retail Parks. They note that leakage to Milton Keynes Retail Parks is 9.4% equating to £16.4m of Zone 8 expenditure, i.e. more than sufficient to support the proposed development. Their assessment states that Leighton Buzzard could achieve a greater market share uplift than suggested in the Roger Tym work (3% uplift) due to the extent of leakage.
- 5.21 Like Blue Sky Planning, the assessment has disregarded the DIY component (the main DIY unit) from the Town Centre impact assessment on the basis that it will draw no trade from the town centre. Again, this mitigates the level of impact arising, although



we note that the DIY unit will have a turnover of £1.8m (letter dated 4<sup>th</sup> January 2013) which is a small proportion of overall turnover. Nevertheless, like the Site A proposals we conclude that Leighton Buzzard town centre clearly has an element of DIY products on sale and the full extent of the proposed scheme should be tested.

- 5.22 Based on the turnover of the unit warehouses only, they assume that 70% of the non-DIY scheme turnover (para.6.33 & letter dated 4<sup>th</sup> January 2013) (£9.2m) will be derived from claw-back expenditure from alternative destinations, and the remaining 30% (£3.9m) would be diverted from the town centre. In 2017, they assume the town centre turnover to reach £80.94m based on the Roger Tym turnover (£67.8m) and a 2% market share increase, equating therefore to a town centre impact of 4.5%. They conclude this to be relatively modest, a conclusion we would broadly agree with, but again we note this is conservative based on the exclusion of the DIY unit.
- 5.23 Frampton's add that if the Homebase were to close as a consequence of Tesco implementing their commitment to extend, the vast majority of the expenditure associated with that DIY store will be diverted to their Grovebury Road proposals. At this stage it is important to assume it will remain open in order to consider a 'worst case' scenario.

### Conclusions - Retail

- 5.24 Both applicants make a number of impact points that we broadly agree with:
- Leighton Buzzard continues to perform well, and overall is a vibrant and healthy centre;
  - The health of Leighton Buzzard town centre is not substantially reliant on DIY and bulky goods trade, although we note there will be some overlap of goods;
  - Neither proposal will impact upon the deliverability of Bridge Meadows on the basis of lengthy timescales and the aspirations for a mixed use scheme with only a small amount of ancillary retail in restricted small unit sizes;
  - Both proposals are complementary to the aspirations for Land South of High Street which is focused on higher order specialist/niche operators, fashion retailers and eating/drinking destinations. The proposals are unlikely to impact on the marketability of Land South of High Street based on the complementarity of the different aspirations;
  - There is a substantial amount of comparison goods leakage (65%) from Zone 8, the zone in which Leighton Buzzard is located. This is not inconsistent with the role of Leighton Buzzard as a lower order centre, but Roger Tym do highlight



opportunities to claw back some of this trade to increase market share through new retail development.

- 5.25 It is important, however, to consider this in the context of quantitative need and impact, and importantly whether the town centre could withstand the levels of trade diversion being suggested; either individually or in parallel if both schemes came forward.
- 5.26 It is our view that the loss of one or two key retailers in a town centre can commence the process of gradual and continued decline, either through national economic trends, or new development and a consequent significant impact. At this stage we are not suggesting Leighton Buzzard town centre is vulnerable to this at present. We review our qualitative considerations in the context of quantitative need and impact, in order to reach our overall conclusions about the appropriateness of one or both schemes in impact terms.
- 5.27 Roger Tym, in their most recent Retail Study (September 2012) identify a need of only 2,521 sq m net comparison in Leighton Buzzard by 2016 even when incorporating a 3% market share uplift. This figure grows to 5,775 sq m net by 2021, 7,043 sq m net by 2026 and 8,643 sq m net by 2031.
- 5.28 We have already noted that Land South of High Street is intended to accommodate around 2,000 sq m net of comparison floorspace, and the Tesco store has consent for an extension of 1,014 sq m net comparison floorspace. These two schemes absorb all the identified need over the next 5 years, and 3,014 sq m net of identified need by 2021, leaving a residual need of 2,761 sq m net by 2021; i.e. not sufficient to support one of the Grovebury Road application proposals.
- 5.29 Need can no longer be cited as a reason for refusal, but deficiencies can lead to greater levels of impact, and need is therefore a relevant consideration to the impact test. Both proposals would therefore be reliant on trade diversion, both from Leighton Buzzard Town Centre and elsewhere. It is necessary to consider acceptable levels of trade diversion, without leading to any unacceptable impacts on town centres.
- 5.30 Both applicants have identified the leakage of comparison goods trade, primarily to Milton Keynes town centre and retail warehouses in Milton Keynes/Bletchley, and acknowledge the opportunity to claw back trade. As Framptons have pointed out in their assessment, this leakage comprises 9.4%/£16.4m of Zone 8 trade to four retail warehouse parks in Milton Keynes/Bletchley. This figure has been identified from Table

4, Appendix 3 of the Roger Tym Retail Study, September 2012, and we agree with this conclusion.

- 5.31 It is also apparent from the Roger Tym Study that aside from the Milton Keynes Retail Parks there is little Zone 8 trade travelling to alternative bulky goods shopping destinations. Leighton Buzzard town centre is receiving 30.2% of trade; Milton Keynes town centre is receiving 35% of trade; and Aylesbury town centre is receiving 7% of trade. We conclude therefore that there is little bulky goods trade above that being leaked to Milton Keynes retail parks (£16.4m in 2012) that could be clawed back to support the application proposals.
- 5.32 In addition, the application proposals are centred in Zone 8 and any trade diversion from elsewhere in the survey area would more likely result in the creation of unsustainable shopping patterns, contrary to policy. Adjoining Zone 5 and 6 primarily travel to Luton, Dunstable and Milton Keynes town centre; and Zone 9 travel to Bedford, Milton Keynes and retail parks in Kempston and Milton Keynes. Neither applicant has aimed to do so, but there would be little policy argument to alter these shopping patterns.
- 5.33 The applications are therefore reliant on Zone 8 claw back from the four Milton Keynes Retail Parks (£16.4m in 2012). Forecasting ahead to 2016, and drawing on Appendix 3 of the Roger Tym work, the level of Zone 8 leakage would reach £19.4m.
- 5.34 Site B (Framptons) claim that their scheme would claw back £9.2m from Zone 8 leakage; and Site A (Blue Sky) claim that their scheme would claw back £4.87m from Zone 8 leakage, totalling £14.1m of claw back (c.2016). This demonstrates that there is sufficient leakage (£19.4m) to support both applications, although this is marginal. It is relevant to point out that if both schemes were to proceed, there would be an element of 'mutual impact', i.e. the bulky goods schemes would impact upon each other, and would be less reliant on claw back from outside Zone 8.
- 5.35 Site B considers their scheme will divert £3.9m of expenditure from the town centre; and Site A will divert £2.09m; totalling £6m. Roger Tym conclude that Leighton Buzzard had a town centre turnover of £62.3m in 2012 (Appendix 3, Table 5a), equating to a cumulative impact of 9.6%. Forecasting ahead, however, the town centre turnover will reach around £80m by 2016, equating to a cumulative impact of around 7.5%. Again, this is likely to be an overestimate on the basis that both schemes will impact on each other to some extent, thereby reducing the impact on town centre locations.

5.36 Provided the schemes are conditioned appropriately, we conclude that there is sufficient expenditure to claw back from bulky goods destinations beyond Zone 8 to support both proposals. This takes into account an element of mutual impact. It is our view that this level of claw back is marginal, and the introduction of any further floorspace over and above the proposed retail park schemes would rely instead on trade diversion from town centres, notably an increasing impact on Leighton Buzzard town centre.

5.37 The impact identified is material, but not, in itself, significant in NPPF terms. Given the marginal nature of available expenditure, we would be concerned about any further out-of-centre floorspace given the lack of opportunity for any further claw back and the increased reliance on town centre trade. There is some product overlap with the town centre; and an increasing scale of floorspace in out-of-centre locations will inevitably erode town centre turnover, range of operator and in time the health of the centre.

5.38 Based on our own on-site surveys, desk based research and work produced by the group 'I Love Leighton Buzzard' (representing town centre traders) we have identified those retailers in the 'town centre' that would likely overlap in product range with the application proposals:

- T&K Furniture
- Cee Jay Furniture
- Halfords
- Buzzard Sports Goods
- Millets
- Dillamores Furnishers
- Sections Hardware
- Wilkinson
- Model Railway Models
- Fabric World
- Green Tea Interior Décor
- Amethyst Interior Décor
- Ultra Wood Interiors/Furniture
- Amalfi Tiles
- Dorvics Cycle Repairs
- Chainey's Cycles
- The Kitchen Studio
- Kingfisher Carpets and Flooring
- Argos
- LB Home Improvements Windows and Doors
- Nutmeg Needle Crafts
- Stanbridge Interior Decor

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- 5.39 These are primarily focused around the furniture and floorcoverings and home interiors and soft furnishings sectors, and there are few operators selling sports goods and toys. The Council's evidence base documents have also demonstrated the strength of these independent businesses through customer loyalty over a much wider catchment area. Given the overall health of Leighton Buzzard, customer loyalty and the attractive environment in the town centre, it is likely that these retailers will continue to trade well within the wider town centre environment.
- 5.40 In terms of the qualitative considerations; we are reasonably comfortable that the type of scheme being proposed is largely complementary to the existing town centre offer and planned town centre investment. This is in the context of appropriate conditions being placed on any consent restricting the sale of goods; we discuss this later.
- 5.41 We have noted, however, that the cumulative impact of both schemes is marginal based on the limited amount of trade available to 'claw back' into Zone 8. We would caution against any further increase in out-of-centre floorspace if these schemes were granted planning permission given the likelihood of trade diversion from the town centre, and competition with retailers, increasing. Whilst it is usual for out-of-centre retail parks to generally impact on each other given the similar product range and travel habits of shoppers, the amount of expenditure available is not unlimited and trade will instead be diverted from those present in the town centre.
- 5.42 In this case, and provided appropriate conditions are put in place, the claw-back arising as a consequence of the two scheme proposals, will more likely come primarily from competing bulky goods destinations rather than the town centre; paragraph 8.2 of the Practice Guidance states that 'the use of conditions will be appropriate where the consequences of certain types of development could lead to unacceptable impacts'. A greater level of flexibility in the range of goods would be likely to be unacceptable in impact terms.
- 5.43 The level of commercial/market demand for space will eventually determine the success of the schemes; if they are not able to claw back the level of floorspace required they will not let. This may give rise to future pressure to relax conditions, but this is not a reason for refusal when such an application should be assessed on its own merits in the future. The bulky goods proposals are more likely to impact on each other in terms of expenditure and market demand, and the outcome will, to some extent, be left to the market.
- 5.44 We have received initial high level advice from our GVA retail agency team, who have advised that both schemes, independently from each other, would let during
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and after construction, but clearly Site A with fewer units would achieve a fully let status quicker. The consultants for Site A have stated that they would expect only 65% let prior to construction, which would suggest a greater difficulty for Site B to let given the greater number of units.

- 5.45 We understand from our retail agents that it is unlikely that there is sufficient 'bulky' goods demand to let both schemes in this market and the foreseeable future. Clearly, planning permission for both schemes might leave one site vacant and unimplemented leading to pressures to relax conditions in the future. This is a risk, but not in itself a reason for refusal.
- 5.46 We conclude that the cumulative impact of the proposals is material and, in our view, borderline. There is sufficient expenditure available to claw-back from alternative bulky goods retail park destinations to support both proposals, provided the proposals are of a sufficient mix and quality to achieve the trade diversion required. In this context, the cumulative impact of both proposals would not seem to be significant in NPPF terms. The applications must also be considered within the wider planning context including traffic, and employment land, for example.

**Restaurant/Bar Proposals (A3/4/5)**

- 5.47 Both applications are proposing eating/drinking units. As noted in Section 2, Site A is proposing a restaurant use of 372 sq m; they do not provide an impact assessment. Site B is proposing a Drive Thru restaurant with a GIA of 186 sq m, and a public house/restaurant with a GIA of 604 sq m. They also do not provide an impact assessment. It is our understanding that the units proposed at Site A and Site B would be defined as A3/4/5 in any planning permission.
- 5.48 The Council have requested consideration of the potential impact of this element of the proposals on the future aspirations for the town centre. The main town centre development aspiration, Land South of High Street, is envisaged to include a quality element of eating and drinking destinations, and it must be considered whether the Grovebury Road application proposals will compromise the aspirations for the town centre from being realised; i.e. leisure operator displacement.
- 5.49 As noted earlier, Leighton Buzzard town centre is performing well with a reasonable eating and drinking offer. Retail agents at GVA have provided information confirming that the drive-thru and pub sectors in respect of retail parks is very active in the current market, with operators seeking space including McDonalds (300-350 sq m), KFC (230-300 sq m), Costa Drive-Thru (165 sq m), Starbucks Drive-Thru (170 sq m),



Subway (140-185 sq m), Burger King (230-280 sq m), Marstons public houses (465-600 sq m), Mitchells & Butler public houses (370-465 sq m).

- 5.50 In this context, the Site A proposals are more likely to be targeting a coffee shop or fast-food type operator, and Site B would be looking for both a coffee shop/fast food operator and pub operator with restaurant facilities.
- 5.51 It is our view that the type of supply/demand in respect of either proposal, would be very different to the type of restaurant operator being targeted for the new town centre extension scheme. A pub operator of the type found at retail parks would be unlikely to take space, or be targeted, for a town centre scheme of the type emerging. Similarly, coffee shops trade alongside each other in most towns across the UK, and often operate more than one unit; it would be difficult to argue at this stage that the proposals would compromise the town centre scheme from attracting coffee shop operators such as Starbucks, Costa Coffee and Café Nero, for example.
- 5.52 We conclude that the proposals, on their own or together, would be unlikely to impact on planned town centre investment given the very different target markets that are being targeted and acquiring space on retail park developments.

## Summary

- Leighton Buzzard town centre is performing well, but there is some overlap of goods, particularly in the furniture and floorcoverings category. The proposals would be broadly complementary to the existing overall town centre offer and planned future investment, but the Roger Tym Study identifies limited capacity and a subsequent requirement for trade diversion to support either proposal in quantitative terms;
- The town centre is performing well, the proposals are largely complementary, and there is sufficient available expenditure to claw-back from retail parks in Milton Keynes. The cumulative impact would be material, and the level of available expenditure is borderline, but in the context of the data presented the schemes combined would not have a significant impact. We would be cautious against any further out-of-centre floorspace given limitations in available expenditure;
- Our conclusions are based on a 'DIY and bulky goods' scheme and the Council must implement appropriate conditions to limit the range of goods that would be sold from either development;



- The A3/4/5 elements of the proposals would be unlikely to impact on future planned investment in Leighton Buzzard town centre given the different target markets.

## 6. Conclusions

### Proposals

- 6.1 Site A comprises 5 retail units and a floorspace of 6,132 sq m net comparison. Site B comprises 9 retail units and a floorspace of 6,959 sq m net comparison. The key difference in terms of floorspace is that Site A is proposing a larger anchor DIY unit, which we understand does meet current requirements from Wickes/Homebase. We would, however, question the mezzanine assumptions put forward by Site B, which seems conservative.
- 6.2 Site B has a greater number of units and has proposed a more 'open' goods condition to include – in addition to those proposed for Site A – office equipment and stationary supplies, motor vehicles, sports clothing, sports footwear and sports equipment, toys and games, cycles and ancillary goods.

### Policy Framework

- 6.3 The application sites are both out-of-centre and the NPPF confirms that both applications are required to demonstrate compliance with the sequential and impact test. They are both allocated as Main Employment Areas in the 2004 adopted Local Plan. Land South of High Street is identified as a key town centre regeneration site in the adopted Plan.
- 6.4 The 2009 WYG Retail Study concluded that Leighton Buzzard was performing well, with a good range of shopping and service facilities. The study identifies a need for between 6,900 and 9,400 sq m of comparison goods floorspace; and concluded that whilst Land South of High Street could accommodate some of the identified need, there may be a requirement for a new large out-of-centre retail facility being allocated.
- 6.5 The most up-to-date Roger Tym's Retail Study (September 2012) identifies a need in Leighton Buzzard of 5,553 sq m net comparison by 2021, growing to 8,645 sq m net comparison by 2031. The Council should be wary of forecasting beyond 2021, and in respect of these applications, 2021 must be viewed as the longer term forecast.
- 6.6 In broad terms, Land South of High Street could accommodate around 1,750 – 2,100 sq m net comparison on the basis that the scheme will include a foodstore anchor. Following the implementation of Land South of High Street, there remains a residual

need for around 3,500 sq m net comparison floorspace in Leighton Buzzard by 2021. This is not in itself sufficient to support either of the applications, which must instead rely on a greater level of claw back than tested by Roger Tym.

### Sequential Test

- 6.7 The NPPF confirms that local authorities are required to apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. This applies to both applications. Local authorities should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available, should out of centre sites be considered (para.24). The document adds that when considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre.
- 6.8 Both applicants have effectively dismissed Land South of High Street and Bridge Meadow as sequential sites on retail grounds, on the basis that they are unsuitable and unviable in the context of the respective Development Briefs and wider planning policy. The Council should give due consideration to the wider planning issues in advance of forming a final decision in respect of the sequential test, notably, access, transport and land uses, for example.
- 6.9 Both Sites A and B are equal in sequential terms, and both comply with the sequential test, as set out in the NPPF, in respect of retail issues. We conclude that neither application 'fails' the sequential test, on retail grounds only. At the time of preparing this report, there are no sequentially preferable sites which are available, suitable or viable for the proposed development.

### Impact

- 6.10 In conclusion, there is a clear lack of 'baseline' need for the scale of retail floorspace being proposed, although need can no longer be cited as a reason for refusal, and in any event there are clear opportunities for claw back of trade from further afield. Proposal B would have a greater impact on the town centre. There is more potential for Proposal B to maximise internal mezzanine areas and a total of nine units rather than 5 would create a greater product overlap with the town centre. However, we have concluded that the scheme would not, on its own, have a significant impact on the town centre (in terms of planned and existing offer) if appropriately conditioned.

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- 6.11 The town centre is performing well, the proposals are largely complementary to the existing offer and to any planned development emerging, and there is sufficient available expenditure to claw-back from retail parks in Milton Keynes. The cumulative impact would be material, and the level of available expenditure is borderline, but in the context of the data presented the schemes combined would not have a significant impact in NPPF terms. We would be cautious against any further out-of-centre retail floorspace given limitations in available expenditure. The applications must also be considered within the wider planning context including traffic, and employment land, for example.
- 6.12 The level of commercial/market demand for space will eventually determine the success of the schemes; if they are not able to claw back the level of floorspace required they will not let. This may give rise to future pressure to relax conditions, but this is not a reason for refusal when such an application should be assessed on its own merits in the future. The bulky goods proposals will impact on each other in terms of expenditure and market demand, and will let to operators when the market determines.
- 6.13 We conclude that the proposals cannot be refused on retail impact grounds, and the applications must be considered within the wider planning context including traffic, and employment land, for example.
- 6.14 Our conclusions are based on a 'DIY and bulky goods' scheme and the Council must implement appropriate conditions to limit the range of goods that would be sold from either development. The conditions put forwards by both schemes appear appropriate, and we would not recommend any widening of product category to ensure the maximum protection for the town centre.
- 6.15 Site B has proposed 'sports clothing, sports footwear and sports equipment, toys and games', which are not 'bulky goods'. Our assessment has identified very few operators in the town centre which sell these types of goods, so we conclude a limited impact on the town centre as a consequence. Nevertheless, such goods are sold in the town centre, and the Council should consider tighter restrictions on a planning permission to control, for example, the number of units selling this type of goods (to one per goods type), and the offer of sports 'clothing' being ancillary to a sports equipment operator. This would protect the town centre now and in the future as a possible consequence of changing economic circumstances, market demand and operator formats etc.
- 6.16 The Council should also consider restrictions on sub-division, the merging of units, and the extent of permanent/temporary eating/drinking facilities. This would enable
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control over any future aspirations at the developments if planning permission were granted, allowing the Council to consider changes on a case by case basis.

- 6.17 The Council should seek legal advice on the restrictions presented to ensure they are enforceable and the most appropriate means by which to control the sale of goods and format of units on both developments; i.e. planning permission conditions or an associated legal agreement.



Report

**Appendices**





**Appendix 1**  
**White Lion Retail**  
**Park Legal**  
**Agreement**

25 JAN 2012

Private & Confidential

12 / 00361

DATED 2012

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CENTRAL BEDFORDSHIRE COUNCIL (1)

and

WHITE LION RP LIMITED (2)

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**AGREEMENT**

Under Section 106 of the Town and Country  
Planning Act 1990 relating to land at  
Boscombe Road, Dunstable, Bedfordshire

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**Wragge&Co**

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THIS AGREEMENT is made on

2012

**BETWEEN:**

- (1) **CENTRAL BEDFORDSHIRE DISTRICT COUNCIL** of Priory House, Monks Walk, Chicksands, Shefford, Bedfordshire, SG17 5TQ ("Council"); and
- (2) **WHITE LION RP LIMITED** (incorporated in Guernsey) whose registered office is at Frances House, Sir William Place, St Peter Port, Guernsey, GY1 4HQ("the Owner")

**BACKGROUND**

- A The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 ("Act") and the highway authority for the purposes of the Highways Act 1980 and the traffic authority for the purposes of the Road Traffic Regulation Act 1984 in respect of the land edged red on the plan annexed ("Land").
- B By an agreement dated 9 March 2009 (the "Consolidated Agreement") an agreement dated 22 December 1997 together with various supplemental agreements containing planning obligations and covenants regulating the development of the Land were consolidated.
- C White Lion RP Limited is the owner of the Land.
- D Having regard to the provisions of the development plan and all other material considerations the Council has agreed to vary certain provisions of the Consolidated Agreement.

**1 Definitions**

In this agreement the following words shall have the following meanings:

"1990 Act" means the Town and Country Planning Act 1990 (as amended);

"Application" means the applications submitted to the Council on 25 January 2012 and given reference number \_\_\_\_\_ to modify the Consolidated Agreement;

"Development" means the proposed changes to the Consolidated Agreement outlined in this Agreement;

"Land" means the land edged red on the Plan;

"Link Road" means the land shaded yellow on the Plan;

“Original Planning Application” means the application for planning permission in respect of the site that was submitted to South Bedfordshire District Council on 21 April 1998 and which was which was allocated statutory registration no. SB/TP/98/0413;

“Original Planning Permission” means planning permission reference SB/TP/98/0413 granted by South Bedfordshire Council on 26 August 1998;

“Plan” means plan reference URB WL [07] 0002 attached to this agreement; and

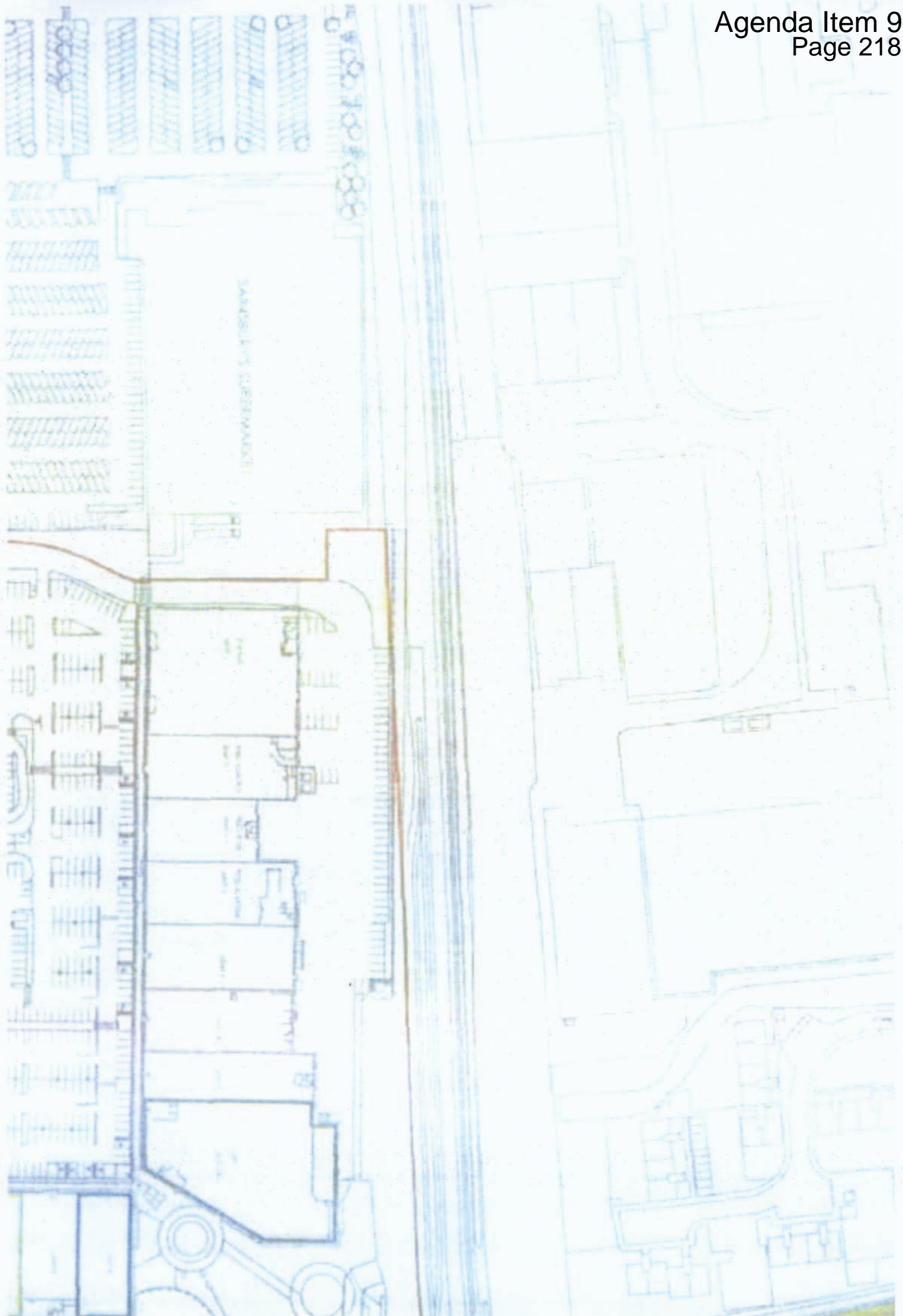
“Pre-existing Agreements” means all agreements made pursuant to section 106 of the 1990 Act binding on the Land prior to the date of this agreement including but not limited to the Consolidated Agreement;

“Retail Buildings” means the retail units within class A1 of the Town and Country Planning (Use Classes) Order 1987 constructed on the Land from time to time.

## 2 Interpretation

In this agreement (unless the context otherwise requires):

- 2.1 references to any party shall include the successors in title of that party and those deriving title through that party;
- 2.2 the words “including” and “include” and words of similar effect shall not be deemed to limit the general effect of the words which precede them;
- 2.3 words importing persons shall include firms, companies and bodies corporate and vice versa;
- 2.4 words importing the singular shall include the plural and vice versa;
- 2.5 words importing any one gender shall include either gender;
- 2.6 construction of this agreement shall ignore the headings, contents list and front sheet (all of which are for reference only);
- 2.7 references to a numbered clause, schedule, paragraph or appendix are references to the clause, schedule, paragraph or appendix of or to this agreement so numbered;
- 2.8 any reference to any statutory provision order or instrument shall be deemed to





include any subsequent re-enactment or amending provision other than references to the Town and Country Planning (Use Classes) Order 1987 which shall be a reference to that instrument as in force at the date of this agreement;

- 2.9 an obligation to do something includes an obligation to procure it to be done;
- 2.10 an obligation not to do something includes an obligation not to cause, permit or allow it to be done;
- 2.11 where any approval, consent or agreement is required from any part under this agreement, that approval, consent or agreement shall not be unreasonably withheld or delayed;
- 2.12 where the approval of the Council is required under this agreement approval is to be given in writing by the Development Control Manager for the time being of the Council or his successor in function or such other officer as he may appoint to act on his behalf.

### **3 Legal Effect**

- 3.1 This agreement is a planning obligation by agreement made pursuant to the provisions of section 106 of the 1990 Act section 2 of the Local Government Act 2000 and all other enabling powers with the intention of binding the Land.
- 3.2 This agreement shall take effect immediately at which time the Pre-existing Agreements shall be of no further effect in relation to the Land.
- 3.3 This agreement is enforceable by the Council as local planning authority.
- 3.4 This agreement is a local land charge under the Local Land Charges Act 1975 and may be registered by the Council as such.
- 3.5 The Owner shall not be liable for any breach of this agreement in respect of any period during which it no longer has an interest in the Land or the relevant part of it to which the breach relates but without prejudice to liability for any subsisting breach prior to parting with such interest.
- 3.6 If at any time any provision in this agreement is or becomes illegal, invalid or unenforceable the legality, validity and enforceability of the remaining provisions shall not in any way be affected or impaired in consequence.

- 3.7 A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 3.8 Nothing in this agreement shall be construed as restricting the exercise by the Council of any of its statutory powers.
- 3.9 This agreement shall be governed by and construed in accordance with English law and the parties hereto irrevocably submit to the exclusive jurisdiction of the English Courts in respect of any dispute or matter arising out of or connected with the Agreement.

#### 4 Agreement

The parties agree that from the date of this agreement the Pre-existing Agreements shall be of no further effect in relation to the Land and shall not be enforceable against the Owner and the Council will cancel entries of the Pre-existing Agreements from the Register of Local Land Charges in relation to the Land.

#### 5 Restrictions on Floor Area

- 5.1 The Owner agrees with the Council not to extend or alter any of the Retail Buildings except in accordance with planning permission granted by the Council provided that nothing in this clause shall prevent:
- (a) the creation of internal floor space at first floor or mezzanine level for use for retail purposes within:
    - (i) that Retail Building shown edged yellow on the Plan subject to a limitation on the creation of mezzanine retail floor space of 929.03 square metres (10,000 square feet) gross internal floor area;
    - (ii) that Retail Building shown edged pink on the Plan;
    - (iii) that Retail Building shown edged blue on the Plan subject to a limitation on the creation of mezzanine retail floor space of 418.06 square metres (4,500 square feet) gross internal floor area; and
    - (iv) that Retail Building shown edged green on the Plan subject to a

limitation on the creation of mezzanine retail floor space of 1,380.54 square metres (14,860 square feet) gross internal floor area;

- (b) the creation of further internal floor space or mezzanine level within any of the Retail Buildings provided always that unless otherwise agreed in writing by the Council such floor space located within such Retail Buildings:
  - (i) is not used for retail purposes; and
  - (ii) is only used for ancillary purposes including office and storage purposes; and
  - (iii) is not available for access by the public;
- (c) the amalgamation of two or more of the individual Retail Buildings to create a larger unit or units.

5.2 The parties agree that notwithstanding any of the provisions in clause 5, nothing in this agreement shall allow or permit the number of Retail Buildings on the land to be less than four or greater than 16.

5.3 The Owner agrees with the Council not to alter or divide any of the Retail Buildings or to create any new Retail Buildings so as to cause:

- (a) any Retail Building to have a gross internal ground floor area of less than 325 square metres (3,500 square foot); and
- (b) at any time more than five of the Retail Buildings to have a gross internal ground floor area of between 325 square metres (3,500 square foot) and 674 square metres (7,255 square foot); and
- (c) the remaining Retail Buildings to have a gross internal ground floor area of less than 674 square metres (7,255 square foot).

## 6 Restriction on Franchisees

The Owner agrees with the Council not to permit franchisees to use or occupy in aggregate more than 30 per cent (30%) of the gross internal ground floor area of any of the Retail Buildings (including any new Retail Building created pursuant to the provisions of clause 5.3).

7 Restriction on Goods Sold

- 7.1 The Owner agrees with the Council not to use or occupy the Retail Buildings other than for the retailing of DIY products (including tools, buildings supplies, gardening products and ancillary items), furniture, carpets, floor coverings, household fabrics, office equipment and stationary supplies, motor vehicles, cycles and ancillary goods, electrical goods and gas appliances, pets and pet supplies and for the avoidance of doubt no other purpose within class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 provided always that nothing in this clause shall prohibit ancillary sales of hot and cold beverages and food and confectionary for consumption in or outside the Retail Buildings.
- 7.2 The Council agrees with the Owner that notwithstanding the provisions of clause 7.1 The Owner shall be entitled to cause or permit the Retail Building shown edged green on the plan annexed having a maximum gross internal floor space of 4,449.41 square metres (47,893 square feet) to be used or occupied by Dave Whelan Sports Limited having its registered office at Whelco Place, Enfield Industrial Estate, Enfield Street, Wigan, WN5 8DB (registration number 06846128) ("DW Sports") for the sale of sports clothing, sports footwear and sports equipment and for health club facilities and provided always that not more than:
- (a) 2,367.54 square metres (25,484 square feet) shall be used or occupied for health club facilities; and
  - (b) 1,380.54 square metres (14,860 square feet) shall be used or occupied for retail sales of which no more than 929.03 square metres (10,000 square feet) shall be used or occupied for the retail sale of sports clothing and sports footwear.
- 7.3 The Council agrees with the Owner that notwithstanding the provisions of clause 7.1 the Owner shall be entitled to cause or permit one of the Retail Buildings having a maximum gross internal floor area of 929.03 square metres (10,000 square feet) to be used or occupied by First Choice Holiday Hypermarkets Limited ("First Choice") whose registered office is at First Choice House, London Road, Lowfield Heath, Crawley, West Sussex RH10 9GX and whose registered company number is 3647615.
- 7.4 In the event that either First Choice or DW Sports cease (or intend to cease) to use or occupy the relevant Retail Building(s), the Owner may:

- (a) request the Council's written approval, such approval not to be unreasonably withheld or delayed, to the occupation of the relevant Retail Building by a new occupier provided that the new occupier will continue the same use of the relevant Retail Building as First Choice or DW Sports as the case may be; and
- (b) if no response is received from the Council within 56 days of the request pursuant to clause 7.4(a) then the Council's approval will be deemed to have been given; and
- (c) provided that the Council's approval is obtained pursuant to clause 7.4(a) or is deemed to have been given pursuant to clause 7.4(b) the new occupier shall be allowed to occupy the relevant Retail Building on the same basis as First Choice or DW Sports, as appropriate, and such occupation shall not constitute a breach of clause 7.1 of this agreement.

7.5 Provided always that in the event that either or both of First Choice or DW Sports cease to use or occupy the relevant Retail Building(s), and no agreement of the Council to a new occupier has been obtained pursuant to clause 7.4, such Retail Building(s) shall be only occupied for the uses specified in clause 7.1 unless otherwise agreed in writing with the Council.

## 8 Indemnity

- 8.1 The Owner shall indemnify and hold the Council harmless against any claim for compensation, loss or damage whatsoever arising out of, or incidental to the carrying out of, the Link Road works (other than in respect of claims arising from the negligence of the County Council, its employees, agents or contractors) and against all charges, costs, and expenses in connection therewith and arising therefrom and in particular, but without prejudice to the generality of the foregoing, to indemnify and hold the Council harmless against all claims, charges, costs and expenses arising out of, or incidental to, the use of the Link Road by public service vehicles and made under, or arising from, Part 1 of the Land Compensation Act 1973 and the Noise Insulation Regulations 1975 and any amendments thereto.
- 8.2 White Lion RP Limited has no obligation to meet any claim or liability under this deed except to the extent that the assets for the time being in the hands of White Lion RP Limited are sufficient for that purpose.

THE COMMON SEAL of CENTRAL )  
BEDFORDSHIRE COUNCIL was hereunto )  
affixed in the presence of: )

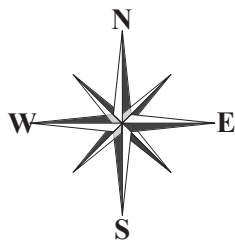
Authorised Signatory

EXECUTED as a DEED on behalf of  
WHITE LION RP LIMITED  
acting by )  
)  
)

Director.

Director/Secretary





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Central Bedfordshire Council  
Licence No. 100049029 (2009)

Date: 26:November:2012

Grid Reference: 491989; 223791

Application No.  
CB/12/03290/OUT

Scale: 1:5000

Unit 7, Grovebury Road, Leighton Buzzard, LU7 4SQ

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<b>Item No. 10</b>
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<b>APPLICATION NUMBER</b>	<b>CB/12/03290/OUT</b>
<b>LOCATION</b>	<b>Unit 7, Grovebury Road, Leighton Buzzard, LU7 4SQ</b>
<b>PROPOSAL</b>	<b>Outline Planning Permission: Proposed non food retail park of up to 10,775 sqm (116,000sqft) Gross retail floorspace, up to 600 sqm (6,460 sqft) storage up to 604 sqm (6,500 sqft) pub/restaurant, up to 167 sqm (1800sqft) drive thru restaurant, new vehicular access and associated highway works, associated car parking; hard and soft landscaping and associated infrastructure works.</b>
<b>PARISH</b>	<b>Leighton-Linslade</b>
<b>WARD</b>	<b>Leighton Buzzard South</b>
<b>WARD COUNCILLORS</b>	<b>Cllrs Berry, Bowater &amp; Dodwell</b>
<b>CASE OFFICER</b>	<b>Adam Davies</b>
<b>DATE REGISTERED</b>	<b>18 September 2012</b>
<b>EXPIRY DATE</b>	<b>18 December 2012</b>
<b>APPLICANT</b>	<b>Barwood Developments Ltd &amp; Invesco P.I.T. Ltd</b>
<b>AGENT</b>	<b>Framptons</b>
<b>REASON FOR COMMITTEE TO DETERMINE</b>	<b>Town Council objection to major application</b>
<b>RECOMMENDED DECISION</b>	<b>Outline Application - Granted</b>

**Site Location:**

The application site comprises a broadly rectangular-shaped parcel of land with an area of 3.4ha located on the eastern side of Grovebury Road, on the south side of Leighton Buzzard. The site is currently occupied by a substantial eight bay portal framed Use Class B8 warehouse unit. The southern-most corner of the site is traversed by 400kW overhead power lines which run in an east-west direction with the existing warehouse building partly positioned below the power lines. The site is located immediately south of Grovebury Lane and situated to the north of a parcel of undeveloped grassland land with hedges and a copse. To the south east and north east, the site is bordered by other commercial uses and associated car parking. Further to the east of the application site, and to the north east of the neighbouring commercial uses, are land at Grovebury Farm and Brickyard Quarry which have outline planning permission for residential and associated development plus a local centre and community land. To the west of Grovebury Road are Tiddenfoot Waterside Park and the adjoining riverside meadows. The site forms part of a Main Employment Area as defined on the Proposals Map of the South Bedfordshire Local Plan Review 2004.

### **The Application:**

Outline planning permission is sought for a non food retail park development with a gross floor area of 10,775 square metres providing a total of 6,959 square metres of net tradable floor space, including mezzanine levels and a garden centre enclosure/outdoor projects area.

The scheme would include an 'anchor' DIY unit with a ground floor retail area of 1,858 square metres gross (1,300 square metres net); a mezzanine floor area of 159 square metres gross (56 square metres net); and a garden centre enclosure/outdoor projects area of 465 square metres gross (326 square metres net). Eight smaller A1 retail units are proposed as follows:

- Unit 1 – gross floor area of 465 square metres + 50 % mezzanine;
- Unit 2 – gross floor area of 929 square metres + 50 % mezzanine;
- Unit 3 – gross floor area of 697 square metres + 50 % mezzanine;
- Unit 4 – gross floor area of 697 square metres + 50 % mezzanine;
- Unit 5 – gross floor area of 697 square metres + 50 % mezzanine;
- Unit 6 – gross floor area of 697 square metres + 50 % mezzanine;
- Unit 7 – gross floor area of 929 square metres + 50 % mezzanine;
- Unit 8 – gross floor area of 418 square metres + 50 % mezzanine.

A public house/restaurant of 604 square metres gross floor area and a drive thru unit of 186 square metres gross floor area are also proposed.

It is proposed that the retail floorspace would be used for the sale of DIY goods; plants, garden products and outdoor furniture; furniture and home furnishings; housewares; fabrics and floor coverings; seasonal goods such as Christmas decorations; motor vehicle parts and accessories; leisure and sports goods; arts, crafts and stationary; toys; home technology and electrical goods; cycles and cycling accessories; and camping goods.

Two vehicular accesses and two separate pedestrian accesses are proposed from Grovebury Road to serve the public parking area. A service access and a separate pedestrian access are proposed from Grovebury Lane. All matters, except those relating to access, are reserved for subsequent approval. As such the precise details of the siting, design, landscaping and appearance of the development would need to be determined at the approval of reserved matters stage.

An indicative site layout plan shows how the retail development could be arranged. The nine Use Class A1 retail units are shown positioned towards the south east side of the site, fronting onto a public parking area and backing onto a servicing area. The public house/restaurant and drive thru units are shown as two stand-alone buildings positioned on the north east side of the site. A total of 389 parking spaces and 50 cycle parking spaces are shown. A new bus stop is shown on Grovebury Lane adjacent to Unit 8 and the proposed drive thru unit.

## **RELEVANT POLICIES:**

### **National Planning Policy Framework (March 2012)**

The National Planning Policy Framework (NPPF) was published on 27th March 2012 and replaced the previous national planning policy documents. The following sections of the NPPF are considered relevant to this application:

Section 1: Building a strong, competitive economy

Section 2: Ensuring the vitality of town centres

Section 4: Promoting sustainable transport

Section 7: Requiring good design

Section 8: Promoting healthy communities

Section 10: Meeting the challenge of climate change, flooding and coastal change

Section 11: Conserving and enhancing the natural environment

Section 12: Conserving and enhancing the historic environment

### **South Bedfordshire Local Plan Review Policies**

SD1: Sustainability Keynote Policy

BE8: Design Considerations

T10: Controlling Parking in New Developments

E1: Providing for B1-B8 Development within Main Employment Areas

R14: Protection and Improvement of Informal Recreational Facilities in the Countryside

*The NPPF advises of the weight to be attached to existing local plans for plans adopted prior to the 2004 Planning and Compulsory Purchase Act, as in the case of the South Bedfordshire Local Plan Review. Due weight can be given to relevant policies in existing plans according to their degree of consistency with the framework. It is considered that Policies BE8 and R14 are broadly consistent with the Framework and carry significant weight. Policies T10 and E1 carry less weight but are considered relevant to this application.*

### **Development Strategy for Central Bedfordshire**

Policy 1: Presumption in Favour of Sustainable Development

Policy 6: Employment Land

Policy 7: Employment Sites and Uses

Policy 11: Town Centre Uses

Policy 12: Retail Strategy

Policy 15: Leighton Buzzard Town Centre

Policy 19: Planning Obligations and the Community Infrastructure Levy

Policy 23: Public Rights of Way

Policy 24: Accessibility and Connectivity

Policy 25: Capacity of the Network

Policy 26: Travel Plans

Policy 27: Car Parking

Policy 28: Transport Assessments and Travel Plans

Policy 43: High Quality Development

Policy 44: Protection from Environmental Pollution

Policy 45: The Historic Environment

Policy 49: Mitigating Flood Risk

Policy 56: Green Infrastructure

Policy 57: Biodiversity and Geodiversity

Policy 59: Woodlands, Trees and Hedgerows

*Having regard to the National Planning Policy Framework, significant weight is given to the policies contained within the emerging Development Strategy for Central Bedfordshire, which is consistent with the NPPF. The draft Development Strategy is due to be submitted to the Secretary of State in May 2013.*

### **Supplementary Planning Guidance**

Design in Central Bedfordshire - A Guide for Development - adopted by the Luton & South Bedfordshire Joint Committee on 23 July 2010

Luton and Central Bedfordshire Core Strategy - adopted for Development Management purposes by the CBC Executive on 23 August 2011

CBC Emerging Parking Strategy, Appendix F, Central Bedfordshire Local Transport Plan, endorsed for Development Management purposes by Executive October 2012

Grovebury Road Industrial Estate Enhancement Plan, August 2012

White Young Green Evidence Base Retail Study 2009

Central Bedfordshire Retail Study, 2012

Land South of High Street Development Brief, GVA, March 2012

Bridge Meadow Development Brief, GVA, March 2012

CBC Medium Term Plan, "Delivering Your Priorities" 2012-2016

### **Planning History**

The following relevant planning history relates to the land south of the application site:

CB/12/02701/OUT      Development of the site for retail warehousing development within Class A1 (retail) to comprise 5,575sqm with 2,090sqm mezzanine floorspace and 929sqm garden centre enclosure and a restaurant/cafe/public house of 372sqm within Class A1/A3/A4/A5 use. Under consideration. On the same Committee Agenda.

SB/06/00137/FULL      Erection of B1 office units (two and three storeys) with ancillary car parking and erection of B2 industrial/B8 warehouse unit (part two storey with ancillary car parking and service area. Permission granted. Not implemented.

SB/03/00340/FULL      Erection of two industrial units with ancillary display area, car parking and service area. Permission granted. Implemented.

*(Officer Note: This permission relates to the Browns retail and trade centre on Grovebury Road. Following the proposed residential redevelopment of the former Browns site at Mentmore Road, Browns proposed to relocate to the Grovebury Road site. Whilst this development involved an element of out of centre retail within the Main Employment*



*Area, given the requirement for Browns to relocate and the employment generation resulting from the proposed mixed use scheme, the proposal was considered acceptable).*

The following application relates to Houghton Regis North Site 1:

CB/12/03613/OUT Outline planning permission with the details of access, appearance, landscaping, layout and scale reserved for later determination. Development to comprise: up to 5,150 dwellings (Use Class C3); up to 202,500 sqm gross of additional development in Use Classes: A1, A2, A3 (retail), A4 (public house), A5 (take away); B1, B2, B8 (offices, industrial and storage and distribution); C1 (hotel), C2 (care home), D1 and D2 (community and leisure); car showroom; data centre; petrol filling station; car parking; primary substation; energy centre; and for the laying out of the buildings; routes and open spaces within the development; and all associated works and operations including but not limited to: demolition; earthworks; engineering operations. All development, works and operations to be in accordance with the Development Parameters Schedule and Plans. Under consideration.

*(Officer note: It is envisioned that this development would provide a maximum of 30,000 square metres of retail uses. This application therefore represents a material consideration for the Grovebury Road retail proposals in relation to matters of retail demand and viability.)*

The following planning history relates to the existing Tesco and Homebase stores at Vimy Road, Leighton Buzzard:

CB/10/04238/FULL Demolition of existing Class A1 retail warehouse (Homebase) and construction of extension (2,850 sqm) to existing Class A1 foodstore (Tesco) with additional car parking and landscaping. Construction of freestanding canalside Class A3 restaurant/cafe unit with public realm enhancements on Leighton Road frontage. Permission. Not implemented. Expires 28 May 2015.

*(Officer note: If implemented, this development would involve the demolition of the existing Homebase store at Vimy Road. Importantly however Homebase are not identified as named operators as part of the current application. It is presently unknown whether the Tesco extension will be implemented or whether Homebase would be required, or seek, to relocate. Whilst the Tesco permission remains extant until 28 May 2015, it should be noted that Tesco have most recently submitted a planning application for a customer collection canopy to serve internet customers [detailed below]. This recent application does not appear to reflect the intention to extend the Tesco store in line with the previous planning permission).*

CB/13/00241/FULL Proposed Customer Collection Canopy. Under consideration.

**Representations:**

Town Council Recommend refusal. A development of this size and nature in this location would have a detrimental impact on the town centre. Town Council supports Policies 7 and 11 of the draft Development Strategy for Central Bedfordshire which support the role and function of the town centres and states retail uses will not normally be considered appropriate on employment sites. Town Council supports proposals for long term development of the town centre and feels that any retail development should be focussed on the town centre rather than out of centre.

Neighbours 15 objections have been received which can be summarised as follows:

- The proposal would reduce spending in the town centre and affect its viability, leading to shops closing and jobs lost.
- The development would jeopardise the plans to develop the land south of the High Street for retail which should be progressed as soon as possible as an enhancement to the town centre.
- The mix of retailers for this type of retail park is not appropriate for an out of centre location and would duplicate goods sold in existing furniture shops, pet shops and takeaways within the town.
- The proposal would reduce pedestrian traffic in the town centre.
- The Town Council and CBC have signed up to the Portas Pilot scheme. The Mary Portas review highlighted the importance of High Street centres as a social and community hub and the harm which retail parks can have on town centres.
- The development would not be accessible for non-car users. The town centre is the only major shopping area which is accessible for non-car users.
- The land should be developed for employment purposes, particularly given the increased requirement for jobs due to the significant increase in the number of homes within the town.
- The town centre is not as healthy as it may appear. The proposal would have a very harmful impact on the retail and night time economies.
- It is questioned whether the figures provided within the application, including the anticipated

number of jobs to be created are correct. Local retailers are unable to enlist professional companies to challenge the assumptions set out within the application.

- Permission should not be granted because of concerns regarding the costs of appeal.
- Local people and retailers did not support the expansion of the Vimy Road Tesco store as it was considered that this would be detrimental to smaller retailers. The relocation of the Homebase store to Grovebury Road would be to the further detriment of the town centre and mean it will be inaccessible to non-car users.
- Neighbouring towns with out of centre retail parks have a high percentage of empty shop units in the town centre. The proposal would have a similar impact in Leighton Buzzard.
- Given the economic climate, retail parks are not automatically viable. There is a growing movement away from large format, out of centre retail towards smaller format, town centre stores where there is greater variety and choice.
- Traditional town centre retailers are more robust than larger, discount based retailers likely to occupy a retail park.
- The Tesco expansion is uncertain and it is not guaranteed Homebase would wish to relocate.
- There are other suitable sites within the town for a DIY type store.
- The application does not adequately address any archaeological implications arising from the proposal.
- The development would increase vehicle movement and congestion increasing harmful emissions.
- The design of the development is generic and would not reflect its location.
- Companies such as Harvester, Starbucks, Costa, KFC and Burger King would prefer town centre locations.
- The proposal would result in the loss of wildlife habitats.
- Given the forthcoming A5-M1 link road, it would make more strategic sense to protect employment land and direct new businesses to this site.

A petition with 72 signatures of those wishing to object to the proposal has been received.

A total of 137 third party representation forms, headed "Help Save Your High Street", have been submitted. A number of those who had completed forms have also commented by way of objection, as summarised above. A number of those who had completed did not provide full addresses. The forms state that there are two retail development options within Leighton Buzzard; Option 1, an extension to the existing retail centre on land south of the High Street or Option 2, a retail development on Grovebury Road. Of the 144 forms received;

- 125 indicated a preference for development on land south of the High Street.
- 4 indicated a preference for neither development
- 3 indicated a preference for the proposed retail park development.
- 5 indicated a preference for both developments.

Two letters/emails of support have been received from local residents/businesses which can be summarised as follows:

- Given its accessible location, the proposal would not increase traffic congestion in the town and may reduce traffic in the town centre.
- A greater mix of shops are needed in Leighton Buzzard.
- The site would provide employment.
- The proposed restaurants/food uses would provide a service to neighbouring businesses and their staff.
- The retail park would attract shoppers normally using retail parks in other towns.
- Empty warehouse units would not be attractive at the entrance to the town.
- The majority of local objection to development outside of the High Street is from vocal retailers and is not representative of the views of others in the town.
- A refusal would send an anti-business message.

#### Buzzcycles

The provision of a cycle and footway along Grovebury Road is welcomed. The number of proposed cycle spaces is unclear as the drawings suggest 40 whereas the supporting information indicate 50. The layout of cycle parking should allow for options for parking in various parts of the site. Additional employee cycle parking with security measures to protect cyclists from machinery is required. The proposed cycle way should extend further south west to link with other existing routes.

Voluntary and  
Community Action  
Group

If permission is granted a contribution should be made to the running of a community house as part of the housing development on Site 17.

### Consultations/Publicity responses

Council's independent  
retail consultant (GVA  
Grimley)

GVA Grimley has been instructed by the Council to carry out an independent assessment of the retail planning issues raised by the two retail proposals. GVA Grimley's Retail Review of the proposals is attached as an appendix to this report.

Highways Agency

No objection.

Highways

Vehicular access for customers is proposed via two new accesses on Grovebury Road: a ghost island junction to the south, and a simple priority junction to the north. This combination of junction types appears reasonable. It is proposed to extend the existing 30mph speed limit further south of the site along Grovebury Road.

HGV servicing access will be provided via Grovebury lane, thereby separating HGVs from customer traffic. Access for HGVs appears reasonable, and a turning head is provided at the southern end of the site to allow HGVs to turn and exit in forward gear.

In terms of Council parking standards, 394 parking spaces are required. At total of 389 parking spaces are proposed. At total of 52 cycle parking spaces would be provided. It is stated that 'detail on car parking and cycle provision (some of which will be covered) will be agreed with CBC during detailed design discussions.'

A 3m wide footway/cycleway is proposed along the site frontage on Grovebury Road, and central walkways will be provided within the car park.

A new bus stop is therefore proposed on Grovebury Lane as part of the development, including a shelter, timetable information and raised kerbs.

Highways capacity assessments have been undertaken for forecast years 2017 and 2022 which take account of growth factors and the Billington Road Transport Corridor scheme.

The site is currently not well served by public transport, at 600m from the nearest bus stops (it is also not clear to which point within the site this has been measured). However, there are plans to re-route the D1 service past the site, at a 15 minute frequency, and the proposed

development includes provision of a new bus stop adjacent to the site. A footway/cycleway is also proposed along the site frontage to link into the existing footways. The proposals are therefore considered reasonable in terms of promoting sustainable travel to/from the site.

Proposed parking provision is lower than the parking standards. It is suggested that a parking accumulation analysis is undertaken to determine the likely peak demand for parking, to determine whether the proposed parking is adequate.

In general the assessment of impacts on the local highway network appears to be reasonable, and the proposed vehicular access to the site for customers and HGVs is considered acceptable. The exception is the analysis of the Stanbridge Road/Grovebury Road/Lake Street Mini Roundabout, which is considered to over-estimate the capacity of the junction. I would not be able to recommend that this application be approved until this junction is re-assessed, preferably based on an engineering layout of the proposed junction.

#### Sustainable Transport

A framework travel plan (FTP) has been submitted aimed at influencing staff travel to and from the site. As a travel plan, the submission falls short of the information that we would require to be presented and various improvements are required.

The proposal for a 3 metre wide cycle/footway along Grovebury Road and the provision of numerous pedestrian/cycle accesses from Grovebury Road and Grovebury Lane are supported. The north eastern-most cycle/pedestrian access should be designed to serve all uses and not just customers/staff of the drive thru unit. The principle of shared use path along the Grovebury Lane boundary is supported, but this part stops at the proposed service access where there is potential for conflict between cyclists/pedestrians and HGVs. At this point priority should be given to non-motorised vehicles, by way of appropriate signage, before the route diverts into the highway. There is a need to connect the site to the Black Bridge cycle route that runs between Grovebury Road and Mentmore Gardens such that this would provide a safe cycle route away from main road from the Linslade area to Grovebury Road and beyond. A financial contribution would also need to be secured to upgrade the length of existing footway to the toucan crossing at junction of Chartmoor and Grovebury Roads to provide a continuous shared use facility. It is expected that as part of the highways proposals this cycle route will be signed in accordance with the cycle town signage that utilises



times rather than distances for pedestrians and cyclists. The site would benefit from the proposed extension of the 30mph zone along Grovebury Road and street lighting already present along Grovebury Road.

The proposal for a bus stop to support an extension to the Dash Direct service is supported in principle. However this is dependant on future build out rates in southern Leighton Linlade. It is therefore suggested that a public transport contribution that is directed to meeting the needs of this site specifically rather than tying it in with a development proposal over which it has no control is required.

I would therefore propose that a contribution is secured that covers the costs of a service for a 3 year period. Should the appropriate linkages from south Leighton Buzzard be developed within this timeframe it will then be used to extend the Dash Direct service to the site if appropriate. Real time provision should also be provided on the site itself such that site users are aware of the options available to them and to give this service the best possible chance of success. A condition should be attached to the planning application to this effect. Any bus stops provided should also facilitate real time displays, shelters and raised kerbs to support low floor vehicular access and it is anticipated that this is delivered by the development to CBC design guidelines.

- |                    |  |
|--------------------|--|
| Environment Agency | No objection subject to conditions to deal with the potential risk to controlled waters on site from historical and current land use.  |
| National Grid      | Holding objection ahead of further information to demonstrate sufficient clearance between buildings and overhead powerlines.  |
| Urban Design       | Out of centre retail developments do not satisfy many of the accepted urban design objectives. However, I accept that in planning policy terms these types of development may be appropriate. This proposal needs to be considered in the context of the adjoining site to the south. If both proposals were to be allowed, then they should be designed comprehensively and the layouts would need to relate better to each other, e.g. access between the two sites, location of servicing. The general layout of the development is acceptable. The pub/restaurant and drive thru provide the opportunities to create active frontages to the car park but also to Grovebury Road/Grovebury Lane. The service area for the retail units is discreetly located behind the building frontages. Landscaping (both soft and hard) will be important to reduce the impact of the buildings and the |

car parking to the front. Tree planting and landscaping should be provided within the car park to reduce the dominance of parked vehicles. The use of different paving materials would help to break up the large area of black tarmac. A hedgerow together with a line of substantial trees should be provided along the Grovebury Road frontage to help define the edge of the road and visually contain the site. Retail unit 8 has a frontage to Grovebury Lane and is located at the entrance to the site from the bus stop (cycle parking is also provided in this location. Unit 8 should turn the corner to provide a stronger entrance to the development for those arriving by bus and cycle. There are limited contextual clues to apply to the design of the buildings. Retail units 1-8 have a strong rhythm and individually have a simple, unfussy design. However it's a long frontage. There may be opportunities for this to be broken in the middle. The pub/restaurant is a key building being located on the corner of Grovebury Road and Grovebury Lane. The use of a 'vernacular' style helps to identify the building as a pub/restaurant and differentiate it from the retail units. If a vernacular style building is to be used, however, it should relate to the local vernacular, both in terms of building details/materials and form.

Strategic Planning	Awaiting comments.
Economic Regeneration	Awaiting comments.
Public Art	Recommends provision is made on site for public art integrated into the development itself. Examples of this could be treatments to streetscapes, floors, panels to buildings, glasswork, windows, lighting and so on. A condition is recommended to secure written details of how public art would be integrated and commissioned. It would be expected that the developer appoints artists at the detailed design stage so the artistic feature can be integrated into the development. In this vein, the art should aim to link the site with the town itself and the history, culture and materials of Leighton Buzzard thinking about how the site links with the rest of the town/area and flow from the retail park to the town centre.
Building Control	No comment.
Buckingham and River Ouzel Internal Drainage Board	It is intended to dispose of storm water runoff by means of a sustainable drainage system. The applicants should note that any discharge of storm water to adjacent watercourse must be limited to the appropriate rate and will require the consent of the Environment Agency. If it is intended to discharge to a Anglian Water sewer connection, confirmation from Anglian Water should be

sought that a suitable surface water sewer exists that can satisfactorily accommodate the flows from the site.

Trees and Landscaping

The Landscape Strategy and Proposed Site Plan indicates retention of retained trees where possible, but in the absence of any BS 5837 survey, a very quick site appraisal was made to make the following observations:

The northern corner of the site, near the junction of Grovebury Road and Grovebury Lane still retains a section of old Hawthorn hedgerow abutting Grovebury Road, which includes a number of attractive Sycamore trees, providing significant visual amenity along the road and site boundary.

Set within the site, just inside the northern corner, is an area of amenity grassland with individually planted specimens of Sycamore and Norway Maple cultivars, which also provided attractive amenity and should be retained.

Further southwest along the boundary with Grovebury Road are two poor examples of Weeping Willow where the crowns are breaking apart and are not worthy of retaining.

Along the Grovebury Lane boundary are two groups of Horse Chestnuts in fair condition, and a group of Hybrid Black Poplars in the eastern corner of the site. None of these trees are of a quality that should be considered a potential constraint to development.

As the Landscape Strategy identifies and embraces existing trees, and incorporates a need for strong linear new planting within the site, I have no objection to the outline application but recommend that a BS 5837 :2012 tree survey is undertaken to identify those constraints presented by quality trees in order that they can be successfully integrated into a final design layout.

Ecology

The proposed development does not appear to have any ecological impacts being redevelopment of an industrial site. The landscaping proposals seem to lend themselves to the inclusion of SUDS, such systems are beneficial to wildlife and would support a focus on the site's redevelopment achieving a net gain for biodiversity.

Archaeology

The proposed development is in an area containing evidence of prehistoric, Roman and medieval activity and occupation. It is also within an area of extensive sand extraction, a significant component of Leighton Buzzard's industrial heritage. Although the area has archaeological

potential and heritage assets with archaeological interest (as defined by the *National Planning Policy Framework*) do exist in the locality, the previous development and use of the site mean that any archaeological deposits are likely to have been heavily disturbed. On that basis it is unlikely that the proposed development will have a major impact on archaeological remains or on the significance of any heritage assets with archaeological interest. Therefore, I have no objection to this application on archaeological grounds.

English Heritage

Application should be determined in accordance with national and local policy and on the basis of specialist conservation advice.

Landscape

Fully support the landscape principle to enhance the landscape frontage of Grovebury Road as part of the development. It is suggested that photo views / wire frames could be provided describing the building height and mass from views within the Ouzel Valley, Grand Union Canal and Tiddenfoot Country Park the valley / Park to gauge if there is likely to be visual impact. There are opportunities for appropriate hard and soft landscaping at the reserved matters stage. Lighting needs to be considered in terms of design, layout and lighting levels especially as the site is within the context of a Country Park and wider countryside which is an important habitat area - and remarkably dark at night. The Design and Access Statement includes exciting images of green roofs and walls but these do not appear to be included in the proposed building design. The inclusion of such features would assist in building insulation, rain water detention, be of ecological benefit and assist in visually mitigating built elevations - demonstrating a 'green' sustainable development - and should be pursued.

**Determining Issues**

The main considerations of the application are;

1. Planning policy and background
2. Employment land allocation
3. Retail impact
4. Pedestrian and cycle links, public transport and highways matters
5. Landscape, biodiversity and archaeology
6. Design concept
7. Other matters
8. Conclusions

## Considerations

### 1. Planning policy and background

The application site is located on the southern edge of Leighton Linlade and forms part of a designated Main Employment Area. In line with South Bedfordshire Local Plan Review Policies E1 and E2, and Policies 6, 7 and 8 of the emerging Development Strategy for Central Bedfordshire, the Council seeks to maintain an appropriate portfolio of employment land within Central Bedfordshire. Accordingly the Council would not wish to see current employment land lost to non-employment uses. However, in order to provide flexibility, choice and the delivery of a range of employment opportunities, proposals for employment generating non-B uses on employment sites will also be considered on a site-by site basis in relation to detailed considerations as set out in Development Strategy Policies 7 and 8.

In line with the 'town centres first' approach advocated by the National Planning Policy Framework (NPPF), the Council seeks to support the role and function of the town centres. Policy 11 of the emerging Development Strategy sets out that proposals for retailing outside of town centre boundaries should be considered against a sequential test. The sequential test should take account of available and suitable sites located in town centres, edge of centre locations and then out of centre locations. Only if suitable sites are not available should out of centre sites be considered. For proposals over 500 square metres gross external floorspace that are outside a designated town centre boundary, the development should be considered against a retail impact test. The retail impact test should consider the impact on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal. The impact on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made will also be considered. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.

It is therefore necessary to consider whether the proposal is acceptable in terms of the employment land allocation and retail impact, having regard to the sequential and impact tests. These assessments take account of the Retail Review undertaken by the Council's independent retail consultant and the advice of internal and external consultees. Whilst the application is made in outline and points of detail relating to siting, design, landscaping and appearance will be dealt with at reserved matters stage, regard should also be had to various detailed considerations at the outline stage.

This application has been made following the submission of a similar retail warehouse proposal on the adjoining site to the south. These schemes should be regarded as separate proposals and each application must be considered on its own planning merit. However regard should be had to the potential for combined impacts in the event of both sites coming forward for similar retail developments. As such these applications have been considered in parallel and are included on the same Committee agenda.

These proposals have emerged following the grant of planning permission for the erection of an extension to the existing Tesco store at Vimy Road, Leighton

Buzzard which, if implemented, would involve the demolition of the adjacent Homebase store. Importantly however, Homebase are not identified as named operators as part of either proposal. Additionally it is presently unknown whether the Tesco extension will be implemented or whether Homebase would be required, or seek, to relocate. Whilst the Tesco permission remains extant until 28 May 2015, it should be noted that Tesco have most recently submitted a planning application for a customer collection canopy to serve internet customers. However this recent application does not appear to reflect the intention to extend the Tesco store in line with the previous planning permission. The applicants have identified a number of retailers likely to be targeted as potential occupiers, based on the range of goods which would be sold as part of the development and have submitted copies of correspondence from retailers who would consider locations within the area. However at present none of the identified operators have publically expressed a commitment to the proposals.

## **2. Employment land allocation**

The Council's 2012 Employment Land Review identifies a significant amount of vacant (employment) land in Central Bedfordshire. There is presently an oversupply of between 75 and 100 hectares of industrial land, although office land supply is broadly in balance. The level of industrial land supply is currently in excess of demand. It is important to note however that a high proportion of vacant employment land is identified to include poor sites which may affect the attractiveness of the employment land market across the area. A number of allocated and unallocated employment sites are not necessarily prime employment sites and are not considered sufficient in scale and quality to be the strategic employment locations needed in order to achieve the Council's job growth aspirations. These types of sites are better suited to service local needs and whilst they have historic employment uses, the likelihood of future strategic employment is questionable given the lack of strategic and market drivers.

Leighton Buzzard has a mixture of large and small industrial estates, located predominantly around Stanbridge Road and Grovebury Road. The application sites are located within an employment allocation concluded as being in adequate condition for B Class employment with some potential for redevelopment taking account of factors including the quality of stock, access to amenities, the adequacy of site servicing, strategic road access and public transport provision. Whilst the review concludes that the quality of the employment land in the area where the application sites are located is 'good', the Council must balance the current supply of industrial land, with future land requirements, the encouragement of inward investment and the need for employment growth.

In connection with this, it should be noted that approximately 16 hectares of new employment land, creating up to 2,400 new jobs, is expected to come forward as part of the East Leighton Buzzard Urban Extension allocation of the emerging Development Strategy.

In relation to existing allocated employment sites, the Council therefore seeks to provide flexibility, choice and the delivery of a range of employment opportunities, in line with national guidance contained within the NPPF and will therefore consider proposals for employment generating non-B uses on employment sites on a site-by site basis.



It is noted that part of the land to the south of the application sites has previously been developed as the Browns retail and trade centre site at the junction with the A505/A4146. Following the proposed residential redevelopment of the former Browns site at Mentmore Road, Browns proposed to relocate to the Grovebury Road site. Whilst this development involved an element of out of centre retail within the Main Employment Area, given the requirement for Browns to relocate and the employment generation resulting from the proposed mixed use scheme, the proposal was considered acceptable.

In terms of the detailed considerations to be applied to non-B uses on employment sites, emerging Development Strategy Policy 7 sets out that proposals should have regard to marketing and viability appraisals of the B class uses; the suitability and impact of the proposal in relation to the location and neighbouring land uses; any increase in the number of jobs that can be delivered; and the potential to strengthen existing clusters through the delivery of complementary employment generating uses.

The application was accompanied by a Marketing Summary Report compiled by Bidwells which sets out details of the present facilities, their current and recent occupation and the marketing initiatives undertaken.

The site presently occupies an eight bay 1970s warehouse building totalling approximately 19,324 square metres, divided into four units of circa 4,800 square metres. The building is of a steel-framed construction with brick elevations and multi-pitched roofs with valley gutters. The building largely retains the original asbestos roof structure and single glazed fenestration. The Report states that ongoing maintenance is increasingly problematic as a result. It is stated that modern commercial access and storage is limited by the buildings 4.5 metre eaves height, the lack of level dock accesses and the limited manoeuvring space for HGVs to turn within the site.

The Council has separately received copies of the marketing material for the site which indicates that the buildings are in good condition and suitable for continued use. However it is accepted that the lack of level loading facilities, internal clearance heights and the present layout and condition of the building may limit the attractiveness of site to potential Use Class B8 occupiers.

Bays 1-4 are presently vacant. Whilst these bays continue to be let to TransHaul Storage, the company went into administration in February 2012 and the lease will ultimately be disclaimed by the Administrator.

Bays 5-8 are presently occupied by Into the Light (Leighton Buzzard) Ltd, a local charity requiring dry storage for pallet foods and clothing which are distributed to the vulnerable and needy in the UK and abroad. Into the Light are a charitable organisation who receive 100% rating relief for the site and occupy the premises on a short term lease at a nominal £12 per annum.

Bidwells were appointed in June 2010 to advise and market the vacant accommodation. It is stated that the site has been subject to an extensive marketing campaign comprising direct mail to local and regional operators, press advertisements and web media, site marketing boards and banners. The

Marketing Summary states the premises were offered to market on short-term flexible lease and the terms of the lease were considered cost-effective for the region. Bidwells were subsequently instructed to market units Bays 7-8 in March 2011. Details of the marketing schedule for the site have been provided. It is stated that over the two year marketing period circa 70 enquiries and expressions of interest were received. These included the following:

- Mini Clipper Logistics, a logistics operator within Leighton Buzzard, looking for various short term contract-based storage requirement, viewed the property on three separate occasions.
- Downton Logistics, a distributor of magazines and newspapers, viewed the premises once but deemed the site unsuitable given the HGV parking available.
- Web Warehouse, a warehouse operator with pallet storage requirements, viewed the premises but deemed the site unsuitable due to the eaves height of the buildings which would limit storage space.
- BE Aerospace, the occupier of an adjacent site on the opposite side of Grovebury Road, viewed the property as a potential short term occupation but did not take the interest further.
- Spirit Fleet Solution, the occupiers of an adjoining site which manages a fleet of cars and vans, viewed the premises as a flexible short term solution for vehicle parking/storage whilst works were undertaken at their existing site but did not take the interest further.
- Clockwork Group, a storage and removal company seeking to relocate to a cost effective space, viewed the premises but dismissed the site due to the eaves height of the building.
- Into the Light, the present occupiers of Bays 5-8, viewed the adjoining bays.

It is noted that the site has only been offered to market on a short term basis. However Bidwells state that interest in the site is only likely to be on the basis of requirements for short term flexible storage space for a localised occupier. On the basis of the responses to the marketing initiatives, Bidwells do not consider that the present facilities meet operational requirements for modern warehouse use on a longer term basis. It is argued that the existing facilities have limited potential to generate significant employment for Leighton Buzzard. At present the site is technically fully let but in reality is 50% vacant and 50% occupied by a charity at nil rent. The premises provide no rental income for external repairs and maintenance. The Marketing Summary Report concludes that the premises are a deteriorating asset and the wholesale refurbishment of the accommodation is economically unviable.

The Council's Economic Regeneration section will be commenting on the submitted marketing appraisal in more detail ahead of the Development Management Committee meeting.

The Planning Statement submitted with the application indicates that the proposed retail development would provide the equivalent of 130 full time jobs and would indirectly generate additional employment due to the impact on supply and service providers. Having regard to the present and recent occupation of the premises, it is considered that the level of employment associated with the proposed retail warehouse development would compare favourably with the present warehouse use, in the event that a B8 occupier

could be secured on a longer term basis to secure the future use of the site for B Class use.

Taking account of the current supply of employment land within the area, the site's history of employment use, the marketing initiatives undertaken and the opportunities for employment creation which would result from the proposal, the proposed non-B Class development is considered acceptable in terms of the employment land allocation and Policy 7 of the emerging Development Strategy.

In accordance with The Town and Country Planning (Consultation) (England) Direction 2009, Local Planning Authorities in England are required to consult the Secretary of State before granting planning permission for certain types of development. This Direction applies in relation to any application, received by a planning authority on or after 20 April 2009, for "development outside town centres" which is not in accordance with one or more provisions of the development plan in force and where the floor space to be created by the development is 5,000 square metres or more. The purpose of the direction is to give the Secretary of State an opportunity to consider whether to exercise call-in powers under Section 77 of the Town and Country Planning Act 1990. The Town and Country Planning (Development Management Procedure) (England) Order 2010 gives the Secretary of State power to issue directions restricting the grant of planning permission by a Local Planning Authority, either indefinitely or during such a period as may be specified in the directions. Notwithstanding the above conclusions in relation to emerging Development Strategy Policy 7 and the NPPF, the proposals are in conflict with Policy E1 of the South Bedfordshire Local Plan Review 2004. Irrespective of the weight to be attached to the employment policies contained with the Local Plan Review 2004, given this conflict, the proposal constitutes "development outside town centres" for the purposes of the 2009 Direction. Therefore the Local Planning Authority is required to consult the Secretary of State, prior to granting planning permission.

### **3. Retail impact** Sequential test

In line with the Council's broad objective to support the role and function of the town centres, proposals for retailing outside of town centre boundaries will be considered against a sequential test as required under Policy 11 of the emerging Development Strategy and NPPF guidance. The sequential test should take account of available and suitable sites located in town centres, edge of centre locations and then out of centre locations. Only if suitable sites are not available should out of centre sites be considered favourably.

Both applications acknowledge need for a sequential approach, due to their out of centre location, and the applicants have undertaken an assessment of the availability and suitability of other sites within Leighton Buzzard. These include the planned developments at land south of the High Street and the Bridge Meadow site, for which the Council has endorsed Planning and Development Briefs. The briefs set planning frameworks to guide the future regeneration of the two sites and set down appropriate land uses and development principles.

Land south of the High Street is identified as providing an opportunity to extend the town centre to improve facilities for the town's current and future population. Development on this site is an objective within the council's Medium Term Plan,

“Delivering Your Priorities 2012-2016”. Accordingly the Council are committing substantial resources and have commenced, and in some cases concluded, the assembly of key land parcels for land south of the High Street. As such this site should be considered available within the plan period.

This site is located within the historic core of the town, adjacent to the Leighton Buzzard Conservation Area which incorporates a large number of listed properties. Notwithstanding the potential scope for a single larger anchor store in line with the Council’s Development Brief, the scale, detailed design and format of new commercial units provided as part of the town centre extension scheme would need to be compatible with properties along the historic High Street which is largely characterised by smaller retail units. In terms of their format scale and design, the warehouse retail developments proposed would not be appropriate within this context taking account of the historic pattern of the development within the town centre. Due to the aspirations of the Development Brief and the complexity of wider planning considerations within the town centre, this site is considered to be unsuitable and unviable for bulky goods retailing as proposed under the terms of the sequential test as set out within the NPPF.

As with the land south of the High Street, any future scheme for the Bridge Meadow site would need to be in line with the objectives of the Development Brief. The Brief identifies opportunities for development which could incorporate a mix of uses including further education, health, recreation and residential. The Bridge Meadow Development Brief envisages a limited amount of retail in restricted unit sizes as part of a wider mixed use scheme. Given this, and the complex land assembly and tenancy issues, the Bridge Meadow site should be regarded as unavailable, unsuitable and unviable for the proposals being put forward.

The Council has received details of a “third retail park” proposal as referred to within the recent local press. This relates to a proposal, made on behalf of EDS (Holdings) Ltd, concerning land west and north west of Grovebury Road known as the “Camden site”, which falls within the Main Employment Area and the adjacent Green Belt field. The proposal sets out two options for development; a mixed use scheme comprising retail and employment development, or an extension of the existing employment area at the “Camden Site” to include the adjacent Green Belt field. In connection with this, it would be proposed to dedicate a parcel of the land for use as recreational open space. Following a public presentation to the Town Council, the details of the proposal were submitted to Central Bedfordshire Council through its Call for Sites consultation, undertaken towards the beginning of last year. This process directly informed the preparation of the Development Strategy. This proposal has not been advanced as part the Development Plan process and has not been put forward by the Council as a site allocation identified within the emerging Development Strategy. It is not currently subject to a planning application and is lacking in sufficient detail to carry significant weight for the purposes of this application. The proposal would be in conflict with current and foreseeable planning policy and, like the current Grovebury Road application proposals, would involve out of centre retail development in the Grovebury Road area. In relation to the sequential test, this site cannot therefore be considered preferable to the application sites.

In sequential terms, the two application sites should be regarded as equal and one should not be regarded as preferable to the other purely on retail grounds.

Therefore, in terms of retail impact, neither application fails the sequential test under the terms of the NPPF.

#### Impact test

In accordance with NPPF guidance and Policy 11 of the emerging Development Strategy, the proposals should be also considered against a retail impact test which examines the impact on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal and the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made.

In particular, due consideration must be given to retail proposals on land south of the High Street and the Bridge Meadow site. The proposed retail developments must demonstrate that the proposals will not compromise either of these planned schemes from coming forwards over the plan period.

In general terms the Retail Impact Assessments submitted in support of the applications indicate that Leighton Buzzard continues to perform well, and overall is a vibrant and healthy centre. It is suggested that the health of Leighton Buzzard town centre is not substantially reliant on DIY and 'bulky goods' trade. These conclusions are in line with the Council's own retail studies and the advice of the Council's retail consultant.

On the basis of the aspirations for the Bridge Meadow site (a limited amount of retail in restricted unit sizes as part of a wider mixed use scheme) and the timescales of this development, the Council is advised that neither proposal would impact upon the deliverability of the Bridge Meadow development.

Additionally both proposals are considered complementary to the aspirations for the development at land south of the High Street, which is likely to be focused on higher order specialist/niche operators, fashion retailers and eating/drinking destinations. Given the different aspirations of the application proposals and those for the town centre expansion site, the developments are unlikely to impact on the marketability of the land south of the High Street. The Council's retail consultant notes that both proposals include A3/A4/A5 units and has considered the potential impact of this element of the proposals on the future aspirations for the town centre. The proposals, on their own or together, would be unlikely to impact on planned town centre investment given that they have different target markets.

The Council's 2012 Retail Study shows there is a substantial amount of comparison goods leakage (65%) from Zone 8, the area in which Leighton Buzzard is located and the Study does highlight opportunities to 'clawback' some of this trade to increase market share through new retail development. The Retail Study has identified a need for only 2,521 square metres of net comparison in Leighton Buzzard by 2016, even when incorporating a 3% market share uplift. This figure grows to 5,775 square metres net by 2021, 7,043 square metres net by 2026 and 8,643 square metres net by 2031.

The development at land south of the High Street is intended to provide around 2000 square metres of comparison floor space. In combination with an expansion to the Vimy Road Tesco store, this planned development would fulfil all of the identified need over the next five years, and 3,014 square metres net of identified need by 2021, leaving a residual need of 2,761 square metres net by 2021. This would not be sufficient to support one of the Grovebury Road application proposals.

It is envisioned that the North Houghton Regis 1 development would provide a significant element of retail development. Whilst the appropriateness and impact of this should be considered separately, this development clearly also has the potential to impact upon retail need within the wider area. Overall, there is a clear lack of baseline need for the comparison goods floorspace sought.

Under the terms of local planning policy and the NPPF need cannot any longer be cited as a reason for refusal. However deficiencies can lead to greater levels of impact and this is therefore a relevant consideration under the impact test. Both proposals would be reliant on trade diversion, both from Leighton Buzzard town centre and elsewhere. It is necessary to consider whether the proposals would give rise to acceptable levels of trade diversion, without leading to any unacceptable impact upon the vitality and viability of the town centre. It is important to consider whether the town centre could withstand the levels of trade diversion being suggested; either individually or in parallel if both schemes came forward. In some circumstances the loss of one or two key retailers in a town centre could commence the process of gradual and continued decline, either through national economic trends, or new development and a consequent significant impact. Recent rises in national town centre vacancy rates and the loss of several important national multiple retailers should be noted. At this stage, the Council's retail consultant does not suggest Leighton Buzzard town centre is vulnerable to this.

The current leakage of comparison goods trade from Leighton Buzzard and opportunities for 'clawback' trade within Leighton Buzzard are identified within the applications. In light of the Council's 2012 Retail Study, the Council's retail consultant concludes there is little 'bulky goods' trade opportunity within Leighton Buzzard above that being leaked to Milton Keynes retail parks. Any trade diversion from elsewhere in the Study area would more likely result in the creation of unsustainable shopping patterns and this would not be in line with the broad objectives of the NPPF. The applications are therefore reliant on 'clawback' trade from the four Milton Keynes retail parks. Whilst the Council's retail consultant anticipates there would be sufficient 'clawback', this would be marginal and is dependent upon both schemes being subject to appropriate restrictions as 'bulky goods' developments. If both schemes were to proceed on this basis, there would be an element of 'mutual impact' whereby the retail warehouse schemes would impact upon each other, and would be less reliant on 'clawback' from other areas. The Council's is advised that the impact identified is material, but not, in itself, significant in NPPF terms. The Council's retail consultant is comfortable that the type of scheme being proposed is largely complementary to the existing town centre offer and planned town centre investment. Again, this is in the context of appropriate restrictions being placed on any consent restricting the sale of goods as a greater level of flexibility in the



range of goods is unlikely to be unacceptable in impact terms.

Despite this conclusion, the range of goods proposed for retail sale includes items which are not 'bulky goods'. In this respect the proposals are not consistent with the emerging Development Strategy Policy DS7 which states that, as an exception to employment land policy, proposals for 'bulky goods' and other forms of specialist retailing less suited to a town centre location will be considered. However, given the clear conclusion regarding the impact of the proposals, it is not considered that an objection purely upon retail policy grounds could be sustained. Nevertheless, it is inevitable that there will be some product overlap with the town centre, including some businesses that would be directly affected such as those primarily focused around the furniture, floor coverings and home interiors and soft furnishings sectors and there are a few operators selling sports goods and toys. This may in time reduce town centre turnover, the range of operators within the main retail area and impact more generally upon the health of the centre. The applicants will therefore need to satisfy that appropriate Section 106 contributions would be forthcoming to support the attractiveness of the town centre, in order mitigate against this impact.

As it is unlikely that there would be sufficient 'bulky goods' demand to let both schemes in the present market or the foreseeable future, the grant of planning permission for both schemes might leave one site vacant and unimplemented creating a retail value (higher than B Class use value) that cannot be realised. This could lead to undermine the value of the vacant land for future B Class uses and pressures to relax restrictions in the future. However this is not in itself a reason to refuse the specific schemes subject of these applications. Any future proposals for retail developments seeking an alternative or broader range of retail goods should be assessed on their own merits.

#### Town centre contributions

Notwithstanding the above, there would be some product overlap with the town centre and some businesses that would be directly affected such as those primarily focused around the furniture, floor coverings and home interiors and soft furnishings sectors. Whilst the Council's retail consultant advises that the proposed retail parks would be primarily dependent upon "clawback" trade taken from other retail centres, it is acknowledged within the application that there would be some trade diversion from the town centre as a result of an out of centre bulky goods retail development on Grovebury Road. It is therefore essential that appropriate Section 106 contributions are secured to support the ongoing vitality and viability of the main shopping area and assist in the delivery of the land south of the High Street for redevelopment as a direct extension to the main shopping area.

Through its 2011 Portas Pilot Bid, Leighton Linlade Town Council has identified a number of priority initiatives, developed to enhance the attractiveness of the town centre as the main retail quarter, that require financial investment. The Town Council has allocated some funding to meet these objectives and identified that a further £100-150,000 is required for the following:

- Summer Sundays Programme – funding to support the employment of an event manager to coordinate a programme of summer events held on Sundays and fund the provision of barriers, pop-up stalls, staging and other important items of infrastructure.

- Street Screen Project – funding to developing a “24 hour High Street” concept allowing smart phones and near field communication technology to interact with retail stores, expanding retail hours and creating more dynamic window displays.
- Twice Weekly Market traffic management and infrastructure - traffic management and infrastructure-related costs associated with relocating the twice weekly market, bringing it into the centre of the High Street
- Town Centre Hub Celebrations – funding to develop the concept of the town centre as a hub for the celebration of the town’s local history, where trails, time-lines and mobile and web technologies are used draw people into and augment their experience of exploring the High Street and its offer.

In connection with these, there is a need to reinforce public links between land south of the High Street and the Main Shopping Area through environmental improvements to courts and alleyways and signage.

In order to inform decisions relating to land assembly and assist in the development of site-specific proposals for the land south of the High Street, architectural and feasibility work relating to the potential relocation of the fire station is needed. This would need to take account of the practical requirements of the Fire Service and other existing land owners in terms of the service and interface requirements as well as public safety issues. It would need to examine various parking and access configurations. A contribution towards these costs would assist the Council in bringing forward land south of the High Street for redevelopment involving retail more quickly and support the development of the town centre as the primary retail area.

A contribution of £135,000 is proposed by the applicant to support these and other related town centre initiatives. This is not considered adequate and proportionate to the retail impact identified. At the time of drafting this report Officers are engaged in discussions with the applicants and Economic Regeneration with regard to this element of the proposal. Notwithstanding this, as addressed below, the proposed town centre contributions should be considered as part of an overall package of planning obligations which are required and those which are offered as part of the development.

#### Sections 106 controls

In relation to the above considerations it is also necessary to control range of goods sold from the proposed retail park and, as far a possible, ensure that it is complimentary to the town centre. The Council’s retail consultant has given consideration to control of development by way of planning condition or by Section 106 Agreement as appropriate. It is considered that the development should be subject to Section 106 controls as any Legal Agreement would offer greater control over the specific detail of retail offering and the manner in which the site would operate. The development would be subject to similar Section 106 restrictions to those imposed at White Lion Retail Park, Dunstable.

Having regard to the proposed range of goods to be sold as part of both schemes, the advice of the Council’s retail consultant and the above conclusions regarding retail impact, it is considered appropriate that both developments be restricted to the retail sale of DIY goods; plants, garden products and outdoor

furniture; furniture and home furnishings; housewares; fabrics and floor coverings; seasonal goods such as Christmas decorations; motor vehicle parts and accessories; leisure and sports goods; arts, crafts and stationary; toys; home technology and electrical goods; cycles and cycling accessories; and camping goods. The ancillary A3/A4/A5 elements would provide for the ancillary sale of hot and cold beverages and food confectionary for consumption in or outside the floorspace.

It is considered appropriate to impose additional restrictions to control, for example, the number of units selling specific type of goods and ensure any sports 'clothing' sold remains ancillary to a sports equipment operator. This would assist in the protection of the town centre now and in the future as a possible consequence of changing economic circumstances, market demand and operator formats etc. The Council's retail consultant have advised that the unit sizes proposed as part of the application are broadly in accordance with the expectations of retailers looking to acquire space in bulky goods categories. The size of retail units would also need to be controlled with size restriction for each individual retail unit along with suitable restrictions on sub-division, the merging of units, and the extent of eating/drinking facilities. This would enable control over any future aspirations at the developments if planning permission were granted, allowing the Council to consider changes on a case by case basis.

#### **4. Pedestrian and cycle links, public transport and highways matters**

In terms of the Council's current parking standards, 394 parking spaces are required as part of the development. A total of 398 spaces are proposed. It is suggested that a parking accumulation analysis is undertaken to determine the likely peak demand for parking, to determine whether the proposed parking is adequate. However given the nature of the proposed development, this is not considered appropriate for a shortfall of only five spaces.

Highways do not consider that the submitted capacity assessment for the Stanbridge Road/Grovebury Road/Lake Street mini roundabout is sufficiently robust. It will be necessary for the applicants to provide additional information to address this.

Notwithstanding the lack of identified demand for two retail warehouse schemes as proposed, in terms of highway capacity, the potential for combined impacts should also be considered, in the event of both retail developments coming forward. As the capacity assessments submitted in support of the proposals do not address this Officers have requested that additional information to examine highway capacity in relation to a potential combined impact. The combined impact of the proposals should be considered in relation to the capacity of the road network itself but also the combined impact of the established use on the brownfield site and an alternative employment generating development on the greenfield site.

The development would need to meet the costs of delivering a 3 metre wide cycle/footway to connect with existing public routes along Grovebury Road and Grovebury Lane. This can be secured by Section 106 Agreement.

Sustainable Transport advise that due to uncertainty over the timing of the adjacent housing development at Grovebury Farm and a second route being

added to the existing Dash Direct bus service, it would be appropriate for the development to fund a dedicated bus service from the retail park to the town centre. The applicants have confirmed their willingness to enter into a planning obligation to secure the requested contribution towards a bus service for the site.

A new bus stop would be provided at the northern end of the site on Grovebury Lane. This would be delivered as part of the development and it would be appropriate for this to be secured by way of legal agreement.

Sustainable Transport have identified that various changes are required to improve the Framework Travel Plan which has been submitted in support of the application. This can be dealt with by planning condition.

## **5. Landscape and biodiversity**

Due to the location of the site at the southern edge of Leighton Linlade and its close proximity to key public open spaces, the potential impact of lighting on the wider landscape would represent a key consideration at the reserved matters stage. The application was accompanied by a Lighting Assessment which sets out the broad principles for the design of a detailed proposal. Reserved matters proposals would need to provide suitable detail by way of light spill plans and lux level drawings. Taking account of the location of the site within the Main Employment Area and adjacent to established commercial premises to the north west, north east and south east, it is considered that an acceptable lighting scheme could be achieved if carefully designed at the reserved matters stage.

An outline landscape strategy has been submitted in support of the application which sets out the basic principles which would inform the design of a detailed landscape strategy for the site.

A detailed scheme of hard and soft landscaping would be required by condition. The detailed landscaping proposals would need to be developed, having regard to the importance of suitable soft planting along site frontage and within public parking areas in light of the comments of the Urban Design Officer, the Council's Grovebury Road Industrial Estate Enhancement Plan and opportunities to create new habitat opportunities.

## **6. Design concept**

The proposed indicative site layout plan shows how the retail development would be arranged. The nine Use Class A1 retail units are shown positioned towards the south east side of the site, fronting onto a public parking area and backing onto a servicing area. The public house/restaurant and drive thru units are shown as two stand-alone buildings positioned on the north east side of the site. The site is located adjacent to other commercial uses and associated car parking to the north east, south east and south west. Further to the east of the application site, and to the north east of the neighbouring commercial uses, are land at Grovebury Farm and Brickyard Quarry which have outline planning permission for residential and associated development plus a local centre and community land.

Within this context it is considered that an acceptable scheme could be achieved in terms of amenity and the impact upon the character and appearance of the locality. Whilst the application is made in outline only, detailed proposals would

need to be developed in response to the comments of the Urban Design Officer, taking account of the need to create an active and interesting elevation to Grovebury Lane, and design elements to provide a visual break within the main retail frontage elevation. The form and external treatment of the public house/restaurant and drive thru units and the importance of suitable landscaping will also need to be carefully considered.

Reserved matters applications would also need to adequately address community safety. All buildings and public spaces will need to incorporate measures to reduce crime opportunities. Design of car parking areas will need to be carefully addressed at the reserved matters stage.

Having regard to the comments of Public Art, a framework public art strategy for the site would need to be agreed with the Council prior to the reserved matters applications and should inform the detailed design of the proposal. This can be secured by condition.

#### **7. Other matters**

As the application is made in outline, full details of disabled facilities for staff and customers have not been provided. Suitable arrangements for disabled users including adequate disabled parking provision, WCs and disabled lifts for internal mezzanine levels would need to be demonstrated at reserved matters stage in line with the guidance of Building Control regarding disability requirements under Building Regulations.

On the basis of the indicative layout submitted, the proposed DIY anchor store would be located below the existing overhead power lines which traverse the southern part of the application. National Grid have advised that they have been unable to determine whether the current scheme would achieve an acceptable overhead clearance between the power lines and the buildings and have registered a holding objection, pending additional information. As the application is submitted in outline, matters relating to scale and layout are reserved for subsequent approval. As such the proposed elevations and layout should be regarded as indicative and may not reflect the final heights of the buildings. It would be necessary to consult National Grid at the detailed stage before granting approval on any final details regarding height or layout. The detailed scheme would need to be designed to meet National Grid clearance requirements in terms of layout and height.

#### **8. Conclusions**

Taking account of the current supply of employment land within the area, the site's history of employment use, the marketing initiatives undertaken and the opportunities for employment creation which would result from the proposal, the proposed non-B Class development is considered acceptable in terms of the employment land allocation and Policy 7 of the emerging Development Strategy. In relation to retail impact, both retail warehouse proposals are considered to pass the sequential test, having regard to the availability and suitability of other sites within Leighton Buzzard. The identified retail impact would be marginal but not significant in NPPF terms.

Prior to Development Management Committee, it will be necessary for the applicants to provide additional information to support the highway network

capacity assessments. Subject to this, it is considered that an acceptable scheme could be achieved at the reserved matters stage, having regard to the relevant detailed considerations for this outline proposal.

In terms of the individual merits of the two proposals, the brownfield scheme would involve the redevelopment of the existing Use Class B8 site. This would be in line with Local Plan Review Policy SD1 and the core planning principles within the NPPF which seeks to encourage the effective use of land by reusing land that has been previously developed (brownfield land) (paragraph 17). Whilst one of the proposals would involve the development of a previously undeveloped site, this does not render the greenfield scheme unacceptable in planning terms, particularly given the longstanding objective for this site to be developed for employment purposes. Similarly any associated benefits which could only be secured through greenfield development do not render the brownfield scheme unacceptable.

In connection with the greenfield scheme, excluding those specific benefits which could only be achieved as part of the development, a contribution of £399,000 is proposed towards the town centre and transport requirements. This compares with a proposed contribution of £489,088 towards town centre and transport requirements for the brownfield scheme. Having regard to their relative scale and likely individual impacts, it is considered that the proposed town centre/transport contributions for the two schemes are broadly proportionate to each other. On the basis of the current Section 106 proposals, the transport contribution offered as part of the greenfield development is inadequate, whereas the town centre contribution offered as part of the brownfield scheme is insufficient. The suitability of the proposed transport/town centre contributions, and the manner in which these monies are apportioned will need to be determined on the basis of the package of contributions put forward by the applicants and appropriate package of Section 106 contributions will need to be secured in discussion with the applicants.

The applicant currently proposes to enter into a Legal Agreement to secure the following:

- A total contribution of £135,000 to support the vitality and viability of the town centre comprising; (1) £50,000 towards Town Council Portas Pilot Schemes; (2) £35,000 towards improvements to courts and alleyways and signage; (3) £25,000 towards cost associated with architectural and feasibility work relating to the relocation of the fire station; and (4) £25,000 towards the costs of providing temporary car parking at land south of the High Street.
- A contribution of £344,088 to fund the delivery of a public bus service to serve the site and other sites along Grovebury Road.
- A contribution of £10,000 to meet the costs of providing public foot/cycle path connections linking the site to the existing public foot/cycle path along Grovebury Road/Grovebury Lane.

The Legal Agreement would also need to secure the following:

- Appropriate controls over goods sold. The developments should be restricted to the retail sale of DIY goods; plants, garden products and outdoor furniture; furniture and home furnishings; housewares; fabrics and floor coverings; seasonal goods such as Christmas decorations;



motor vehicle parts and accessories; leisure and sports goods; arts, crafts and stationary; toys; home technology and electrical goods; cycles and cycling accessories; and camping goods. The ancillary A3/A4/A5 elements would provide for the ancillary sale of hot and cold beverages and food confectionary for consumption in or outside the floorspace.

- Appropriate controls over the number of units selling specific types of goods and ensure any sports 'clothing' sold remains ancillary to a sports equipment operator.
- Appropriate controls over the size of the retail units along with suitable restrictions on sub-division, the merging of units, and the extent of eating/drinking facilities.
- The funding of a public art strategy as part of the development.
- The creation of a bus stop and half bus lay-by on Grovebury Road as part of the development and provision of real time passenger information on site.

### **Recommendation**

That, subject to the prior consultation of the Secretary of State, in accordance with The Town and Country Planning (Consultation) (England) Direction 2009, and the completion of a prior Section 106 Agreement that the Head of Development Management be authorised to GRANT Planning Permission subject to the following:

### **CONDITIONS**

- 1 An application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

Reason: To comply with the provisions of Section 92 (2) (a) and (4) of the Town and Country Planning Act 1990.

- 2 Approval of the details of the appearance, landscaping, layout and scale of the development (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced. Plans and particulars of all of the reserved matters referred to above shall be submitted in writing to the Local Planning Authority and the development shall be implemented as approved.

Reason: To enable the Local Planning Authority to exercise control over the said matters which are not particularised in the application for planning permission in accordance with Section 92 of the Town and Country Planning Act 1990 and Town and Country Planning (General Development Procedure) Order 1995.

- 3 The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason: To comply with the provisions of Sections 92 (2) (b) and (4) of the Town and Country Planning Act 1990.

- 4 Before development begins, details of the materials to be used for the external walls and roofs of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

Reason: To protect, as far as possible the character of the locality.  
(Policy BE8 S.B.L.P.R and Policy 43 D.S.C.B).

- 5 Before development begins, a landscaping scheme based upon a full BS 5837 :2012 tree survey and including any hard surfaces and earth mounding shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide details of any existing trees and hedgerows to be retained as part of the development and details of protection measures for the retained trees and hedgerows and identify opportunities for the creation of new wildlife and supporting habitats to be incorporated as part of the development. The approved scheme shall be implemented by the end of the full planting season immediately following the completion and/or first use of any separate part of the development (a full planting season means the period from October to March). The new and retained trees, shrubs and grass shall subsequently be maintained for a period of five years from the date of planting and any which die or are destroyed during this period shall be replaced during the next planting season and maintained until satisfactorily established.

Reason: To ensure a satisfactory standard of landscaping and the appropriate creation of wildlife and supporting habitats opportunities  
(Policy BE8 S.B.L.P.R and Policy 43 D.S.C.B).

- 6 Before developments begins, a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:

1) A preliminary risk assessment which has identified:

- All previous uses,
- Potential contaminants associated with those uses,
- A conceptual model of the site indicating sources, pathways and receptors, and
- Potentially unacceptable risks arising from contamination at the site.

2) A further site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to controlled waters as the Environment Agency are not confident that the initial site investigation sampling and the results of the risk assessment provides sufficient evidence to prove that there is no risk to controlled waters on site.

3) The results of the site investigation and detailed quantitative risk

**assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.**

**4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.**

**Any changes to these components require the express written consent of the Local Planning Authority. The scheme shall then be implemented as approved.**

**Reason: To protect and prevent the pollution of controlled waters (particularly the River Ouzel and the Woburn Sands Formation (Principal aquifer) below the site which is part of the Upper Bedford Ouse Woburn Sands waterbody) from potential pollutants.**

- 7 Prior to the initial public use of the development, a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall then be implemented as approved.

Reason: To protect and prevent the pollution of controlled waters (particularly the River Ouzel and the Woburn Sands Formation (Principal aquifer) below the site which is part of the Upper Bedford Ouse Woburn Sands waterbody) from potential pollutants.

- 8 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted a remediation strategy to the Local Planning Authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the Local Planning Authority. The remediation strategy shall then be implemented as approved.

Reason: To protect and prevent the pollution of controlled waters (particularly the River Ouzel and the Woburn Sands Formation (Principal aquifer) below the site which is part of the Upper Bedford Ouse Woburn Sands waterbody) from potential pollutants.

- 9 **Before development begins, a scheme for surface water disposal shall be submitted to and approved by the Local Planning Authority. The scheme shall then be implemented as approved. Infiltration systems and penetrative methods should only be used where it can be**

**demonstrated that they will not pose a risk to groundwater quality.**

**Reason: To protect and prevent the pollution of controlled waters.**

10 Prior to the initial public use of the development, a revised Framework Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Framework Travel Plan shall include the following:

- measures to give visitors to the site, as well as staff, a choice of travel options;
- clarification on where cycle spaces will be provided on site;
- a commitment that showers, changing rooms or storage facilities will be installed onsite prior to occupation, or that site occupants will be required to set up 'Cycle to Work' salary sacrifice schemes for staff;
- a commitment to promote of Central Beds and Luton liftshare and CBC's 'Travel choices' programme;
- a commitment to offer a free personalised journey planning (PJP) service to staff and seek business sign-up to CBC's new Employers Travel Club;
- a commitment to allocate staff car-share bays, set up a private, web-based liftshare scheme for staff or run promotional events during National Liftshare Week.

The Framework Travel Plan shall then be fully implemented in accordance with the approved details.

Reason: In the interests of highway safety, to reduce congestion and to promote the use of sustainable modes of transport.

11 **Before development begins, a Public Art Strategy shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall include written details of how public art would be commissioned and integrated as part of the development, setting out details of community engagement/consultation undertaken, timeframes for the creation and advertisement of an artists brief, the artist shortlisting and agreement process, and a maintenance plan for any artworks created including funding for long term maintenance. The strategy shall then be fully implement in accordance with the approved details.**

**Reason: To ensure a satisfactory and appropriate artistic feature(s) or element(s) are integrated into the development itself and thereby enhance, as far as possible the character of the locality.  
(Policy BE8 S.B.L.P.R. and Policy 43 D.S.C.B).**

12 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plan numbers 11853-100 Revision A Received by the Local Planning Authority on 12 Seotember 2012 and 26560/001 Revision received by the Local Planning Authority on 18 September 2012.

Reason: For the avoidance of doubt.

**Statement required by the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 - Article 31**

Planning permission has been granted for this proposal. The Council acted pro-actively through positive engagement with the applicant at the pre-application stage and during the determination process which led to improvements to the scheme. The Council has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012.

**Reasons for Granting**

Having regard to the current supply of employment land within the area, the site's history of employment use, the marketing initiatives undertaken and the opportunities for employment creation which would result from the proposal, the proposed non-B Class development is considered acceptable in terms of the site's employment land allocation. Taking account of the availability and suitability of other sites within Leighton Buzzard and the impact on existing, committed and planned public and private investment, subject to appropriate town centre contributions, the identified retail impact is considered to be marginal but not significant in NPPF terms. Subject to the delivery of a public bus service to serve the site and other sites along Grovebury Road, the proposed development is capable of achieving an acceptable scheme in terms of the impact upon the character and appearance of the locality and incorporating adequate landscaping, road, cycle and footpath links and parking areas. The proposal is therefore in conformity with Supplementary Planning Guidance contained within Central Bedfordshire Design Guide: A Guide for Development 2010, the development plan policies comprising the South Bedfordshire Local Plan Review and the emerging Development Strategy for Central Bedfordshire and national guidance contained in the National Planning Policy Framework.

**Notes to Applicant**

1. The development is subject to a Legal Agreement under Section 106 of the Town and Country Planning Act 1990.
2. In accordance with Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, the reason for any condition above relates to the Policies as referred to in the South Bedfordshire Local Plan Review (SBLPR) and the emerging Development Strategy for Central Bedfordshire (DSCB).
3. This permission relates only to that required under the Town & Country Planning Acts and does not include any consent or approval under any other enactment or under the Building Regulations. Any other consent or approval which is necessary must be obtained from the appropriate authority.
4. Land contamination investigations should be carried out in accordance with BS 5930:1999-2010 'Code of Practice for site investigations' and BS 10175:2011 'Investigation of potentially contaminated sites - Code of Practice' as updated/amended. Site investigation works should be undertaken by a suitably qualified and experienced professional. Soil and

water analysis should be fully MCERTS accredited. Any further site investigation, demolition, remediation or construction works on site must not create new pollutant pathways or pollutant linkages in to the underlying principal aquifer to avoid generating new contaminated land liabilities for the developer. Clean drilling techniques may be required where boreholes, piles etc penetrate through contaminated ground.

5. The CLAIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated material arising from site during remediation and/or land development works are waste or have ceased to be waste. Under the Code of Practice:

- excavated materials that are recovered via a treatment operation can be re-used on-site providing they are treated to a standard such that they are fit for purpose and unlikely to cause pollution
- treated materials can be transferred between sites as part of a hub and cluster project
- some naturally occurring clean material can be transferred directly between sites.

Contaminated soil that is, or must be disposed of, is waste. Therefore, its handling, transport, treatment and disposal is subject to waste management legislation, which includes:

- Duty of Care Regulations 1991
- Hazardous Waste (England and Wales) Regulations 2005
- Environmental Permitting (England and Wales) Regulations 2010

The Waste (England and Wales) Regulations 2011

6. Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, including in line with British Standards BS EN 14899:2005 'Characterisation of Waste - Sampling of Waste Materials - Framework for the Preparation and Application of a Sampling Plan' for waste to be removed from site, and that the permitting status of any proposed treatment or disposal activity is clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays. If the total quantity of waste material to be produced at or taken off site is hazardous waste and is 500kg or greater in any 12 month period the developer will need to register with us as a hazardous waste producer.
7. Soakaways and other infiltration SuDS must not be constructed in contaminated ground. The use of infiltration drainage would only be acceptable if a phased site investigation showed the presence of no significant contamination. The use of non infiltration SuDS may be acceptable subject to our agreement. The Environment Agency would need to be consulted on the results of the site investigation and on any protection measures. Please refer to the Environment Agency website at [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk) for more information.
8. It is intended to dispose of storm water runoff by means of a sustainable drainage system. The applicant should note that any discharge of storm water to adjacent watercourse must be limited to the appropriate rate and will require the consent of the Environment Agency. If it is intended to

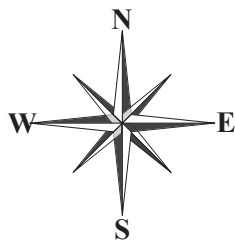
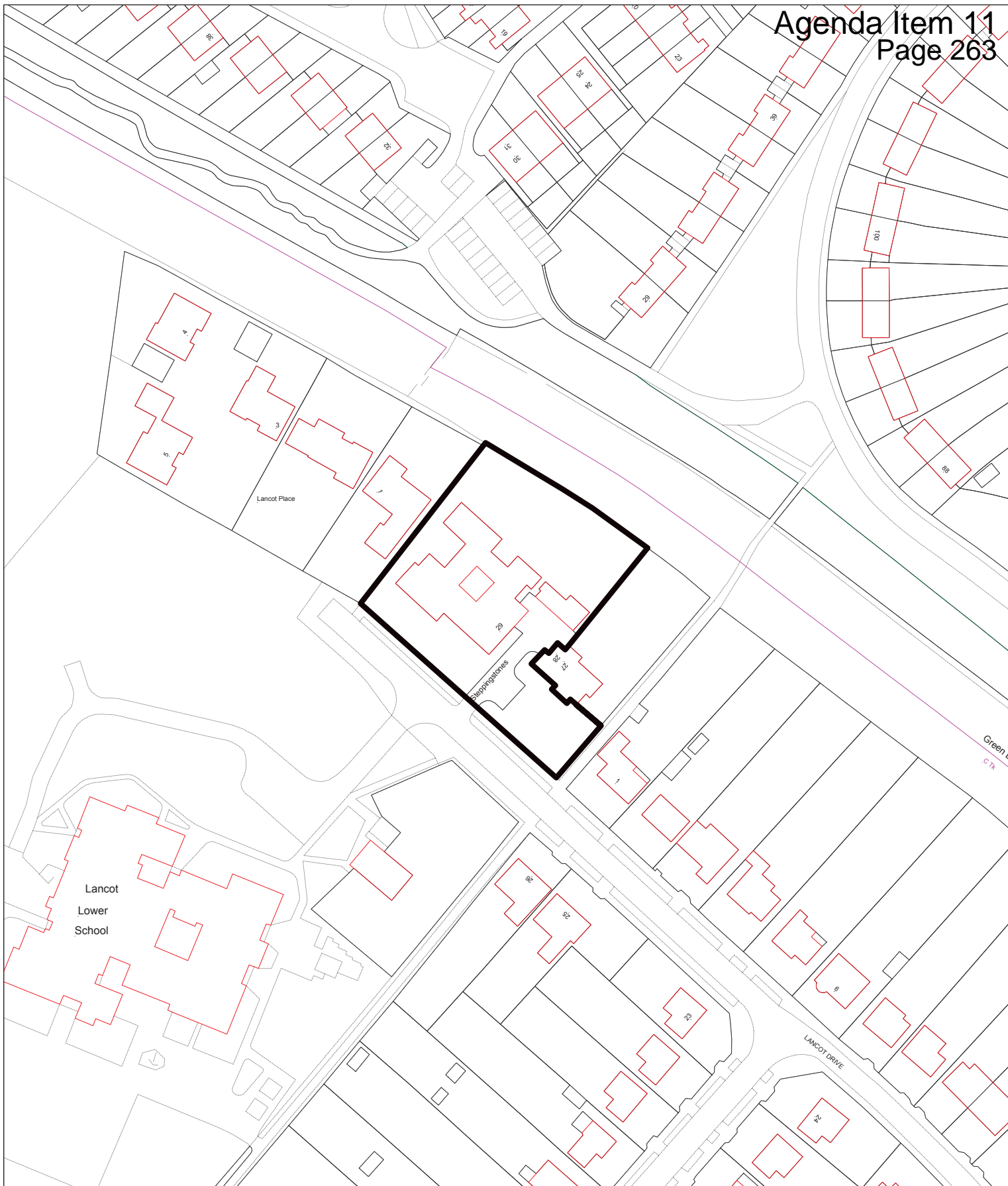


discharge to a Anglian Water sewer connection, confirmation from Anglian Water should be sought that a suitable surface water sewer exists that can satisfactorily accommodate the flows from the site.

**DECISION**

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Central Bedfordshire Council  
Licence No. 100049029 (2009)

Date: 28:January:2013

Grid Reference: 500513; 221682

Application No.  
CB/12/03575/FULL

Scale: 1:1250

29 Steppingstones, Lancot Drive, Dunstable, LU6 2AP

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<b>Item No. 11</b>
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<b>APPLICATION NUMBER</b>	<b>CB/12/03575/FULL</b>
<b>LOCATION</b>	<b>29 Steppingstones, Lancot Drive, Dunstable, LU6 2AP</b>
<b>PROPOSAL</b>	<b>Demolition of existing care facility and construction of new building with associated works. Proposed ground floor 8No x studio bedrooms with ensuites and associated communal and staff facilities. First floor assisted living 4No x two bedroom flats and 2No x one bedroom flats.</b>
<b>PARISH</b>	<b>Dunstable</b>
<b>WARD</b>	<b>Dunstable Northfields</b>
<b>WARD COUNCILLORS</b>	<b>Cllrs Mrs Green &amp; Murray</b>
<b>CASE OFFICER</b>	<b>Vicki Davies</b>
<b>DATE REGISTERED</b>	<b>24 October 2012</b>
<b>EXPIRY DATE</b>	<b>23 January 2013</b>
<b>APPLICANT</b>	<b>Macintyre Housing Association</b>
<b>AGENT</b>	<b>Kyle Smart Associates</b>
<b>REASON FOR COMMITTEE TO DETERMINE</b>	<b>The application site is owned by CBC and an objection has been received which cannot be overcome by conditions.</b>
<b>RECOMMENDED DECISION</b>	<b>Full Application - Granted</b>

**Site Location:**

The application site is located on the northern side of Lancot Drive, Dunstable. Lancot Drive is a no-through road accessed from Lancot Avenue. The application site is opposite Lancot Lower School and is within a primarily residential area. The site was previously used as a care home with 16 places for people with mental disorders within a secure environment with help with day to day living, the building is vacant and the site overgrown. The site is bounded to the south east by a cycle way and to the north east by a Byway Open to All Traffic (BOAT) known as Green Lane which runs from West Street northwards towards Sewell. To the north west of the site, beyond a small housing development lies a County Wildlife Site.

**The Application:**

The application seeks consent for the demolition of the existing care facility and the construction of a new building with associated works. The new building would contain 8 ensuite studio flats at ground floor level with associated communal and staff facilities. At first floor level it is proposed that there are 4 x two bed flats and 2 x one bed flats which would form assisted living accommodation.

The application plans also show the provision of 14 car parking spaces, 2 disabled parking spaces and a minibus parking space. There would also be two communal gardens and landscaping within the site.

The accommodation would be for adults with mental disorders who require varying

levels of care. The residents of the ground floor flats would require a high level of care and would share communal facilities. The residents of the first floor flats would be more independent but would live with some assistance from staff. The existing dwelling on the site would be used by residents who are living fairly independently preparing to move into the community to live with limited support. The dwelling is not included in this application as neither its use or appearance would change.

## **RELEVANT POLICIES:**

### **National Policies**

National Planning Policy Framework

Section 6 - Delivering a wide choice of high quality homes

Section 7 - Requiring Good Design

Section 8 - Promoting Healthy Communities

Section 11 - Conserving and Enhancing the Natural Environment

### **South Bedfordshire Local Plan Review Policies**

SD1 - Development Strategy

BE8 - Design Considerations

T10 - Controlling Parking in New Developments

*The NPPF advises of the weight to be attached to existing local plans for plans adopted prior to the 2004 Planning and Compulsory Purchase Act, as in the case of the South Bedfordshire Local Plan Review. Due weight can be given to relevant policies in existing plans according to their degree of consistency with the framework. It is considered that policy BE8 is broadly consistent with the Framework but less weight should be attached to policy T10.*

### **Development Strategy for Central Bedfordshire Pre-Submission January 2013**

27 - Car Parking

43 - High Quality Development

44 - Protection from Environmental Pollution

*Having regard to the National Planning Policy Framework, significant weight is given to the policies contained within the emerging Development Strategy for Central Bedfordshire, which is consistent with the NPPF. The draft Development Strategy is due to be submitted to the Secretary of State in May 2013.*

### **Supplementary Planning Guidance**

Design in Central Bedfordshire: A Guide for Development

Central Bedfordshire Local Transport Plan: Appendix F - Parking Strategy  
Planning Obligations (south) Supplementary Planning Document

### **Planning History**

SB/75/0559                      Permission granted for hostel for mentally ill adults.

**Representations:  
(Parish & Neighbours)**

Dunstable Town Council Neighbours No objection  
One letter of objection has been received. The reasons for the objection are:

- on-street parking in front of the application site on both sides of the road and on the verges in connection with the school
- the road is not adopted and therefore parking restrictions are unenforceable
- the proposal would make the parking situation worse during and after construction

The writer states that they would be happy to support the proposal if:

- the road was adopted by CBC and a no parking zone enforced
- wooden bollards were installed in the verge on both sides of Lancot Drive around Steppingstones to prevent parking around the school entrance

### Consultations/Publicity responses

#### Ecology

I have read through the Phase 1 habitat survey and associated bat and reptile surveys for Lancot Drive. The bat survey identified a small Pipistrelle roost in building 1 and as such it will be necessary to obtain a European Protected Species licence from Natural England prior to undertaking any demolition works. The report states that mitigation measures will be required as part of this process but does not indicate what these would be. The obtaining of such a licence and informing the ecologist at CBC of the mitigation measures proposed should be a condition of any planning permission granted.

A green lane runs along the north east boundary of the site, this will be a useful wildlife corridor allowing passage out from Dunstable into the wider / open countryside. As part of the proposals some of the existing vegetation / shrubs will be lost along this corridor. The bat survey identified a number of bats commuting through this area and I am concerned that lighting of the new building could impact on this route at night. I would seek to ensure that any lighting used on the building should not intrude into this corridor which could otherwise have an impact on bats in the area.

No reptiles were found to be using the site at the time of survey but recommendations R1, R2 and R3 in 5.2 of the report should be conditioned.

#### Tree and Landscape Officer

It was observed that the trees within the site interior are of low quality, and it would be preferable to remove specimens indicated for retention, where



clearly they would be vulnerable to damage during both the construction operations and proximity to areas providing new parking spaces. This would allow an opportunity to plant new trees of superior form, more suited to the constraints of the site.

However, I am concerned that the north eastern block of this building will be too close to the boundary with Green Lane, with no landscape buffer being accommodated along this boundary. The existing hedging on the Green Lane side is poor with much of the hedgerow plants heavily encroached in Ivy growth, and in poor vigour.

I therefore recommend that the layout design is considered for reconfiguring to allow for supplementary buffer planting to be provided along the northwestern boundary, which will retain the visual integrity of the Green Lane and its amenity value.

In light of these comments the building has been moved further forward on the site. The officer made further comments on the revised plans as follows. The officer remains concerned that the north eastern block is too close to the boundary with Green Lane, especially when the applicant intends to remove a section of hedgerow and to replant. It is my view that the existing hedgerow should be left intact and any encroachment avoided.

Public Protection

No response received

Waste Services

No response received

Highways Development  
Control

The site is accessed from unadopted highway which is not controlled by the Council as the Highway Authority. Detailed comments on the proposal will be provided on the late sheet.

## Determining Issues

The main considerations of the application are;

1. Principle of Development
2. Impact on Character and Appearance of the Area
3. Impact on Amenities of Residents
4. Ecology and Landscape
5. Highways and Other Issues

## Considerations

### 1. Principle of Development

The application site is within the built up area of Dunstable where residential development is acceptable in principle. In addition the building currently on the site is vacant but unsuitable for re-use as it stands. The demolition of the existing building and construction of an appropriate purpose-built structure

would re-use a brownfield rather than a greenfield site.

South Bedfordshire Local Plan Review policy SD1 sets out the development strategy for the area. The order of preference for sites starts with previously developed sites and vacant land within urban areas. The application site is a previously developed site and therefore accords with policy SD1.

Some concern has been raised by the school regarding the appropriateness of the proposal opposite a lower school setting. A meeting has been held with the school and MacIntyre Housing Association during which the needs of the proposed residents were discussed. The adults who would be living in the proposed care facility would be those moving through preparations to live independently and should not be a cause for concern of the school. Following the meeting the school were satisfied with the proposal and have not objected to the application.

## **2. Impact on Character and Appearance of the Area**

South Bedfordshire Local Plan Review policy BE8 requires that the size, scale, density, massing, orientation, materials and overall appearance of the development should complement and harmonise with the local surroundings.

The existing building is a mix of single and two storey sections which occupies the majority of the application site. The current site layout accommodates limited car parking provision with some landscaping to the front and rear of the buildings.

The proposed building would be "L-shaped" and would be located in line with the building line of 1 Lancot Place. The building would be barn-like in appearance with pitched roofs. The building would have a gable-end facing the street with the main entrance set within a gable-end at the corner of the building visible along Lancot Drive.

The building then extends away from the road back into the site. The building forms two sides of the enclosure of the rear communal garden with a further garden and bin store located to the south east of the building.

To the front of the building would be a landscaped parking area.

The ridgeline of the building has been lowered to be similar to those of the neighbouring dwellings. The building would be finished in brick and dark stained timber cladding. The neighbouring dwellings are brick with pitched tiled roofs. Whilst the appearance of the proposed building does not match that of the neighbouring dwellings it is considered to complement them and is judged to be appropriate.

The size of the building is larger than those dwellings surrounding the application site however the gaps between the building and neighbouring dwellings are similar to the those between other dwellings. It is considered that the rhythm of development in the area would be maintained even if the footprint of the building would be larger.

Overall it is considered that the character and appearance of the area would not be adversely affected by the application proposal and therefore accords with the relevant parts of SBLPR policy BE8.

### **3. Impact on Amenities of Residents**

South Bedfordshire Local Plan Review policy BE8 requires that the proposed development has no unacceptable adverse impact on general or residential amenity and privacy.

The closest dwelling to the proposed building would be 6 metres away to the north west. There would be a similar distance between the new building and the dwelling as there is at present. There would not be any views between the dwelling and the proposed flats at ground floor level due to boundary treatment. At first floor level windows serving two kitchens and a bedroom would face the neighbouring dwelling. These windows would look towards the side elevation of the dwelling which does not appear to have any windows at first floor level. There would be some windows in the rear elevations of the proposed building however the orientation of the building would either mean that no clear views into the rear garden of the neighbouring property would be possible or would be long distance views over 20m. The location of the building and windows would not cause any loss of light to the neighbouring dwelling.

The closest dwelling to the proposed building to the south east would be over 30m away and it is not considered that there would be any adverse impact on the amenities of residents as a result.

Overall it is not considered that the proposal would have an adverse impact on the amenities of neighbours by reason of overlooking, loss of privacy, loss of light or loss of general amenity and therefore accords with the relevant parts of policy BE8 of the SBLPR.

### **4. Ecology and Landscape**

The Ecologist notes that the bat survey identified a small Pipistrelle roost in building 1 and as such it will be necessary to obtain a European Protected Species licence from Natural England prior to undertaking any demolition works. The report states that mitigation measures will be required as part of this process but does not indicate what these would be. The submission of details of the mitigation measures proposed can be secured by condition. It is not necessary to condition the licence as this is controlled by separate legislation, however an informative will be added to any planning permission granted to highlight this issue to the applicant.

A green lane runs along the north east boundary of the site, this will be a useful wildlife corridor allowing passage out from Dunstable into the wider / open countryside. The Ecologist wishes to ensure that any lighting does not impact on this wildlife corridor which is used by bats. A condition can be added to any planning permission granted requiring the submission of lighting details prior to installation.

No reptiles were found to be using the site at the time of survey but recommendations R1, R2 and R3 in 5.2 of the report should be conditioned. These recommendations are that if any reptiles are discovered during works that all works cease and an ecologist or Natural England are contacted to determine a way forward; that rough grassland is strimmed back short before works commence and that if works do not commence by April 2014 the reptile survey be updated as colonisation may have occurred.

The Tree and Landscape Officer commented that the trees within the site interior are of low quality, and it would be preferable to remove specimens indicated for retention, where clearly they would be vulnerable to damage during both the construction operations and proximity to areas providing new parking spaces. This would allow an opportunity to plant new trees of superior form, more suited to the constraints of the site.

The officer also raised concern that the north eastern block of this building would be too close to the boundary with Green Lane, with no landscape buffer being accommodated along this boundary. The existing hedging on the Green Lane side is poor with much of the hedgerow plants heavily encroached in Ivy growth, and in poor vigour. In response to these comments the building was moved forward on the site to allow more planting along the boundary with Green Lane. The officer remained concerned about the removal of part of the hedgerow due to the conflict with the building and its replanting. A further amended plan has been submitted as discussions with the applicant's agent resulting in the agreement that the boundary hedgerow can and should be retained. It is considered that this concern is now overcome as the whole of the boundary hedgerow can be retained.

The boundary between the application site and Green Lane appears to run within the hedgerow. The original planning application drawings showed a new fence along the boundary line however it would not be possible to erect this fence without removing the hedgerow. The plans have therefore been amended to remove the fence and show railings erected along the pathways within the site. The hedgerow planting would therefore be unaffected.

## **5. Highways and Other Issues**

The part of Lancot Drive on which the application site is located is unadopted and therefore is not the responsibility of the Council as Highway Authority. The Local Authority is therefore unable to require works to the road or to implement or enforce parking restrictions. One objector comments that they would be happy to support the application if the road were adopted and parking restrictions enforced. It is not possible to require the adoption of the road as part of the planning permission or to require the owner of the road to implement parking restrictions. The situation with the highway will remain the same whether or not planning permission is granted.

There are zig zag road markings outside of the school to discourage parking and a sign which reads "No unauthorised parking. Emergency Vehicle Access Route" located between 1 Lancot Avenue and Steppingstones. Investigations into the ownership situation with the road are ongoing and an update will be provided on the late sheet.

The Parking Strategy, Appendix F of the Central Bedfordshire Local Transport Plan sets out the required parking provision for developments. The closest development type in the Strategy to the proposed use of the site would be a nursing home which would require 1 parking space per 4 beds plus 1 space per 2 members of staff. The proposed building would accommodate 18 bed spaces requiring 5 parking spaces. This would leave 9 car parking spaces for staff equating to 18 staff. There are no details within the application regarding the number of staff who would be employed but it is considered that 18 would be a reasonable assumption particularly as the aim of the facility is to help people to live more independently and this level of staffing would equate to one-to-one

care. The building would be staffed 24 hours a day however there would be less staff during the night-time hours.

Overall it is considered that the proposal provides sufficient parking and would not cause any highway safety issues.

The proposal is for residential development however it would be for a very limited sector of the population who require at least some assistance with day to day living. The proposal has therefore been considered as a nursing home for the purposes of the Planning Obligations Supplementary Planning Document and therefore no financial contributions are required.

## **Recommendation**

That Planning Permission be approved 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 **No development shall commence unless and until a scheme setting out the details of the materials to be used for the external walls and roof has been submitted to and approved in writing by the Local Planning Authority. 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. (SBLPR BE8 & DSCB 43)

- 3 **Before development begins, a landscaping scheme to include any hard surfaces and earth mounding shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented by the end of the full planting season immediately following the completion and/or first use of any separate part of the development (a full planting season means the period from October to March). The trees, shrubs and grass shall subsequently be maintained for a period of five years from the date of planting and any which die or are destroyed during this period shall be replaced during the next planting season and maintained until satisfactorily established.**

Reason: To ensure a satisfactory standard of landscaping. (Policy BE8, S.B.L.P.R & DSCB 43).

- 4 **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.

- 5 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 cleaners 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.

- 6 No development shall commence unless and until a temporary turning space for construction vehicles has been provided and maintained throughout the construction period in a position to be approved in writing by the Local Planning Authority.

Reason: To avoid the need for vehicles to reverse into or from the highway in the interest of road safety.

- 7 No development shall commence unless and until a scheme for the parking of cycles on the site has been 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.

- 8 No development shall commence, including any ground clearance or excavation, unless substantial protective fencing, the details of which shall first be approved in writing by the Local Planning Authority, has been erected in such a manner as to protect all trees and hedgerows to be retained as shown on plan 09023 wd2.01 rev B and the fencing shall be retained at full height and extent until the development is substantially completed. No materials shall be stored or deposited and no mixing of materials shall take place within the area so protected.

Reason: To protect the trees so enclosed in accordance with Section 8 of BS 5837 of 2005 or as may be subsequently amended.  
(Policy BE8 S.B.L.P.R & DSCB 43)

- 9 No development shall commence until details of mitigation measures to be undertaken to safeguard protected species and protection of the habitats during the proposed works have been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented to the satisfaction of the Local Planning Authority and in accordance with a timetable agreed in writing by the Local Planning Authority.

**Reason: To enable proper consideration of the impact of the development on the contribution of nature conservation interests to the amenity of the area.**

- 10 In the event that works do not commence prior to April 2014 the development hereby permitted shall not commence until the reptile survey has been updated and submitted to and approved in writing by the Local Planning Authority as colonisation may have occurred during this time.

Reason: In order to ensure that there are no reptiles on site which would be affected by the development.

- 11 Demolition or construction works shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0800 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the amenities of nearby residents.

- 12 No part of the hedgerow demarcating the north eastern boundary of the site is permitted to be removed, trimmed or lowered without the prior written agreement of the Local Planning Authority.

Reason: In order to retain the hedgerow for its screening and ecological benefits.

- 13 No external lighting shall be installed unless and until a scheme of lighting including details of the location, design, lux level and light spill of all lights has been submitted to and approved in writing by the Local Planning Authority. The scheme shall then be implemented solely in accordance with the scheme.

Reason: To protect the amenity of neighbouring properties and/or highway safety.  
(Policy BE8, S.B.L.P.R & DSCB 43).

- 14 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers 09023 lp.01, 09023 wd2.01 rev C, 09023 wd2.02, 09023 wd2.03, 09023 wd2.04, 09023 wd2.05 rev A, 09023 wd2.06 rev A, 09023 wd2.07A & 09023 wd2.08

Reason: For the avoidance of doubt.

**Statement required by the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 - Article 31**

Planning permission has been granted for this proposal. The Council acted pro-actively through positive engagement with the applicant during the determination process which led to improvements to the scheme. The Council has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012.



**Reasons for Granting**

The proposed development would not detrimentally impact upon the character and appearance of the area nor would there be any adverse impact on the amenities of neighbouring residents. The proposal would not result in any highway, parking or other issues. The scheme by reason of its siting and design is in conformity with the National Planning Policy Framework, South Bedfordshire Local Plan First Review policy BE8 and policies 43 & 44 of the emerging Development Strategy for Central Bedfordshire. It is further in conformity with the Central Bedfordshire Supplementary Technical Guidance "Design in Central Bedfordshire, A Guide for Development" and the Parking Strategy, Appendix F of the Central Bedfordshire Local Transport Plan.

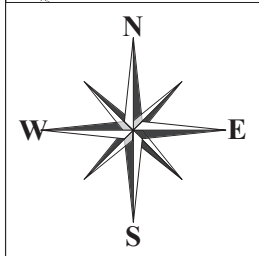
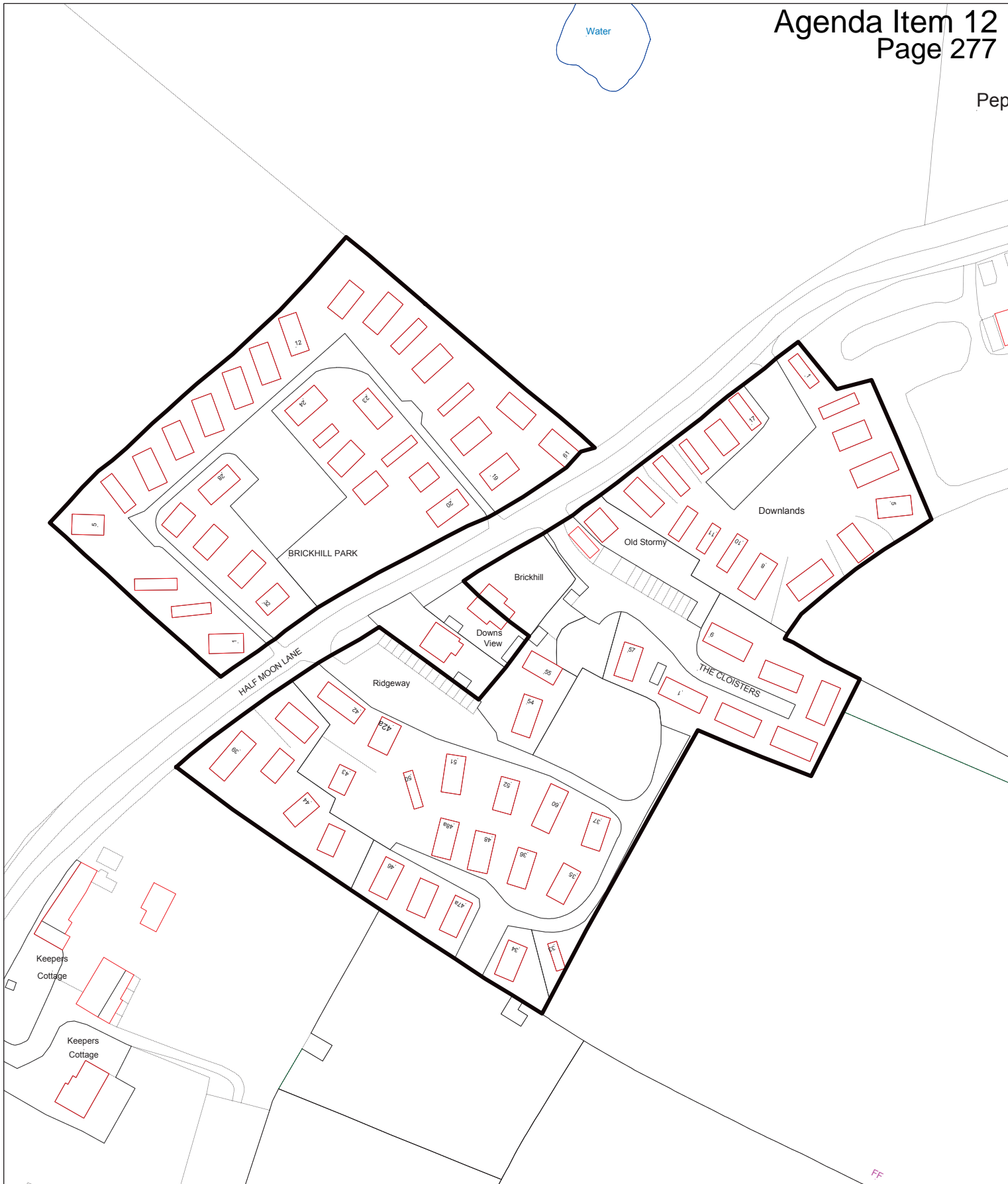
**Notes to Applicant**

1. In accordance with Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, the reason for any condition above relates to the Policies as referred to in the National Planning Policy Framework, the South Bedfordshire Local Plan Review (SBLPR) and the emerging Development Strategy for Central Bedfordshire (DSCB).
2. This permission relates only to that required under the Town & Country Planning Acts and does not include any consent or approval under any other enactment or under the Building Regulations. Any other consent or approval which is necessary must be obtained from the appropriate authority.
3. The Council's ecologist supports the recommendations set out in the Reptile Survey and advises that any areas of rough grassland must be strimmed back short prior to the commencement of development and that this should be done in one direction away from the buildings on site in order to allow animals to escape. In addition if prior to or during demolition or construction works on the site any reptiles are discovered, all works must cease until the Council's ecologist or Natural England has been contacted and a way forward has been agreed.

**DECISION**

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Licence No. 100049029 (2009)

Date: 28:January:2013

Grid Reference: 508237; 217892

Application No.  
CB/12/04310/FULL

Scale: 1:1750

Brickhill Farm Park Homes, Halfmoon Lane, Pepperstock, Luton, LU1 4LW

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**Item No. 12**

<b>APPLICATION NUMBER</b>	<b>CB/12/04310/FULL</b>
<b>LOCATION</b>	<b>Brickhill Farm Park Homes, Halfmoon Lane, Pepperstock, Luton, LU1 4LW</b>
<b>PROPOSAL</b>	<b>Continued use of site as mobile home park for a total of 105 mobile home plots</b>
<b>PARISH</b>	<b>Slip End</b>
<b>WARD</b>	<b>Caddington</b>
<b>WARD COUNCILLORS</b>	<b>Cllrs Mrs Gammons &amp; Stay</b>
<b>CASE OFFICER</b>	<b>Adam Davies</b>
<b>DATE REGISTERED</b>	<b>03 December 2012</b>
<b>EXPIRY DATE</b>	<b>04 March 2013</b>
<b>APPLICANT</b>	<b>Miss G Mc Farland</b>
<b>AGENT</b>	
<b>REASON FOR COMMITTEE TO DETERMINE</b>	<b>Parish Council objection to major application</b>
<b>RECOMMENDED DECISION</b>	<b>Full Application - Granted</b>

**Site Location:**

The application site comprises a 3.2 hectare mobile home park. The site is split into two parcels of land on either side of Halfmoon Lane at the south western edge of Pepperstock, which lies south west of Luton. There are currently a total of 89 mobile home plots laid out on site, some of which are presently empty.

The site originally benefited from a 1975 planning permission for 62 mobile home plots. Subsequently, several 'piecemeal' planning permissions have been granted for various additions and enlargements to the site, increasing the number of mobile homes permitted for the site to a total of 74. However the total number of mobile homes on site has historically been in excess of the total number permitted under the various planning permissions.

The site is also subject to separate control under two site licenses under the Caravan Sites and Control of Development Act 1960. The two licenses deal with two distinct parts of the site; the larger area known as Brickhill Park and the smaller Downlands area which is located at the north eastern end of the site.

The site falls within the South Bedfordshire Green Belt as defined on the proposals map of the South Bedfordshire Local Plan Review 2004.

**The Application:**

Planning permission is sought for the continued use of the site as a mobile home park for a total of 105 mobile home plots.

The applicant seeks to rationalise and improve the layout of the site to meet site licensing requirements and improve the general appearance of the site through the removal of disused buildings, including two substantial garage blocks. In order to

secure updated site licenses the Council's Private Sector Housing Section have advised the applicant that a prior planning permission is required, as the total number of homes for the site would exceed the total number permitted under the various planning permissions.

A proposed site layout plan has been submitted in support of the application to show how the existing, replacement and new mobile homes could be arranged within the site. The detailed layout of the site is separately controlled by site licenses. For the purposes of this planning application, the layout plan should be treated as indicative and any planning permission would solely relate to the continued use of the site as a mobile home park for a total of 105 mobile homes, rather than a specific site specific layout which can evolve as individual units are replaced and licensing requirements change overtime.

### **RELEVANT POLICIES:**

#### **National Planning Policy Framework (March 2012)**

##### **South Bedfordshire Local Plan Review Policies**

BE8: Design Considerations,

T10: Controlling Parking in New Developments

H15: Mobile Homes and Residential Caravans in the Green Belt

R12: Protection of Recreational Open Space

*The NPPF advises of the weight to be attached to existing local plans for plans adopted prior to the 2004 Planning and Compulsory Purchase Act, as in the case of the South Bedfordshire Local Plan Review. Due weight can be given to relevant policies in existing plans according to their degree of consistency with the framework. It is considered that Policies BE8, H15 and R12 are broadly consistent with the Framework and carry significant weight. Policy T10 carries less weight is are considered relevant to this application.*

##### **Development Strategy for Central Bedfordshire**

Policy 1: Presumption in Favour of Sustainable Development

Policy 3: Green Belt

Policy 24: Accessibility and Connectivity

Policy 25: Capacity of the Network

Policy 27: Car Parking

Policy 36: Development in the Green Belt

Policy 43: High Quality Development

*Having regard to the National Planning Policy Framework, significant weight is given to the policies contained within the emerging Development Strategy for Central Bedfordshire, which is consistent with the NPPF. The draft Development Strategy is due to be submitted to the Secretary of State in May 2013.*

##### **Supplementary Planning Guidance**

Design in Central Bedfordshire - A Guide for Development - adopted by the Luton & South Bedfordshire Joint Committee on 23 July 2010

Luton and Central Bedfordshire Core Strategy - adopted for Development Management purposes by the CBC Executive on 23 August 2011

CBC Emerging Parking Strategy, Appendix F, Central Bedfordshire Local Transport

Plan, endorsed for Development Management purposes by Executive October 2012

### Planning History

SB/75/00558 Mobile home park and alterations. Permission. Condition 5 of this permission states:

*Not more than 62 caravans shall be stationed on the land the subject of this permission.*

*REASON: To enable the District Planning Authority to exercise control over the future use of the site*

SB/76/01039 Demolition of existing garages and erection of a block of 15 garages. Permission.

SB/79/01141 Ten additional mobile home pitches. Refused.

SB/81/00750 Siting of mobile home. Refused.

SB/84/00741 Erection of brick office. Permission.

SB/88/00496 Siting of mobile home. Refused.

SB/88/00497 Siting of two mobile homes. Permission.

SB/90/01052 Erection of mobile home. Withdrawn.

SB/91/00566 Siting of six mobile homes. Permission.

SB/96/00591 Renewal of permission SB/91/00566 for the siting of six mobile homes. Permission.

SB/98/00087 Use of land for the siting of six mobile homes and ancillary garages. Permission.

CB/12/02026 Variation of Condition 5 of planning permission SB/75/00558 so as to allow the stationing of up to 85 mobile homes on the site. Withdrawn.

### Representations: (Parish & Neighbours)

Parish Council

Objection. Proposed layout would take important green space and parking areas away from residents and over fill the site with housing units. It is suggested the owners consult the residents before resubmitting revised plans.

Neighbours

Ten objections have been received which raise concerns regarding the following:

- The loss of the grassed area within the Downlands area of the site and the impact of this on the quality of the environment.
- The impact on infrastructure and services.
- Potential fire hazards.
- The level of parking provision for the site.



- The ongoing maintenance of the access roads within the site.
- The suitability of the proposed access arrangements.
- The current maintenance arrangements for the site and the lack of emergency maintenance workers on site.
- The visual impact of the additional mobile homes.
- The loss of maintenance access to the existing garage at Ridgeway, Halfmoon Lane.
- Distress caused to elderly residents due to various concerns as summarised above.

A petition with 18 signatures of those wishing to object to the proposal has been received.

Brickhill and Downlands  
Residents Association

The committee is aware of concerns caused by previous licensing arrangements and that the proposal represents an attempt to regularise the present situation for the future. The proposal has the potential to adversely impact on the overall environment of the site. It is suggested that better communication between the applicant and residents would have made the applicant's intentions clearer. Specific concerns are raised regarding the loss of the grassed area within the Downlands area of the site and the impact of this on the quality of the environment. The proposal would result in the loss of car parking for residents with no indication of reimbursement. Existing garages are in poor condition and their removal would be beneficial. Concerns are raised that the proposed layout would create substandard vehicle manoeuvring areas. The proposal would negatively impact on existing services. Existing access roads require maintenance prior to and planning application.

### **Consultations/Publicity responses**

Environment Agency

It is noted foul drainage is to mains. Therefore, EA have no comment to make.

Health and Safety  
Executive

Awaiting comment.

Highways

The proposed layout would result in the loss of communal parking areas. Parking provision is shown for new plots but is not shown for all existing units. The number of bedrooms per unit has not been specified and a comprehensive parking schedule has not been provided. The application fails to demonstrate the development would be in accordance with the Council's parking standards. The application represents an intensification of use of existing substandard accesses onto Halfmoon Lane. The proposed layout includes access roads which are substandard in terms of their width. This would make it difficult to access individual parking spaces as shown

and make it difficult for some vehicles to access parts of the site. The existing footway along one side of Halfmoon Lane is of a substandard width. Recommend refusal.

Housing Development	I have no comment regarding the site regarding affordable housing as the proposal does not generate a requirement for affordable housing.
Public Protection	No objection.
Private Sector Housing	The Private Sector Housing Team has no objections to the proposed development of the land to a caravan site. The site must be licensed under the Caravan Sites and Control of Development Act 1960 and comply with the current licensing conditions for a residential mobile home as set out in the license issued by this Service.

### **Determining Issues**

The main considerations of the application are;

1. Principle of development and impact upon Green Belt
2. Parking and highways considerations
3. Other matters

### **Considerations**

#### **1. Principle of development and impact upon Green Belt**

Within the Green Belt most development, including new mobile home plots, is considered inappropriate. Therefore, under the terms of the NPPF and Policy H15 of the South Bedfordshire Local Plan Review 2004, there is a presumption against the application.

Since the original 1975 planning permission for the site, there have been several subsequent planning approvals for 'piecemeal' enlargements to the park, which have resulted in additional mobile homes towards the outer edges of the site, where the visual impact upon the Green Belt is potentially greater. Having regard to the need to protect the openness and visual amenities of the Green Belt, the additional mobile home plots would be created within the context of the surrounding development and would not be intrusive within the landscape. In this case, the creation of additional mobile home plots would involve the removal of two substantial disused garage blocks within the site, thereby improving the general appearance of the site. Additionally the proposal seeks to regularise the existing unauthorised development and rationalise and improve the layout of the site to meet site licensing requirements. Given the licensing requirements and planning history of the site and that the total number of homes on site has long been in excess of the total number of plots permitted by the various planning permissions it is not considered a Green Belt objection could be sustained in this case.

#### **2. Parking and highways considerations**

Highways have raised a number of detailed concerns in relation to the access, manoeuvring and parking arrangements as shown on the submitted layout plan and recommend refusal on this basis. As noted, the detailed layout of the site is

separately controlled by the site licenses. For the purposes of this planning application, the submitted layout plan should only be regarded as indicative. However it is necessary to consider whether a satisfactory layout could be achieved, taking account of the concerns of Highways Officers and site licensing requirements.

In relation to parking provision and the potential loss of communal parking areas, Private Sector Housing have advised that licensing requirements dictate that one public parking space would be required for every for mobile homes. Therefore a minimum of 27 public parking spaces would be required on the site. Private Sector Housing has confirmed that sufficient off-street parking could be provided for the number mobile home plots now sought.

Notwithstanding this, there will be a need for the site layout to be revised in light of Highways comments. The applicant has confirmed their intention to address the specific concerns regarding the access and manoeuvring arrangements, and driver visibility onto Half Moon Lane prior to seeking a revision to the site licenses. In this instance, having regard to the indicative layout plan which shows a replacement vehicular access from Half Moon Lane, it is considered appropriate to attach a condition to any planning permission granted to secure further details of suitable visibility splays to be provided.

### **3. Other matters**

The concerns regarding the potential loss of the grassed area within the Downlands area are noted. However, as the layout of the site can evolve over time as mobile home units are replaced and site licensing requirements change, it is not considered reasonable to raise objection to this, in relation to South Bedfordshire Local Plan Review Policy H12.

Regarding the various concerns raised in relation to site maintenance, infrastructure, services and fire safety, these represent practical considerations for the applicants as site owners, and are subject to controls under separate legislation.

It is noted that the application site is located within approximately 150 metres of the Fantastic Fireworks site at the south western end of Halfmoon Lane. Having regard to the Town and Country Planning (General Development Procedure) Order 1995 (as amended), Officers have requested the comments of the Health and Safety Executive regarding the proposed development. Any additional comments received in relation to this will be presented as part of the Committee Late Sheet.

The Council's Planning Obligations SPD for the north area states that charges will not be applied to mobile homes. As the Council's south area SPD is silent on this matter, it is considered appropriate to apply a consistent approach throughout the Council's area in relation to planning obligations and mobile homes. As such the proposal does not generate a requirement for planning obligations.

### **Recommendation**

That Planning Permission be GRANTED subject to the following:

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

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 **Before development begins, details of visibility splays to be provided at the junction between the new estate road(s) and the existing highway shall be submitted and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details and the approved vision splay(s) shall, on land in the applicant's control, be kept free of any obstruction.**

**Reason: To provide adequate visibility within the site to make the new road(s) and access(es) safe and convenient for the traffic which is likely to use them.**

- 3 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted location plan received by the Local Planning Authority on 3 December 2012.

Reason: For the avoidance of doubt.

#### **Statement required by the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 - Article 31**

Planning permission has been granted for this proposal. The Council acted pro-actively through positive engagement with the applicant at the pre-application stage and during the determination process. The Council has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012.

#### **Reasons for Granting**

The continued use of the site as a mobile home park for a total of 105 mobile home plots is acceptable in terms of the impact upon the Green Belt and, subject to separate controls over the specific site layout under the Caravan Sites and Control of Development Act 1960, is not considered to be in conflict with the development plan policies comprising the South Bedfordshire Local Plan Review, the emerging Development Strategy for Central Bedfordshire and national guidance contained in the National Planning Policy Framework.

#### **Notes to Applicant**

1. In accordance with Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, the reason for any condition above relates to the Policies as referred to in the South

Bedfordshire Local Plan Review (SBLPR) and the emerging Development Strategy for Central Bedfordshire (DSCB).

2. This permission relates only to that required under the Town & Country Planning Acts and does not include any consent or approval under any other enactment or under the Building Regulations. Any other consent or approval which is necessary must be obtained from the appropriate authority.

**DECISION**

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**Item No. 13**

**APPLICATION NUMBER** CB/13/00101/FULL  
**LOCATION** 113 Camberton Road, Linslade, Leighton Buzzard, LU7 2UW  
**PROPOSAL** Single storey front extension and demolition of existing side brick boundary wall. Erection of 1.8m fence to extend rear and side garden to enclose grassed amenity land. (Re-Sub 12/3791).  
**PARISH** Leighton-Linslade  
**WARD** Linslade  
**WARD COUNCILLORS**  
**CASE OFFICER** Heidi Antrobus  
**DATE REGISTERED** 16 January 2013  
**EXPIRY DATE** 13 March 2013  
**APPLICANT** Mr & Mrs L Silva  
**AGENT** Mr Ian Johnson  
**REASON FOR COMMITTEE TO DETERMINE** The Agent is an employee of CBC  
**RECOMMENDED DECISION** Full Application - Refused

**Site Location**

The property is a modern two storey detached 3 bedroom dwelling that is located on a set back open corner plot that is adjacent to a pedestrian footpath. The property has a frontage of between 3 and 1.7 metres and a 12.4 metre long rear garden. The rear of the garden is enclosed by a brick boundary wall which is set back by between 4 to 6.5 metres from the pedestrian footpath and the rear corner of the wall is set at a 45 degree angle to the neighbouring property of No. 83.

In front of the rear boundary wall of the corner plot is an open grassed frontage of amenity space which has a width of between 4 to 6.5 metres. The property has a single garage and 3 off street car parking spaces. The property is located within an established residential area within the Linslade settlement envelope.

**Planning Proposal**

Single storey front extension and demolition of existing side brick boundary wall. Erection of 1.8m fence to extend rear and side garden to enclose grassed amenity land. (Re-Sub 12/3791).

**RELEVANT POLICIES:**

**National Policies**

National Planning Policy Framework (2012)

- 6 Delivering a wide choice of high quality homes
- 7 Requiring good design

**South Bedfordshire Local Plan Review Policies (2004)**

- BE8 Design Considerations
- H8 Extensions to Dwellings
- R12 Protecting Recreational Open Space

*The NPPF advises of the weight to be attached to existing local plans adopted prior to the 2004 Planning and Compulsory Purchase Act as in the case of the South Bedfordshire Local Plan Review. Due weight can be given to relevant policies in existing plans according to their degree of consistency with the framework. It is considered that the above policies are consistent with the Framework and carry significant weight.*

**Development Strategy for Central Bedfordshire (2013)**

- Policy 40 Other Areas of Open Space within Settlements
- Policy 43 High Quality Development

*(Having regard to the National Planning Policy Framework, significant weight is given to the policies contained within the emerging Development Strategy for Central Bedfordshire, which is consistent with the NPPF. The draft Development Strategy is due to be submitted to the Secretary of State in May 2013. )*

**Supplementary Planning Guidance**

Design in Central Bedfordshire. A Guide for Development (2010)

- D.S.4 Residential Alterations and Extensions
- D.S.7 Movement, Streets and Places

Central Bedfordshire Local Transport Plan : Appendix F – Approach to Car Parking 2012.

**Planning History**

CB/12/ 03791 Full Withdrawn - Erection of a single storey front extension and two storey side extension.

**Representations:  
(Parish & Neighbours)**

Leighton–Linslade Town Council	None received at present
Adjacent Occupiers	None

**Consultations/Publicity responses**

Highways	Will update at Development Management Committee Meeting
Rights of Way	No Comment. The application site does not effect any recorded Public Right of Way. There is however an alleyway that runs adjacent to the property that is understood is maintained by Highways.
Environment Agency	No Objection
Bedfordshire and Ivel Internal Drainage Board	No Comment

## Determining Issues

1. Pre Application Discussions
2. Formal Application Discussions during Submission
3. Principle of Development
4. Impact on the Character and Appearance of the Area
5. Design
6. Impact on neighbouring residential amenity
7. Highways

## Considerations

### 1. *Pre Application Discussions*

The applicant previously submitted a planning application for a front extension and a two storey side extension which did not meet the planning policy and residential design requirements so the planning application was withdrawn (Ref CB/12/03791).

The applicant subsequently undertook pre application discussions which confirmed that the proposed rear extension would be classed as Permitted Development and the proposed single storey front extension and proposed demolition of the rear / side boundary wall, enclosure of the side and part open frontage and construction of a 1.8 boundary fence would require planning permission and be subject to the relevant consultations.

### 2. *Formal Application Discussions during Submission*

The agent is an employee of the Council so the planning application is be required to be determined at the Development Management Committee. Following the submission the agent / applicant was advised that the demolition of the existing side/ rear brick boundary wall and the enclosure of the corner plot grassed amenity space which fronted the pedestrian footpath would not meet the required policy and design requirements and therefore the proposal would need to be amended to remove this element and the remainder proposal would just include the front extension or the applicant had the choice to withdraw the current planning application. The agent confirmed that the applicant did not wish to amend the proposal and does not wish to withdraw the application and would like the application to be heard at the Development Management Committee.

### 3. *Principle of Development*

The property is an existing residential property which is located within the established residential area of Linslade. The principle of appropriate residential development would be acceptable providing the proposals would meet the requirements of the National Planning Framework (NPPF), Policies 40 and 43 of the emerging Central Bedfordshire Development Strategy (2013), Policies BE8, H8, R12 of the South Bedfordshire Local Plan Review (2004), the requirements of the Central Bedfordshire Council's Supplementary Guidance – A Guide for Development Design Supplement 4: Residential Alterations and Extensions and the Central Bedfordshire Local Transport Plan : Appendix F – Approach to Parking (2012).

### 4. *Character and Appearance of the Area*

The open grassed corner plot currently has an open spacious and verdant character. The rear of the boundary wall is set back at a 45 degree angle so there is a clear view of the frontages and front elevations of the neighbouring properties of No. 83 and 85 of which the occupiers have a view of the open grassed land and can look out along the pedestrian footpath.

The proposed demolition of the existing brick boundary wall, the construction of a 1.8 metre timber fence enclosing the majority of the open grassed amenity space of approximately over 80 sqm would result in a loss of a valuable grassed amenity space.

It is considered that the proposal would change the character of the street scene and result in a loss of openness.

The proposed timber fence would project out 3.4 metres from the existing corner of the side elevation, it would enclose the existing side elevation and would project out 6.5 metres in front of the neighbouring properties of No. 83 and 85 Camberton Road.

Based on the recent planning application (ref -CB/12/03791) that was subsequently withdrawn, it would be reasonable to conclude that this open grassed amenity space is being enclosed with a timber fence in order to accommodate a 2 storey side extension to the property.

Paragraph 64 of the National Planning Framework states that permission should be refused for development which is of a poor design and that fails to take account of the opportunities available for improving the character and quality of an area and the way it functions. It is therefore considered that the proposed demolition of the existing boundary wall and the provision of a 1.8 metre boundary fence enclosing the open grassed amenity land would be harmful to the design and character of the existing street scene and footpath of Camberton Road and this would be contrary to the NPPF, Policies 40 and 43 of the emerging Central Bedfordshire Development Strategy (2013), Policies B.E.8 and R.12 of the South Bedfordshire Local Plan Review (2004) and it would not meet the requirements of the Central Bedfordshire Council's Supplementary Guidance – A Guide for Development Design Supplement 4: Residential Alterations and Extensions (2010).

## **5. Design**

The previous planning application submission CB/12/03791 proposed a two side storey extension and a single storey front extension across the existing frontage and across the proposed frontage of the property. This previous application was withdrawn due to its inappropriate design, impact on the street scene and impact on the neighbouring amenity.

The current planning submission drawings show the provision of the single storey rear extension to the property and the provision of a set of ground floor double doors on the side elevation which has been confirmed by the Council would be classified as Permitted Development.

There is a proposed single storey front extension with a mono pitch roof containing one roof light which would form a ground floor W.C./ Shower room, entrance hall and repositioned front entrance. The single storey extension would measure 0.8 x 1.3 metres. This element of the proposal would be considered as acceptable in design terms.

The other element of the proposal involving the construction of the 1.8 metre timber fence in order to enclose approximately over 80 sqm of the open grassed amenity space on a corner plot would be considered to be out of keeping with the character and appearance of the existing property and the wider street scene. The proposal would result in an unacceptable loss of valuable amenity space to the estate.

The original estate design included this open grassed land as open grassed amenity space and the rear garden of this property was defined as being located within the existing brick boundary wall. Policy R12 of the South Bedfordshire Local Plan Review (2004) aims to protect recreational open space and the policy defines that this policy is intended to include proposals for the incorporation of amenity areas and spaces into private gardens.

Therefore it is considered that the proposals would not meet the requirements of Section 7 of the NPPF and would not meet the requirements of the Policies 40 and 43 of the emerging Central Bedfordshire Development Strategy (2013), Policies BE8 and R12 of the South Bedfordshire Local Plan Review (2004) and the Central Bedfordshire Council's Supplementary Guidance – A Guide for Development – Design Supplement 4: Residential Alterations and Extensions and Design Supplement 7 - Movement, Streets and Places (2010).

## **6. *Impact on neighbouring residential amenity***

It is considered that the construction of the proposed 1.8 metre timber fencing in front of the neighbouring properties of No.83 and 85 would be harmful to their visual amenity. Currently the neighbouring properties have an open view of the grassed frontage all the way along the footpath. This fencing would project by 6.5 metres and would enclose the neighbouring property of No.83 and would be overbearing and reduce light to the ground floor front elevation of No.83 and No.85.

The development would be sited too close to the neighbouring properties of No.83 and No.85 Camberton Road and the proposed timber fencing would be harmful to the residential and visual amenity of the neighbouring occupiers. As such the development is contrary to the requirements of the National Planning Policy Framework (2012) and would not meet the requirements of Policies 40 and 43 of the emerging Central Bedfordshire Development Strategy (2013), Policy BE8 of the South Bedfordshire Local Plan Review (2004) and the Design in Central Bedfordshire. A Guide for Development Design Supplement 4: Residential Alterations and Extensions (2010).

## **7. *Highways***

To be reported at Development Management Committee

### **Recommendation**

That Planning Permission be REFUSED for the following reasons:

- 1 The proposal would result in a substantial loss of amenity space which currently forms an open frontage to the corner plot of No.113 Camberton Road. The proposal would therefore not meet the requirements of the

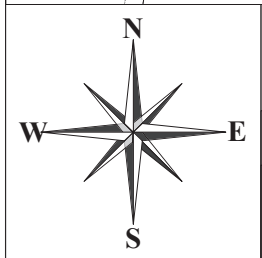
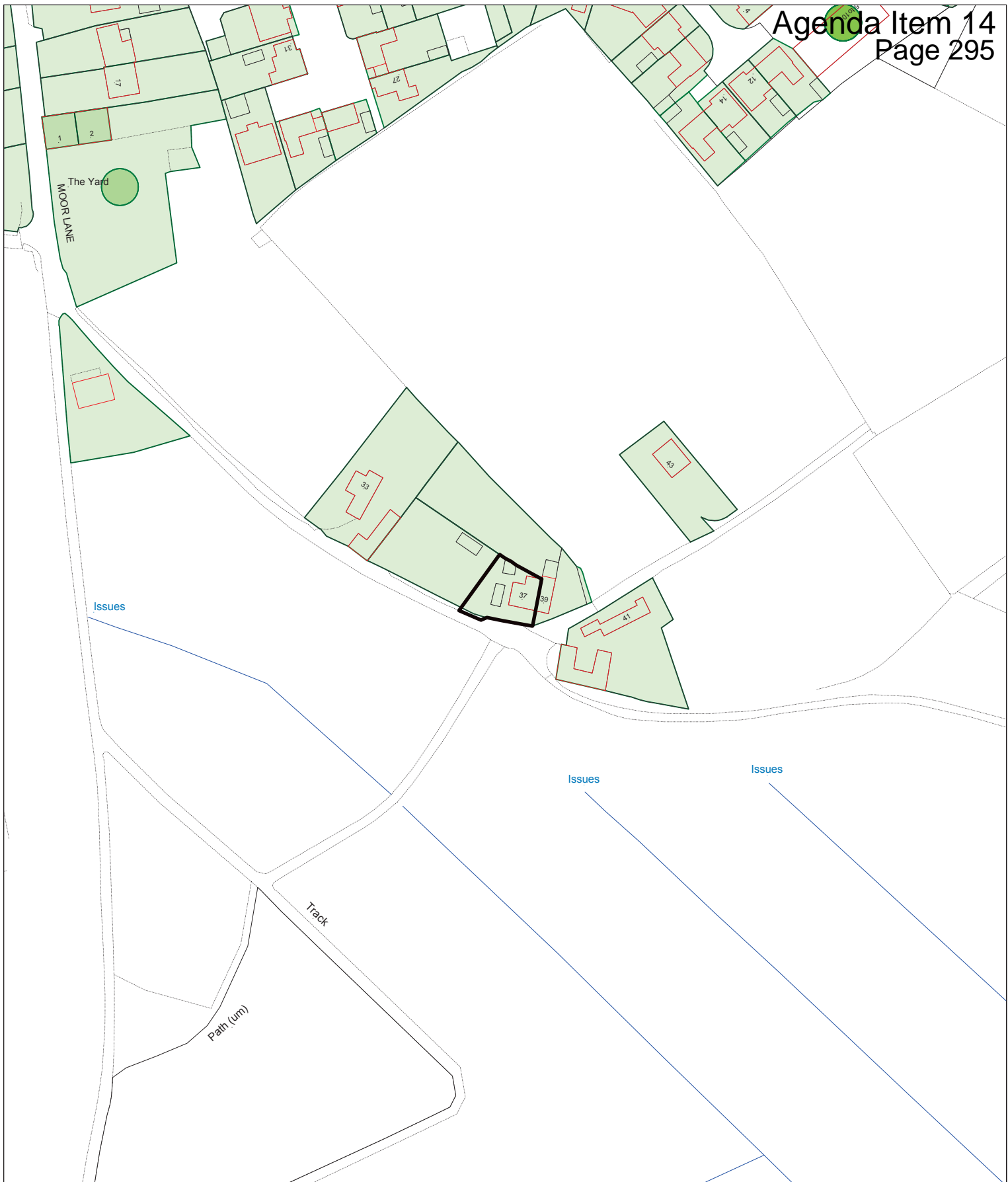
National Planning Policy Framework (2012) and would not meet the requirements of Policies 40 and 43 of the emerging Central Bedfordshire Development Strategy (2013), Policies R12 and BE8 of the South Bedfordshire Local Plan Review (2004) and the Design in Central Bedfordshire. A Guide for Development Design Supplement 4: Residential Alterations and Extensions (2010).

- 2 The proposal is considered to be out of character with the existing property of No.113 Camberton Road and the wider street scene of Camberton Road due to the proposed set forward location of the proposed timber boundary fencing which is highly visible from the street scene of Camberton Road and the adjacent pedestrian footpath that runs along side the side of the property and the rear garden. The proposal would therefore not meet the requirements of the National Planning Policy Framework (2012) and would not meet the requirements of Policy 43 of the emerging Central Bedfordshire Development Strategy (2013), Policy BE8 of the South Bedfordshire Local Plan Review (2004) and the Design in Central Bedfordshire. A Guide for Development Design Supplement 4: Residential Alterations and Extensions (2010).
  
- 3 The development would be sited too close to the neighbouring properties of No.83 and 85 Camberton Road and the proposed timber fencing would be harmful to the residential and visual amenity of the neighbouring occupiers, by reason of overbearing and loss of light. As such the development is contrary to the requirements of the National Planning Policy Framework (2012) and would not meet the requirements of Policy 43 of the emerging Central Bedfordshire Development Strategy (2013), Policy BE8 of the South Bedfordshire Local Plan Review (2004) and the Design in Central Bedfordshire. A Guide for Development Design Supplement 4: Residential Alterations and Extensions (2010).

**Notes to Applicant**

**DECISION**

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Central Bedfordshire Council  
Licence No. 100049029 (2009)  
Date: 28:January:2013  
Grid Ref: 505239, 237727

Application No.  
CB/12/03999/FULL

Scale: 1:1500

37 Moor Lane, Maulden, Bedford



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**Item No. 14**

**APPLICATION NUMBER** CB/12/03999/FULL  
**LOCATION** 37 Moor Lane, Maulden, Bedford, MK45 2DJ  
**PROPOSAL** Retrospective approval for a garage extension to a dwelling.  
**PARISH** Maulden  
**WARD** Ampthill  
**WARD COUNCILLORS** Cllrs Duckett, Blair & Smith  
**CASE OFFICER** Dee Walker  
**DATE REGISTERED** 08 November 2012  
**EXPIRY DATE** 03 January 2013  
**APPLICANT** Mr Swan  
**AGENT** Braund Technical Services  
**REASON FOR COMMITTEE TO DETERMINE** Development partially on highway land under CBC control

**RECOMMENDED DECISION** Full Application - Granted

**Site Location:**

The application site is 37 Moor Lane in Maulden. The site consists of a semi detached residential dwelling with 2 no. garages. The site lies outside the settlement envelope of Maulden and within open countryside.

**The Application:**

This application seeks retrospective permission for one of the garages adjacent the highway.

**RELEVANT POLICIES:**

**National Policy**

National Planning Policy Framework (2012)

**Bedfordshire Structure Plan 2011**

Not applicable

**Central Bedfordshire Council's Core Strategy and Development Management Policies 2009**

Policy DM3 High quality development  
Policy DM4 Development within and beyond Settlement Envelopes

**South Bedfordshire Local Plan Review Policies**

Not applicable

### Supplementary Planning Guidance

Central Bedfordshire Council's Technical Guidance - *Design Supplement 4: Residential Alterations and Extensions* (2010)

### Relevant Planning History

CB/11/02961	Full: Erection of detached front garage – Withdrawn 18.10.2011
MB/08/00274	Full: First floor side extension, single storey front extension – Approved 04.04.2008
MB/07/02159	Full: Single storey front extension, first floor side extension, double garage side extension and render to existing brick walls – Refused 11.02.2003 Appeal allowed 21.07.2008

### Representations: (Parish & Neighbours)

Maulden Council	Parish	Objects very strongly for the following reasons: <ul style="list-style-type: none"><li>• We do not like retrospective applications. It means that the applicant has proceeded to build without any recourse to the Planning Authority and hopes to achieve planning by the back door;</li><li>• The building has been erected on grounds that is not entirely in the applicant ownership. The portion in question belongs to Central Bedfordshire Council being the verge of the public highway, ie belonging to the taxpayers of Central Bedfordshire which, it appears, the Highways Dept is willing to give away;</li><li>• No provision has been made for rain water drainage on the side of the building adjacent to Moor Lane, leaving rain water to discharge directly onto the road surface;</li><li>• We would wish to see this building demolished or at the very least the south elevation wall taken back onto land in the applicant's ownership with, or course the appropriate planning permission.</li></ul>
Adjacent Occupiers		No comments received

### Consultations/Publicity responses

Site Notice posted	16.11.2012
CBC Highways	No objections
CBC Tree & Landscape Officer	No objections

### Determining Issues

The main considerations of the application are;

1. The effect on the character and appearance of the surrounding area
2. The impact on the residential amenity of neighbouring properties
3. Any other implications of the proposal

## Considerations

### 1. Effect on the character and appearance of the area

The host dwelling is set back and up from Moor Lane on elevated land. The garage is located abutting the highway with its side elevation and is constructed in stained brown timber weatherboarding with a pitched roof of mineral felt.

Garage to the front of dwellings can introduce an intrusive element into the street scene. The site and road levels are different and although the garage is to the front of the host dwelling, the dwelling is elevated thus making the garage subservient by nature of its scale, position and use of materials. Furthermore, the materials give the appearance of a barn like structure and therefore in keeping with this rural location.

### 2. Impact on the residential amenity of neighbouring properties

No. 39 is the adjoining semi detached dwelling located to the east of the site. Given the physical distance it is not considered that there will be any undue loss of light, privacy or overbearing impact as a result of the development.

### 3. Any other implications

#### Highways

The flank wall of the garage is very close to the highway boundary. Visibility at the site is below standard but the building of the garage has not made the situation any worse than it previously was with a 2.0m boundary hedge. The site is towards the end of a very lightly trafficked rural lane and the garage is sited in a similar position to a neighbouring property, no. 33. Therefore, no objections have been raised by the Highways Officer.

It is noted from comments made on the previous application, that the garage has been built partially on land owned by the Highways Authority. Planning permission can still be granted but the relevant permissions will need to be sought by the applicant from the land owner.

## Recommendation

That Planning Permission be APPROVED subject to the following:

- 1 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.

- 2 Notwithstanding any provision of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification) no further window or other opening shall be formed on the building hereby approved.

Reason: To protect the amenities of occupiers of neighbouring properties.

- 3 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers 11/1152/01, 11/1152/02, 11/1152/03, 11/1152/04, 11/1152/05.

Reason: For the avoidance of doubt.

### **Statement required by the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 - Article 31**

Planning permission has been granted for this proposal. Discussion with the applicant to seek an acceptable solution was not necessary in this instance. The Council has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012.

### **Reasons for Granting**

In conclusion, the scheme by reason of its site, design and location would not harm the character and appearance of the area or have an adverse impact on the residential amenity of neighbouring properties. As such the proposal is in conformity with Policy DM3 of the Central Bedfordshire Adopted Core Strategy and Development Management Policies 2009; National Planning Policy Framework. It is further in conformity with the Design in Central Bedfordshire: A Guide for Development - *Design Supplement 4: Residential Alterations and Extensions* (2009). It is therefore considered **acceptable** and that planning permission should be granted subject to conditions.

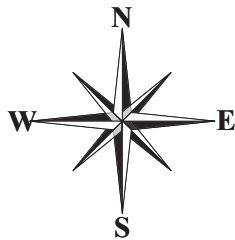
### **Notes to Applicant**

1. This permission is granted under the provisions of Section 73A of the Town and Country Planning Act 1990.
2. This permission relates only to that required under the Town & Country Planning Acts and does not include any consent or approval under any other enactment or under the Building Regulations. Any other consent or approval which is necessary must be obtained from the appropriate authority.



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Date: 28:January:2013

Map Sheet No

Application No.  
CB/12/4248/FULL

Scale: 1:2500

Oak Tree Farm, Potton Road, Biggleswade

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**Item No. 15**

<b>APPLICATION NUMBER</b>	<b>CB/12/04248/FULL</b>
<b>LOCATION</b>	<b>Oak Tree Farm, Potton Road, Biggleswade, SG18 0EP</b>
<b>PROPOSAL</b>	<b>Change of use of site and buildings from Light industrial / retail / store / showroom / workshop / restaurant to school. External alterations including revised parking layout / landscaping / play areas and new fencing. Subdivision of land to separate existing house. New windows and Doors.</b>
<b>PARISH</b>	<b>Sutton</b>
<b>WARD</b>	<b>Potton</b>
<b>WARD COUNCILLORS</b>	<b>Cllrs Mrs Gurney &amp; Zerny</b>
<b>CASE OFFICER</b>	<b>Mark Spragg</b>
<b>DATE REGISTERED</b>	<b>03 December 2012</b>
<b>EXPIRY DATE</b>	<b>28 January 2013</b>
<b>APPLICANT</b>	<b>Ermine Education Trust</b>
<b>AGENT</b>	<b>Blueprint Architectural Design</b>
<b>REASON FOR COMMITTEE TO DETERMINE</b>	<b>Call in by Cllr Gurney due to concerns as to whether this is an appropriate location for a school use.</b>
<b>RECOMMENDED DECISION</b>	<b>Full Application - Granted</b>

**Site Location:**

The application site is located on Potton Road, between the settlements of Biggleswade and Sutton, occupying a level area of approximately 1.3 hectares.

The site is currently made up of two separate areas, under the same ownership. The main (west) part of the site, is occupied by a large modern two storey glazed and rendered retail building, with associated restaurant and ancillary offices, totalling a floorspace of approximately 1300sqm. The development was the subject of planning permission in 2005 (MB/05/00606/FULL). The building is set back towards the rear of the site behind a landscaped pond and grassed area, whilst a 1m high post and rail fence extends along the highway boundary. In front of and to the side of the retail building is parking for up to 40 vehicles, together with a turning area for service vehicles.

A 2.4m high brick wall extends along the north west boundary of the main part of the site, beyond which, in the east part of the site, is a one and a half storey L shaped workshop/storage building, comprising a floorspace of approximately 580sqm. In addition, a two storey triple garage with games room over is also situated within the eastern part of the site, used ancillary to the use of the detached residential property which, whilst under the same ownership, does not fall within the application site.

There are currently two accesses serving the site, the main access in the north west corner serving the retail use, and a smaller access in the north east corner serving

the residential property and the workshop/storage area.

On the opposite side of the road are a number of large buildings associated with Bedfordshire Growers, a large local horticultural business.

**The Application:**

This application proposes a change of use of the retail showroom, workshop building and triple garage to use as a school. The Design and Access Statement states that the applicant is the Ermine Education Trust, who are registered with the Department for Education and affiliated to Focus Learning Trust, responsible for 30 schools in the UK.

The Trust currently operates Wellgrove Senior School in Barnet and Cheshunt Primary School and have apparently been looking to relocate both schools to a single campus within Bedfordshire for the last six years, as many of the families have relocated to Bedfordshire. It is stated that the school would cater for a total of approximately 160 children (60 aged between 7-11 and 100 between 12-18). The children would come from a wide catchment area covering Bedford, Biggleswade, Barnet and Hereford. The staff levels would comprise 12 full time teachers, 13 part time teachers and 3 full time administration staff.

It is proposed to convert the existing retail building to provide teaching accommodation comprising 12 main classrooms, a library, IT suite, and a special needs room. The adjacent and ancillary workshop building is intended to be converted to provide a sports hall, with associated changing facilities and a cookery area. It is proposed that the existing garage building would be utilised as a maintenance/general store, cycle store and games room for use in connection with the school activities.

Three outdoor hard play areas each of 594sqm, enclosed by 3m high chain link fencing, are proposed within land currently used partly for parking and turning, partly as an open grassed area at the front of the site and also comprising part of the garden area serving the adjacent house.

A new 2.5m high acoustic fence is proposed to be provided between the house and the school. In addition 2m high green chain link fencing is indicated around the perimeter of the site and a lockable gate at the main access to provide security and safety.

The access to the school would be solely from the existing main access, with the current second access being retained only for use in connection with the adjacent house.

Parking is shown for a total of 29 cars and 12 minibuses on the west of the access drive and to the west side of the main building. The extent of the internal road would be reduced and include a turning circle area and drop off points outside the main building.

Further landscaping is also shown to be provided within the site, including additional trees and grassed areas, replacing some of the existing hardstanding.

## **RELEVANT POLICIES:**

### **National Planning Policy Framework**

#### **Core Strategy and Development Management Policies**

CS1: Development Strategy

CS11: Rural economy and tourism

DM3: High Quality Development

DM4: Development within and beyond Settlement Envelopes

#### **Supplementary Planning Guidance**

Design in Central Bedfordshire: A Guide for Development

CBC Emerging Parking Strategy, Appendix F, Central Bedfordshire Local Transport Plan, endorsed for Development Management purposes by Executive October 20212

#### **Planning History**

CB/10//04579 – Change of use of first floor (garage) from games room to separate residential unit (Refused).

CB/10/02501 – Change of use of first floor (garage) from games room to separate residential unit (Refused).

MB/08/01952 – Change of use of commercial building (workshop) into 2 no. residential dwellings (Refused)

MB/08/00431 – Erection of two storey garage/workshop (Approved)

MB/0700617 – First floor balcony to south east elevation of showroom/restaurant (Approved)

MB/05/00606 – Erection of new showroom, restaurant, workshop, boundary wall and formation of new access and car park. (Approved)

#### **Representations: (Parish & Neighbours)**

Sutton Parish Council      No objection.

Potton Town Council      No comments received.

Third party  
representations      Three letters of support received of which the comments  
are summarised as follows:

- The proposed use for a school will bring jobs to the area after the disappointment of the business closure.
- Will help preserve a fine building becoming derelict

## Consultations/Publicity responses

Highways:	There is no technical highway reason to oppose the development in terms of vehicle access arrangements and the ability to provide an appropriate level of on-site vehicle parking and manoeuvring area, together with provision for cycle storage. However, being remote from any area of population, without sustainable transport links the site is far from ideal. Recommend that a Travel Plan is provided.
Sustainable Transport Officer:	Following the further information provided by the applicants regarding transportation arrangements the Sustainable Transport Officer raises no objection in principle, however considers it essential that a Travel Plan is secured to reflect the proposed usage of the site. This should include details of how any travel and transport arrangements will be organised and managed and mitigation measures for any potential travel issues.
Public Protection	No objection subject to a condition to secure the erection of a 2.5m high acoustic fence to mitigate noise from the sports hall building.
Environment Agency	Requested Flood Risk Assessment. No objection subject to conditions, provided that the Internal Drainage Board are satisfied with the submitted FRA.
Internal Drainage Board	Comments regarding FRA awaited.
Tree Officer	No trees of significance affected by the proposal but it would be a good opportunity to improve the landscaping on site. There is an opportunity to incorporate some hedge planting along the front boundary of the site.

## Determining Issues

The main considerations of the application are;

1. Principle of development
2. Impact on character and appearance of the surrounding area
3. Impact on amenities of neighbouring residents and future occupiers
4. Access, parking and sustainability
5. Other matters

## Considerations

### 1. Principle of Development

The site lies within the open countryside outside any settlement envelope. Policy CS11 of the Core Strategy seeks to support the rural economy and the

diversification of redundant properties to other commercial, industrial, tourism and recreational uses in the first instance.

The NPPF (para 15) advises that Local Plans should follow the approach of the presumption in favour of sustainable development. Paragraph 17 encourages the effective use of land by reusing land that has been previously developed.

The application site comprises buildings of a substantial floorspace previously used for retail and ancillary light industrial uses. Due to the demise of the previous business the buildings all remain vacant and as such under utilised and of no benefit to the local economy.

It is considered that the principle of reusing the buildings as a new school does in principle broadly reflect the objectives of both the Core strategy and the NPPF, with no new buildings being proposed.

On the basis of the above it is considered that the change of use of the site to a school use is in principle acceptable.

## **2. Impact on Character and Appearance of the Streetscene**

The application does not involve any new buildings, with only internal and minor external changes proposed to the buildings which it is not considered would result in any material impact on the appearance of the site.

The large grassed landscaped area with the pond in front of the main building would remain unchanged. Whilst the addition of the front play area would result in the removal of some of the grassed area towards the front of the site new soft landscaping would be provided where currently there is hardstanding. More trees are also proposed to infill those trees at the front of the site which are to be retained, providing additional screening from the highway. It is also intended to provide landscaping in front of the proposed acoustic fencing, which is to enclose the adjoining residential property. Whilst a 2m high chain link fencing is proposed around the perimeter of the site it is considered that this type of fencing appropriately finished in a green colour, with the benefit of landscaping behind, would have a minimal visual impact on the streetscene and open character of the area site, whilst ensuring that the safety and security of the pupils is maintained.

On the basis of the above it is not considered that any harm to the character of the surrounding area would result from the proposed change of use and associated works.

## **3. Impact on Amenities of Neighbouring Residents**

Core Strategy policy DM3 requires new development to respect the amenity of nearby residents.

The site is not located within a residential area and as such the only residential property close to the site is that which is under the same ownership. The existing property is located within 12m, of the existing light industrial workshop building with no intervening boundary. There is presently a wall of approximately 2.4m



which divides the retail showroom part of the site from the house and light industrial unit. It is proposed to remove the wall and to provide a new 2.4m acoustic fence around the south and west boundaries of the reduced residential curtilage, separating it from the school site and providing a degree of noise protection from the play areas and sports hall building. The rear windows of the garage building which would overlook the garden of the house are proposed to be obscurely glazed.

Public Protection consider that the proposed 2.5m high acoustic fence would satisfactorily mitigate any resultant noise from the application site to the residential property.

Whilst the curtilage of the house would be reduced the property would still be served by a significant garden area well in excess of 100sqm and more than adequate for the occupants of that property.

On the basis of the above it is not considered that any harm to neighbouring amenity would result and the development would result in a reasonable level of amenity for future occupiers.

#### **4. Access and Parking**

The school would be served by the same access as the existing main access. Parking within the site would comprise 19 staff parking spaces, 10 visitor spaces, 4 disabled spaces, 3 drop off points, and parking for 22 minibuses.

The applicant has provided information about how it is intended that the transportation to the school would work, including examples from two other schools operated by the applicant. In the example provided by the applicant at their Dunstable School Campus they state that 143 of the 182 pupils arrive by minibus, whilst at the Barnet Campus 64 of the 68 pupils arrive by minibus.

The applicants states that of the 159 students, 49 come from Bedfordshire (Biggleswade and Bedford areas) and 110 from Hertfordshire. They state that pupils would be collected by 12 seater minibuses and dropped off and picked up at the school. This transport service would be a compulsory part of the schools policy except in certain exceptions.

Cycle parking is shown to be provided in the ground floor of the converted garage building, and it is anticipated that this could serve the needs of local staff who may wish to cycle to the site.

It is recognised that the site is not in a sustainable location such that it would encourage children or staff to walk or cycle to school the fact that the majority of pupils would not be from the immediate area. However, the means of shared transport operated by the applicants and proposed to use at this site would significantly reduce vehicle trips to the site. It is also relevant to consider that the current authorised use of the site as a retail premises with associated restaurant, and adjacent workshop would itself have the potential to generate significant levels of traffic. The estimated figures provided by the previous occupier have suggested vehicle movements equating to 125 per day during the week with significantly higher movements at weekends. This was increased

significantly on Saturday nights when wedding receptions and parties took place in the restaurant. Whilst the submitted figures for the previous use may appear rather high it is not possible to verify the figures now that the use has ceased. Nevertheless it is considered that on the basis of the transportation arrangements proposed by the school that the new use would be likely to lead to a significant reduction in the overall vehicle movements to the site.

The Council's Highway Officer has raised no objection in principle to the proposals on parking and highway safety grounds, subject to conditions.

Similarly, the Council's Transport Sustainability Officer has also raised no objection in principle to the proposal. However, due to the location of the school considers a Travel Plan to be essential

The proposed change of use by the Ermine Trust, taking account of their established arrangements in their other schools for transporting children by minibus represents a very different arrangement than would normally be the case with a local catchment area school, where the majority of children would be likely to walk or cycle. In recognising that the school in this location would not suit such a standard catchment school, due to the lack of public transport, cycle routes and pedestrian links/accessibility it is considered appropriate in this case to impose a personal user condition in favour of the Ermine Trust. On that basis and subject to a comprehensive Travel Plan it is considered that the proposal is acceptable.

5.

#### **Other Matters**

Given that the site lies within Flood Zone 2, wherein the change of use would result in the site becoming "more vulnerable", a flood risk assessment (FRA) was requested by the Environment Agency and the Internal Drainage Board. An FRA has been produced on behalf of the applicant which concludes with a recommendation that flood mitigation measures are implemented. The Environment Agency have advised that subject to the Internal Drainage Board being satisfied with the FRA and its mitigation measures then they would not object, subject to appropriate conditions and informatives. Comments are awaited from the Internal Drainage Board.

#### **Recommendation**

That Planning Permission be granted subject to the following conditions:

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

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase

Act 2004.

- 2 The proposed development shall be carried out and completed in accordance with the vehicle access and parking layout illustrated on the approved plan 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.

- 3 **Development shall not commence until a scheme detailing provision for on site parking for construction workers and deliveries 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.**

- 4 Before the premises are occupied all on site vehicular areas shall be surfaced in a stable and durable manner in accordance with details to be approved in writing by the Local Planning Authority. Arrangements shall be made for surface water drainage from the site to soak away within the site so that it does not discharge into the highway or into the main drainage system.

Reason: To avoid the carriage of mud or other extraneous material or surface water from the site so as to safeguard the interest of highway safety and reduce the risk of flooding and to minimise inconvenience to users of the premises and ensure satisfactory parking of vehicles outside highway limits.

- 5 Before the building is first brought into use, a travel plan is to be submitted to and approved in writing by the Local Planning Authority. The plan shall contain details of:

- a. measures to encourage sustainable travel choices for journeys to the school
- a. pupil travel patterns and barriers to sustainable travel
- a. measures to reduce car use
- a. transport policy(s) of the school
- a. measures to mitigate any adverse impacts of non-sustainable travel to, from and between the school
- a. an action plan detailing targets and a timetable for implementing appropriate measures and plans for annual monitoring and review

All measures agreed therein shall be undertaken in accordance with the

approved plan unless otherwise agreed by the Local Planning Authority.

Reason: In the interests of highway safety, to reduce congestion and to promote the use of sustainable modes of transport

- 6 This permission is for the sole benefit of the premises as a school for use by the Ermine Education Trust and shall not extend to any other educational use by any other group.

Reason: To ensure the retention of planning control by the Local Planning Authority on the disposal of the present applicant's interest in the land and buildings due to the location of the site outside any settlement envelope and the fact that special regard has been had to the specific transportation methods proposed by the applicants and evidenced by examples from other schools within their education portfolio.

- 7 **The development hereby permitted shall not be commenced until such time as a scheme to dispose of foul drainage has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented in accordance with the approved scheme.**

**Reasons: To prevent deterioration and promote recovery of water bodies and prevent hazardous substances being released into the groundwater.**

- 8 **Before development begins, a landscaping scheme to include any hard surfaces and earth mounding shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented by the end of the full planting season immediately following the completion and/or first use of any separate part of the development (a full planting season means the period from October to March). The trees, shrubs and grass shall subsequently be maintained for a period of five years from the date of planting and any which die or are destroyed during this period shall be replaced during the next planting season and maintained until satisfactorily established.**

**Reason: To ensure a satisfactory standard of landscaping.**

- 9 **Prior to first occupation of the school a 2.5m high acoustic fence shall be provided in the position shown on drawing 12-073-101 and detailed in the drawing within the Design and Access Statement (layout), and thereafter retained, unless otherwise agreed in writing by the Local Planning Authority.**

**Reason: To safeguard the amenity of the adjoining residential property.**

- 10 The first floor windows to the north elevation of the existing garage building shall be permanently glazed with obscured glass.

Reason: To protect the privacy of the occupiers of the adjoining residential

property.

- 11 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers [Plans 12-073-100, 101, 102, 103, 104, 106, 107, 108, 109].

Reason: For the avoidance of doubt.

### **Statement required by the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 - Article 31**

Planning permission has been granted for this proposal. The Council acted pro-actively through positive engagement with the applicant at the pre-application stage and during the determination process which led to improvements to the scheme. The Council has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012.

### **Reasons for Granting**

The proposed change of use of the site to a school would support the rural economy whilst not having a negative impact on the character or appearance of the area. There would be no adverse impact on the amenity of the neighbouring property and is considered acceptable in terms of highway safety and sustainability given the existing use and the specific transportation arrangements proposed to be adopted by the applicant. Therefore the proposal is in conformity with Policies CS11, DM3 and DM4 of the Core Strategy and Management Policies, November 2009; and The National Planning Policy Framework, 2012. It is further in conformity with the Supplementary Planning Document: Design in Central Bedfordshire: A Guide for Development, 2010.

### **Notes to Applicant**

1. With regards to the Travel Plan the applicant is advised that further information regarding the updating of the School Travel Plan is available from the Sustainable Transport Team, Central Bedfordshire Council, Technology House, Bedford, MK42 9BD
2. The proposed development overlies a Principal aquifer, overlain with alluvium clay, silt, sand and gravel. The application does not provide sufficient information about foul drainage arrangements and pollution prevention measures to demonstrate whether the proposal will lead to pollution of surface or underground waters, and possible contamination of drinking water sources. A septic tank with tertiary reed bed discharging to ground may not provide a suitable arrangement for foul water in this location and with the proposed number of users.

A package treatment plant is an alternative to a septic tank which has an outlet to either a soakaway or watercourse, and requires a separate formal permit from the Environment Agency. Under the Environmental Permitting Regulations 2010 a discharge permit or exemption from this Agency is required prior to the commencement of any discharge of trade or sewage effluent to a watercourse or groundwater. Such permits are not granted automatically, and may be refused or granted subject to conditions. The statutory consultation period for permit applications is four months. Such consent is not implied by these observations. The applicant may find that, if permits are granted, any conditions applied may influence the nature of any treatment facilities required. **The granting of planning approval must not be taken to imply that consent has been given in respect of any Permit requirements.**

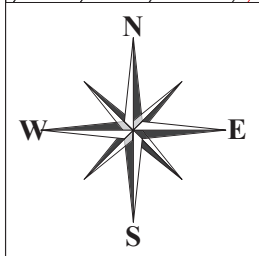
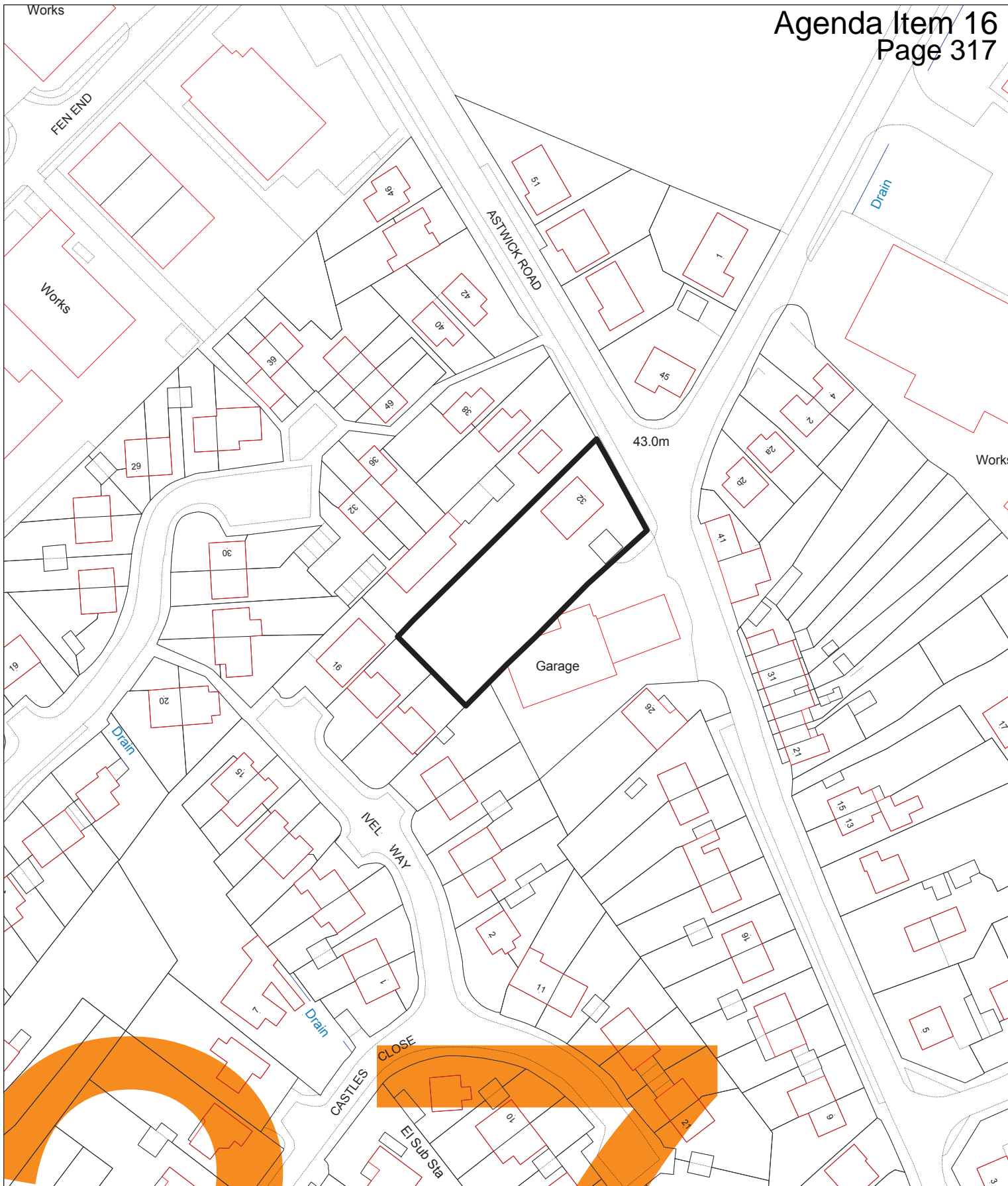
3. The following advisory notes are provided by the Environment Agency:
- Only clean, uncontaminated surface water should be discharged to any soakaway, watercourse or surface water sewer.
  - Where soakaways are proposed for the disposal of uncontaminated surface water, percolation tests should be undertaken, 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.
  - We have issued a series of Pollution Prevention Guidance Notes (PPGs). These are available on our website at: <http://www.environment-agency.gov.uk/business/topics/pollution/39083.aspx>
  - Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hard standings susceptible to oil contamination shall be passed through an oil separator designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the interceptor.
  - Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from impermeable parking areas and hard standings shall be passed through trapped gullies with an overall capacity compatible with the site being drained. Any facilities, above ground, for the storage of oils, fuels or chemicals must be provided with adequate, durable secondary containment to prevent the escape of pollutants. The volume of the secondary containment must be at least equivalent to the capacity of the tank plus 10%. If there is more than one oil storage tank in the facility, the secondary containment must be capable of storing 110% of the biggest tank's capacity or 25% of the total capacity of all the

tanks, whichever is greater. All filling points, vents, gauges and sight glasses should be bunded. Any tank overflow pipe outlets must be directed into the bund. Associated pipework should be located above ground and protected from accidental damage. The drainage system of the bund must be sealed with no discharge to any watercourse, land or underground strata. The installation must, where relevant, comply with the Control of Pollution (Oil Storage) (England) Regulations 2001 and the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 2010. Site occupiers intending to purchase or install pollutant secondary containment (bunding) should ensure that the materials are not vulnerable to premature structural failure in the event of a fire in the vicinity. Further guidance can be found on the Environment Agency's website at: [www.environment-agency.gov.uk/osr](http://www.environment-agency.gov.uk/osr)

**DECISION**

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Date: 28:January:2013

Map Sheet No

Application No  
CB12/04272/FULL

Scale: 1:1250

32 Astwick Road, Stotfold, Hitchin

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south boundary of the site to facilitate the realigned access and parking area, with replacement planting shown to either side of the access. Some small trees are also shown to be removed towards the rear of the site.

The application is accompanied by a Design and Access statement and a Tree Survey.

## **RELEVANT POLICIES:**

### **National Planning Policy Framework**

#### **Core Strategy and Development Management Policies**

CS1: Development Strategy

CS2: Developer Contributions

CS14: High Quality Development

DM3: High Quality Development

DM4: Development within and beyond Settlement Envelopes

DM15: Biodiversity

#### **Supplementary Planning Guidance**

Design in Central Bedfordshire: A Guide for Development

CBC Emerging Parking Strategy, Appendix F, Central Bedfordshire Local Transport Plan, endorsed for Development Management purposes by Executive October 2012

Planning Obligation Strategy 2008

#### **Planning History**

CB/12/02351 – Erection of 3 dwellings. Withdrawn.

#### **Representations: (Parish & Neighbours)**

Stotfold Town Council      Object on the following grounds:

- The proposals are contrary to the wishes of residents as identified in the Stotfold Town Plan as the proposal is back land development.
- Due to the very close proximity to the adjacent petrol station, we request that an environmental study is carried out to determine potential health risks to inhabitants of the proposed dwellings.
- Ask if Central Beds Council has a policy on building of dwellings in close proximity to petrol stations.
- Due to the relative high water table we ask that Anglian Water are consulted as by covering a large land mass with buildings and hard surfacing will make the current situation worse.

- The proposal would result in a crowded site, with lots of vehicle movements on a narrow access.
- Visitor parking would be very limited, and it is not considered suitable for visitors to park on Astwick Toad given the width of the road and the nature of the recovery business adjacent.
- There would be a considerable amount of overlooking and loss of privacy, and there is no protection for long term screening.
- The site supports a variety of wildlife, which is an asset to the whole of the area.
- The site contains a substantial detached dwelling and the proposed row of 2 storey terraced homes could be out of character with the surrounding area.

#### Neighbours

Six letters of objection have been received from the occupants of five adjoining properties. The comments are summarised as follows: :

- Overlooking of No.10, 12 and 16 Ivel Way
- The existing screen will be overbearing on the new properties and likely to be removed
- There have already been too many infill sites in Stotfold
- The access will put more pressure on Astwick Road
- Impact on existing water levels
- Will harm wildlife
- Inadequate parking
- Out of keeping with the area
- Proximity to the garage may result in contamination.

#### Consultations/Publicity responses

##### Highways

The on site parking complies with the Council's recently endorsed parking standards for residential dwellings. Visibility at the modified access complies with the standards set out in Manual for Streets. The adjacent garage is in the ownership of the applicant and therefore the displays can be secured by condition.

The new dwellings are less than 45m from the carriageway edge of Astwick Road and a bin collection/bin storage point is shown within 10m of the highway. Therefore the refuse vehicle will not need to access the rear of the site. However the turning area in front of the new dwellings is large enough to accommodate other service/delivery vehicles and possibly emergency vehicles and can therefore be

	considered acceptable. Recommend approval subject to conditions.
Public Protection	No objection. Conclude that the proposed layout does not have any windows for habitable rooms facing the commercial garage. Do not consider that there will be any detriment to the amenity of the proposed dwellings from activities at the adjacent garage. The design and layout has ensured that it is no more significant than the levels that existing properties will experience.
Public Protection (Contamination)	No objection subject to conditions.
Tree Officer	Existing trees should be retained as far as is practical and the group of trees to the rear of plot 1 should be retained.
Ecology	Support retention of mature 'heritage' pear which is over 100 years old.  The buildings on site proposed for demolition are unlikely to provide roosting opportunities for bats but as a precautionary measure I would advise that should any bats be found all works cease and advice be sought from Natural England.
Ivel and Ouse IDB	The Board notes that the proposed method of storm water disposal is by way of soakaways. It is essential that ground conditions are investigated and if found satisfactory the soakaways be constructed in accordance with the latest Building Research Establishment Digest 365.

## Determining Issues

The main considerations of the application are;

1. Principle of Development
2. Impact on Character and Appearance of the Streetscene
3. Impact on Amenities of Neighbouring Residents and future occupiers
4. Access and parking
5. Infrastructure
6. Other considerations

## Considerations

### 1. Principle of Development

Core Strategy policy CS1 defines Stotfold as a Minor Service Centre wherein policy DM4 sets out that within such settlement envelopes housing commensurate with the scale of the settlement will be approved in principle.

The National Planning Policy Framework (para 49) states that "housing

applications should be considered in the context of the presumption in favour of sustainable development". The NPPF recognises that garden areas do not fall under the definition of 'Previously Developed Land', however, paragraph 53 of the document states: 'Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area'. The ability of the Council to resist inappropriate development of residential gardens is already present in Development Management Policy DM3: High Quality Development, which states amongst others that: All proposals for new development will: be appropriate in scale and design to their setting, contribute positively to creating a sense of place and respect local distinctiveness through design and use of materials, use land efficiently, respect the amenity of surrounding properties, provide adequate areas for parking and servicing, respect and complement the context and setting of all historically sensitive sites particularly those that are designated.

The proposed houses would be within the settlement envelope and as such the principle of development complies with the objectives of the Core Strategy Policies CS1 and DM4 and objectives of the NPPF subject to all other material considerations.

## **2. Impact on Character and Appearance of the Streetscene**

Core Strategy DM3 sets out that developments should be appropriate in scale and design to their setting and contribute positively to creating a sense of place.

The proposed houses would be located within what is currently the rear garden of 32 Astwick Road. It is relevant however to note that there is other backland development surrounding the site in all directions, including detached two storey houses in Astwick Road, two storey terraced houses in Saxon Avenue, set back behind No.40 Astwick Road and chalet style properties at the rear in Ivel Way. The neighbouring commercial building is also sited in a similar position relative to Astwick Road as the proposed houses.

The design of the houses would be of a simple form as a small terrace. Window detailing and pitched canopies to the front doors would add interest to the front elevations, whilst the scale would respect surrounding developments. Due to being set back in excess of 38m from the Astwick Road frontage and partly obscured by the existing house it is not considered that the development would appear prominent and be appropriate to the scale of the retained frontage property.

The application is supported by a Tree Survey which identifies some groupings of trees within the site and in particular towards the rear corner of the site between plot 1 and 14, 16 Ivel Way and included in a tree protection plan. The plan also indicates additional trees to be planted along the rear and side (south boundary), with existing trees also shown to be retained adjacent to the north boundary. It is considered that the proposed new planting on either side of the access road would help to soften the appearance of the realigned access into the site.

The density of development would equate to approximately 33 dwellings per



hectare (dph) which is considered reasonable in the context of its surroundings, the development at Ivel Way being in excess of 40 dph.

In summary it is considered that the design and scale of the proposed houses would not harm the character of the area and would integrate satisfactorily with its surroundings.

### **3. Impact on Amenities of Neighbouring Residents and future occupiers**

Core Strategy policy DM3 requires new development to respect the amenity of nearby residents.

The houses have been positioned such that they would be approximately midway between the rear of 32 Astwick Road (22.5m) and the rear of No's 12 and 14 Ivel Way (22m). Similarly a distance of 24m would be maintained to the rear of 34 Astwick Road. Each new property would have a single bedroom window on the front and rear elevation, whilst the rear elevation of each would also have a bathroom window.

The Council's Design Guide recommends that a minimum distance of 21 metres is maintained in such suburban settings to prevent unreasonable overlooking between properties. As such, the separation distance to the above neighbouring would comply with these guidelines.

No.16 Ivel Way has a rear single storey conservatory extension, which does project to a point only 16m from the first floor bedroom window serving plot 1. However, the proposed window would not face directly towards No.16, being at an angle of approximately 40 degrees from the conservatory. As such it is not considered that the acute degree of overlooking would be so significant as to justify a refusal on such grounds. Nevertheless, it is considered appropriate to impose a condition requiring that the closer window, serving the first floor bathroom is obscurely glazed.

There are some trees shown to be retained along the rear boundary which would provide a degree of screening between the properties, although it is considered that the separation distances and the juxtaposition of the proposed dwellings to the neighbouring properties are themselves sufficient to address any overlooking issues. The retention of the trees would however be beneficial.

The proposed houses would be orientated to the south east of the properties in Ivel Way and as such it is not considered that the new dwellings would significantly restrict daylight to the rear of the neighbouring properties.

In terms of the amenities of the future occupiers, each property would be provided with gardens of sufficient size, 102sqm (plot 1), 62sqm (plot 2) and 110sq m (plot 3). The Design Guide in Central Bedfordshire recommends (para 6.08) that rear gardens for family houses should generally be no less than 50sqm. Whilst the rear garden on plot 1 would be shaded to a degree by the existing trees shown to be retained it is considered that due to the south westerly orientation of the garden and its size in excess of 100sqm that a reasonable degree of natural sunlight would be obtained within the garden area to serve

such a 2 bed property.

The site is located adjacent to a working garage which also operates as a base for a 24 hour vehicle recovery business. It is noted that the business currently operates between 8am and 5pm Monday - Friday and 8am to midday on Saturday. It is also noted that the applicants state that out of hours delivery of recovered vehicles does not normally occur at the premises. The closest proposed house (Plot 3) has been designed without any windows serving habitable rooms on the closest flank elevation and the Public Protection Officer considers that the relationship to the adjacent premises would be no different to other surrounding properties and raises no objection on amenity grounds.

On the basis of the above it is not considered that any harm to neighbouring amenity would result and the development would result in a reasonable level of amenity for future occupiers.

#### **4. Access and Parking**

The development would be served by a shared access with the existing house, which would be relocated in order to provide an acceptable level of visibility onto Astwick Road.

Parking provision of 7 spaces in total for the three 2 bed houses is considered acceptable, in line with the emerging parking strategy. The use of the existing gravelled frontage for the parking of up to 4 cars associated with the existing house is also acceptable.

The Highway Officer has raised no objection to the proposal in terms of access, visibility of parking and there are considered to be no highway safety issues with the proposal.

#### **5. Infrastructure**

The SPD regarding Planning Obligations was adopted in February 2008 and supported by Core Strategy policy CS2 sets out that all residential development will be subject to standard charges to ensure that smaller-scale development can meet its obligations to fairly and reasonably contribute towards new infrastructure and facilities. A draft unilateral agreement has been submitted with this application which satisfies the requirements of the SPD.

#### **6. Other considerations**

A Tree survey and Assessment was submitted as part of the application which identifies trees to be retained and those to be removed, also shown on the block plan drawing. Whilst the Tree Officer does not consider the trees within the site to be of such significance as to justify protection he nevertheless considers it important that the grouping of trees within the west corner in the rear garden of plot 1 are retained as part of the development.

Whilst concerns regarding the impact on wildlife within the site have been raised by neighbours the Council's Ecologist does not consider that the development would result in harm to any protected species. The buildings on site proposed

for demolition are unlikely to provide roosting opportunities for bats. However it is considered appropriate to include a precautionary note that should any bats be found that all works cease and advice be sought from Natural England.

Whilst concerns have been raised regarding possible flooding, the area is not within a flood risk area. Furthermore, whilst the site is located within the area covered by the Bedfordshire and River Ivel Drainage Board they have raised no objections to the development in terms of drainage.

## **Recommendation**

That Planning Permission be granted subject to the following conditions:

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

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 **Prior to the development hereby approved commencing on site, 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 **Prior to the commencement of any phase of development approved by this planning permission the developer shall submit to the Planning Authority for written agreement:**

**a) A Phase 2 Site Investigation report further documenting the ground conditions of the site with regard to potential contamination, incorporating appropriate sampling, as shown to be necessary by the Phase 1 Desk Study by Applied Geology of June 2012 already submitted.**

**b) Where shown necessary by this Phase 2 investigation, a Phase 3 detailed scheme for remedial works and measures to be taken to mitigate any risks to human health, groundwater and the wider environment.**

**Reason: To protect human health and the environment**

- 4 On completion of the development, the developer shall provide written confirmation that any and all works have been completed in accordance with the agreed remediation scheme in the form of a Phase 4 validation report to incorporate photographs, material transport tickets and validation sampling.
- Any remediation scheme and any variations shall be agreed in writing by the local planning authority prior to the commencement of works. This should include responses to any unexpected contamination discovered during works.

Reason: To protect human health and the environment

- 5 **Prior to the development hereby approved commencing on site, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented by the end of the full planting season immediately following the completion and/or first use of any separate part of the development (a full planting season means the period from October to March). The trees, shrubs and grass shall subsequently be maintained for a period of five years from the date of planting and any which die or are destroyed during this period shall be replaced during the next planting season and maintained until satisfactorily established.**

**Reason: To ensure a satisfactory standard of landscaping.**

- 6 **Prior to the development hereby approved commencing on site, including any ground clearance or excavation, substantial protective fencing, the details of which shall first be approved in writing by the Local Planning Authority, shall be erected and the fencing shall be retained at full height and extent until the development is substantially completed. No materials shall be stored or deposited and no mixing of materials shall take place within the area so protected.**

**Reason: To protect the trees so enclosed in accordance with Section 8 of BS 5837 of 2005 or as may be subsequently amended.**

- 7 **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.**

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

- 8 Notwithstanding any provision of the Town and Country Planning (General Permitted Development Order) 1995 (or any Order revoking or re-enacting that Order with or without modification) no works shall be commenced for the extension of the buildings hereby approved nor any material alteration of

their external appearance until detailed plans and elevations have been submitted to and approved in writing by the Local Planning Authority.

Reason: To protect the amenities of occupiers of neighbouring properties.

9 The first floor bathroom window in the rear elevation of plot 1 shall be –

- obscure-glazed, and
- non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.

Reason: To safeguard the amenities of occupiers of no. 16 Ivel Way.

10 **Development shall not begin until details of the junction of the widened vehicular access with the highway have been approved by the Local Planning Authority and no dwelling shall be occupied until the 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 the premises.**

11 Before the modified access is first brought into use, a triangular vision splay shall be provided on each side of the new access drive and shall be 2.8m measured along the back edge of the highway from the centre line of the anticipated vehicle path to a point 2.0m measured from the back edge of the footway into the site along the centre line of the anticipated vehicle path. The vision splay so described and on land under the applicant's control 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 modified access and to make the access safe and convenient for the traffic that is likely to use it.

12 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers [4A, 5 ].

Reason: For the avoidance of doubt.

### Notes to Applicant

1. The British Standard for Topsoil, BS 3882:2007, specifies requirements for topsoils that are moved or traded and should be adhered to.  
Applicants are reminded that, should groundwater or surface water courses

be at risk of contamination during or after development, the Environment Agency at Brampton should be approached for approval of measures to protect water resources separately, unless an Agency condition already forms part of this permission.

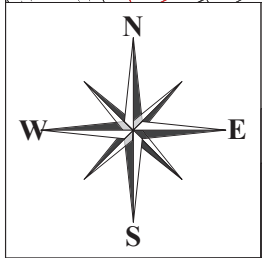
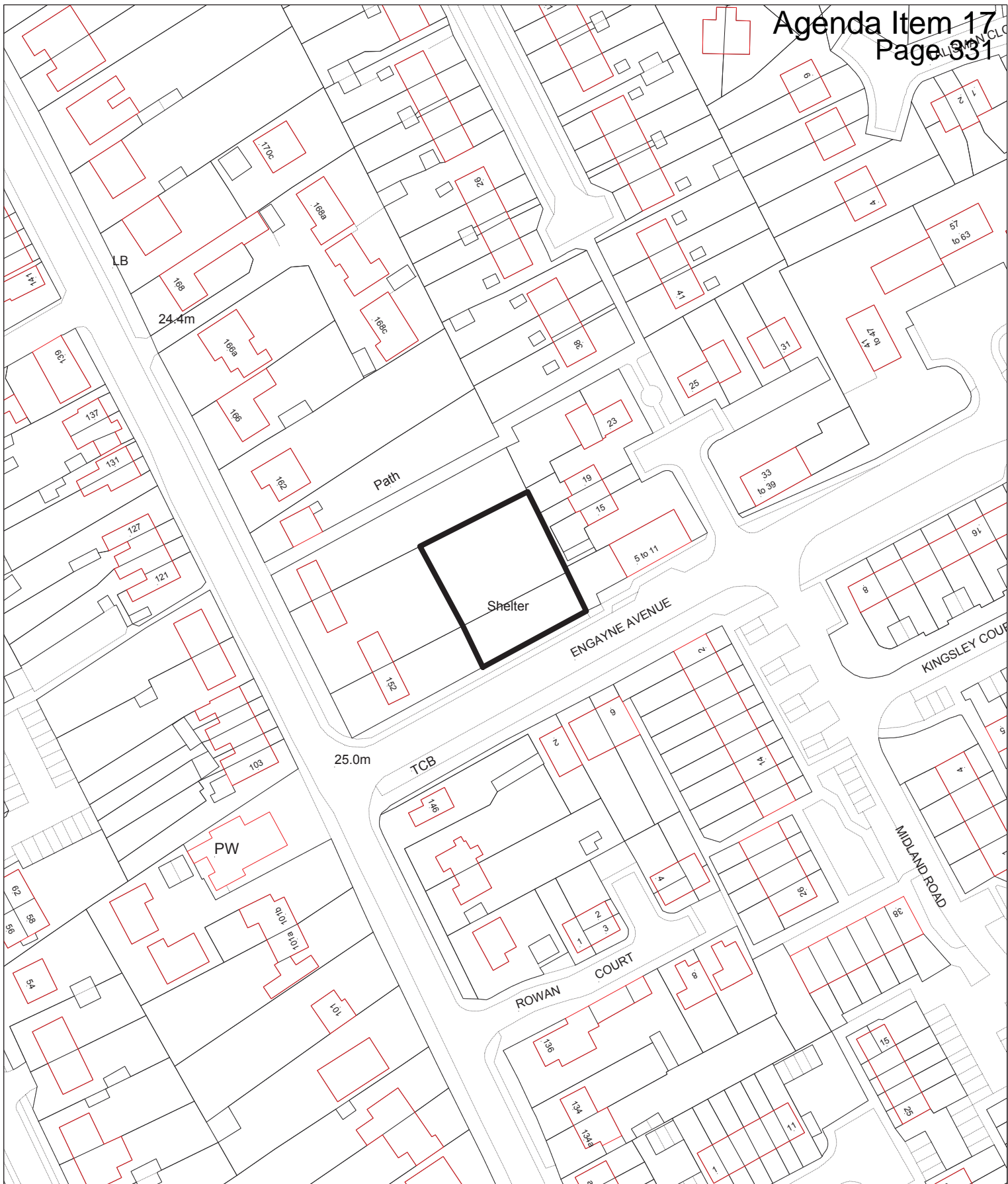
2. The Buckingham & River Ouzel Internal Drainage Board advise that it is essential that ground conditions be investigated and if found satisfactory, the soakaways constructed in accordance with the latest Building Research Establishment Digest.  
In the event that ground conditions are found not to be suitable for soakaway drainage, any direct discharge to the nearby watercourse will require the Board's prior consent. Please contact the Internal Drainage Board at Cambridge House, Cambridge Road, Bedford, MK42 0LH - Telephone (01234 354396) - E-mail [contact@idbs.org.uk](mailto:contact@idbs.org.uk)
3. Should any roosting bats be found during the demolition of the buildings on site then all works should cease and advice be sought from Natural England.

**DECISION**

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Central Bedfordshire Council  
Licence No. 100049029 (2009)  
Date: 28:January:2013  
Map Sheet No

CASE NO.

Scale: 1:1250

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**Item No. 17**

<b>APPLICATION NUMBER</b>	<b>CB/12/04342/FULL</b>
<b>LOCATION</b>	<b>Land To The Rear Of 152 - 156, St Neots Road, Sandy</b>
<b>PROPOSAL</b>	<b>Erection of 4 No. semi-detached dwellings and formation of associated access.</b>
<b>PARISH</b>	<b>Sandy</b>
<b>WARD</b>	<b>Sandy</b>
<b>WARD COUNCILLORS</b>	<b>Cllrs Aldis, Maudlin &amp; Sheppard</b>
<b>CASE OFFICER</b>	<b>Samantha Boyd</b>
<b>DATE REGISTERED</b>	<b>14 December 2012</b>
<b>EXPIRY DATE</b>	<b>08 February 2013</b>
<b>APPLICANT</b>	<b>L &amp; R Developments (Herts) Limited</b>
<b>AGENT</b>	<b>Medusa Design</b>
<b>REASON FOR COMMITTEE TO DETERMINE</b>	<b>Cllr Aldis requests application goes to DMC because of objections from Town Council and neighbours on the grounds of overdevelopment, parking concerns and loss of sunlight amenity to neighbours.</b>
<b>RECOMMENDED DECISION</b>	<b>Full Application - Granted</b>

**Site Location:**

The site comprises a rectangular parcel of vacant land to the rear of nos. 154, 156 and 158 St. Neots Road, Sandy. The land was previously part of the rear gardens of these properties, however it has now been subdivided and has been the subject of past planning application for its redevelopment. The site has a frontage measuring approximately 24m facing onto Engayne Avenue, currently bound by tall conifers, and a depth measuring approximately 29m. The site adjoins the rear gardens of neighbouring properties to the north, east and west. Immediately adjacent, on the Engayne Avenue frontage is a local convenience store with residential use above.

The area is predominantly residential in character and comprises a mix of dwelling types, sizes, designs and ages.

**The Application:**

Planning permission is sought for the erection of four semi detached properties. The properties would all be of a similar design; two storey with a pitched roof and a small entrance porch over the front access door. Plots 1 and 2 are three bedroom properties and plots 3 and 4 are the two bedroom properties. Plot 4 proposes a single storey rear projection along the north east boundary which would provide an extended utility area and each property has approximately 60sq m of rear garden space with a 6ft x 4ft timber shed for storage. To the front, plots 1 and 2 would have four parking spaces each, two on a paved surface and two on a grasscrete type surface. There is a similar arrangement for plots 3 and 4 however for these properties, three parking spaces each are proposed.

**RELEVANT POLICIES:**

**National Planning Policy Framework.**

**Core Strategy and Development Management Policies - North 2009**

CS2 Developer Contributions

CS7 Affordable Housing

DM4 Development within and Beyond Settlement Envelopes

DM3, CS14 High Quality Development

**Supplementary Planning Guidance**

Design in Central Bedfordshire: A Guide for Development

Central Bedfordshire Local Transport Plan: Parking Strategy 2012

Planning Obligation Strategy 2008

**Planning History**

MB/74/ 00091/OUT	Four Homes. Granted 20th June 1974.
MB/91/00536/OUT	One detached bungalow. granted 26th June 1991.
MB/01/00735/FULL	Erection of a two-storey Chalet-Style dwelling with detached double garage. Granted 5th July 2001.
MB/03/01166/OUT	Residential development: 2 pairs of semi-detached dwellings (All Matters Reserved). Refused 29th August 2003.
MB/03/02152/FULL	Erection of 2no. 3-bed semi-detached dwellings and 1no. 3-bed detached dwelling. Approved 30th January 2004.
MB/07/00206/Full	Erection of 5 terraced houses with associated parking and access. Refused 30th March 2007.
CB/09/06266/Full	Erection of 4no. 3 bed terraced dwellings with associated access and parking.
CB/10/01985/Full	Erection of 1 no. detached three bedroom dwelling and 2 no. semi detached 3 bedroom dwellings. Granted 30/1/10.

**Representations:  
(Parish & Neighbours)**

Sandy Town Council	Object - it is considered the erection of the 4 semi-detached dwellings with the layout of 14 parking spaces represents overdevelopment of this plot and a very tight fit. The Town Council is concerned that the layout of the parking (back to back) was not in practice likely to accommodate all the vehicles potentially associated with 4 dwellings and would result in on street parking. The site is near a busy junction with Engayne Avenue and the road is
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used by buses and pedestrians and motorists accessing the shop, nearby schools, old peoples accommodation and other facilities. The Council would be reluctant to see overflow parking from the houses onto this heavily used road and would suggest that if development is approved considerations should be given to conditions requiring parking restrictions.

Neighbours One letter received from property in St Neots Road - would like to see a 2m fence between the garden and properties to be constructed for privacy and as there would be more noise from neighbours.

### **Consultations/Publicity responses**

Highways No objections subject to conditions  
Tree and landscape officer No objection to removal of conifers, no further trees on site to be retained, site would benefit from landscaping scheme.  
Site notice dated 11/1/13

### **Determining Issues**

The main considerations of the application are;

1. Principle
2. The effect on character and appearance of the area
3. The impact on neighbouring amenity
4. Highway considerations
5. Other material considerations

### **Considerations**

#### **1. Principle**

The application site is located within the Settlement Envelope for Sandy, which is classed as a Major Service Centre for development management purposes under Policy CS1 of the Core Strategy and Development Management Policies. Policy DM4 states that within Settlement Envelopes of Major Service Centres proposals for new residential development will be considered acceptable where it is commensurate with the settlement in which it is located. The general principle of residential development in this location is therefore acceptable. Aside from the policy support, the principle re-development of this site has been established under the previous planning permissions, most recently in 2010 for two semi detached three bedroom properties and one detached four bedroom dwelling.

The approved plans, reference CB10/01985/Full are relevant to this proposal and are referred to throughout this report. Therefore the plans have been included on the Powerpoint presentation for Members information.

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

The proposed dwellings are located in a residential area that is of mixed character. Engayne Avenue comprises terraced properties, semi detached and flats all of mixed appearance and with a close relationship to one another, while in St Neots Road there are older cottages and semi detached hipped roof dwellings with a more spacious layout.

The design of the proposal is not out of keeping with the character of the immediate surroundings as the area is completely varied.

Concern has been raised as four dwellings are felt to be overdevelopment of the site. In terms of footprint, the proposal is not dissimilar to the previous approval for three dwellings. The proposed site plan clearly marks the position of the previously approved dwellings and the plans are attached for reference. Therefore in terms of the layout of the buildings and having regard to the previous approved application, the proposal is considered to be acceptable.

## **3. The impact on neighbouring amenity**

The layout of the proposed development is such that plot 4 would be 1m from the rear boundary fence of No's 15, 17 and 19 Engayne Avenue and approximately 9 -10m from their rear elevations. The two storey section of plot 4 would be off set from the rear elevation of No.15 therefore only the single storey rear projection would be directly to the rear. The single storey rear extension is designed with a lean to roof against a parapet wall that runs along the boundary for 4.5m. No. 15 would have full view of the 3.5m high parapet wall, however given its height and distance from the rear elevation, it is not considered to be overbearing or result in significant loss of light.

The single storey section has been included in the design to reduce overlooking onto the rear of the proposed dwellings from No. 15, 17 and 19. It partly replicates a single storey off shoot that was approved as part of Plot 3 (the detached dwelling) under the previous planning permission. However the roof configuration is different and the depth of the extension reduced.

No windows are proposed in the flank elevation of Plot 4 that would directly face the rear windows of 15, 17, and 19. Whilst there may be some overlooking of the rear gardens of the adjacent properties, in a residential area such as this some overlooking is expected. The proposal is not considered to have an adverse impact on the amenities of No. 15, 17 and 19 Engayne Avenue.

The convenience store and its residential flat above are located approximately 10m to the north east and as such would not be adversely affected by the proposal.

Properties in St Neots Road are sited at some distance from the proposed dwellings, separated by long rear gardens and existing outbuildings.

As stated earlier the proposal is not significantly different to what has previous been approved on the site.

No adverse impact on the amenities of the adjacent occupiers is considered to occur as a result of this proposal.

#### **4. Highway considerations**

Each property is shown to be provided with two no. 2.5 x 5.m tandem parking spaces constricted in blacktop and two no. 2.5 x 5.0m tandem spaces alongside constructed in grasscrete or similar. Such provision exceeds the Council's recently endorsed parking standards.

The applicant sought to meet the Council's parking standards without the need to cover the whole frontage of the site with hardstanding.

Planning permission was granted in July 2010 for the erection of three dwellings on the site under reference CB/12/01985. The proposal will result in a slight increase in traffic movements to and from the site above that previously approved but the increase is considered minimal and can readily be accommodated on the local road network.

No objections to the scheme have been raised by Highway Officers.

#### **5. Other material considerations**

##### Viability

The application proposed four dwellings therefore in accordance with Policy CS one unit should be for affordable housing. The applicant has submitted a Viability Assessment in support of the claim that the development is economically unviable with the provision of an affordable unit and the contributions required under the Planning Obligation Strategy. The Assessment demonstrates that the scheme would have a return of approximately 7.5% without taking into account the affordable housing unit. However the applicant has agreed to pay the contributions that were agreed during the determination of application CB/10/01985 which is £24,795. The calculations for the current proposal amounts to £28,210 resulting in a difference of £3,415.

The contributions include an amount towards off site affordable housing provision with the remainder being shared between each contribution area on a percentage based sum.

##### Landscaping

The site itself has a substantial line of mature Leyland Cypress that were obviously planted as a boundary treatment on the south border with Engayne Avenue some time ago. These have now matured to a height of approximately eight metres with minimal maintenance carried out on them. As part of the application these trees would need to be removed and there would be no objections to that proposal.

There are no other trees or vegetation of any significance on the site that should be retained. Although the site would benefit from some soft landscaping, there is limited scope on the frontage of the site to provide any landscaping due to the parking area therefore it is not considered necessary to include a landscaping condition.

### **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 **No development shall commence until details have been submitted for written approval by the Local Planning Authority setting out the details of the materials to be used for the external walls 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 **No development shall commence on site until 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. 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 **No development shall commence until details have been submitted to the Local Planning Authority and approved in writing indicating the positions, design, materials and type of boundary treatment to be erected within and on the edges of the site. The approved scheme shall be fully implemented in accordance with the approved details before the development is first occupied and thereafter retained.**

**Reason: To safeguard the amenity of the adjacent occupiers.**

- 5 **Development shall not begin until details of the junction of the proposed vehicular access with the highway have been approved the Local Planning Authority and no dwelling shall be occupied until the 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 the premises.**

- 6 Before each individual access is first brought into use, a triangular vision splay shall be provided on each side of the new access drive and shall be 2.8m measured along the back edge of the highway from the centre line of the anticipated vehicle path to a point 2.0m measured from the back edge of the footway into the site along the centre line of the anticipated vehicle path. The vision splay so described and on land under the applicant's control 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 access and to make the access safe and convenient for the traffic that is likely to use it.

- 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 43m 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 applicants 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 that is likely to use it.

- 8 Before the dwellings 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

- 9 Notwithstanding any provision of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification) no further window or other opening(s) shall be formed on the first floor side elevations of Plot 1 and Plot 4.

Reason: To protect the amenities of occupiers of neighbouring properties.

- 10 Notwithstanding any provision of the Town and Country Planning (General Permitted Development Order) 1995 (or any Order revoking or re-enacting that Order with or without modification), no works shall be commenced for the extension of the dwellings, or the erection of any building or structure within their curtilage, until detailed plans and elevations have been submitted

to and approved in writing by the Local Planning Authority.

Reason: To protect the amenities of occupiers of neighbouring properties.

- 11 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers 1134/11/03, 1134/11/02 rev C, 1134/11/01 Rev D.

Reason: For the avoidance of doubt.

**Statement required by the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 - Article 31**

Planning permission has been granted for this proposal. The Council acted pro-actively through early engagement with the applicant at the pre-application stage which led to improvements to the scheme. The Council has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012.

**Reasons for Granting**

The proposal would not have a negative impact on the character 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 size, design and location, is in conformity with Policies CS2, CS14, DM3 and DM4 of the Core Strategy and Management Policies, November 2009; and The National Planning Policy Framework. It is further in conformity with Design in Central Bedfordshire, a Guide for Development, 2010 and the Planning Obligation Strategy 2008. .

**Notes to Applicant**

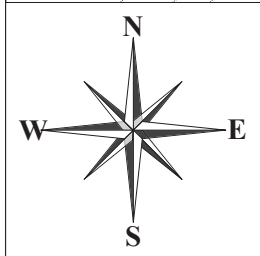
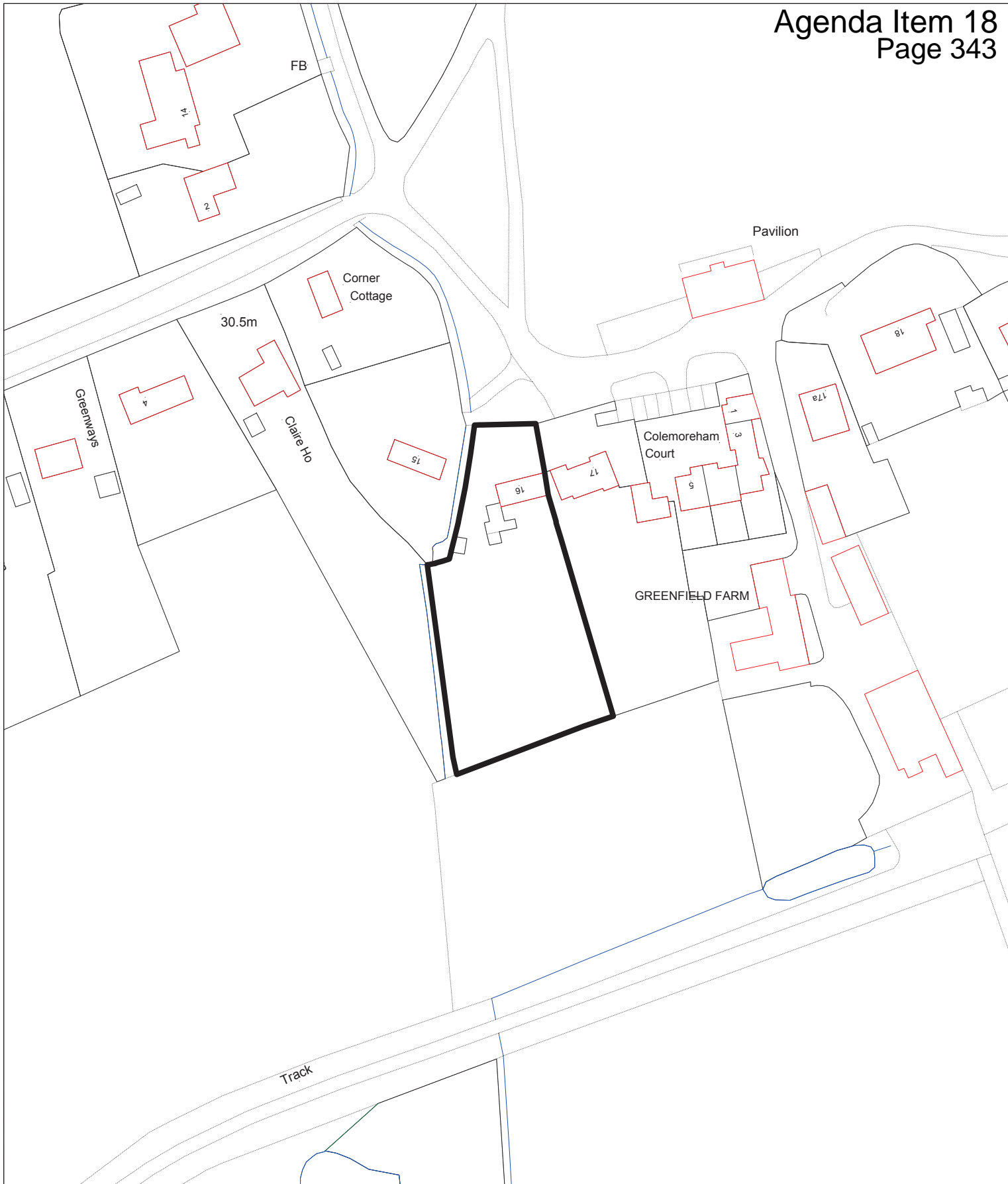
1. The applicant is advised that no works associated with the construction of the vehicular access should be carried out within the confines of the public highway without prior consent, in writing, of the Central Bedfordshire Council. Upon receipt of this Notice of Planning Approval, the applicant is 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.

**DECISION**

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Date: 28:January:2013

Map Sheet No

Application No.  
CB/12/04140/FULL

Scale: 1:1250

16 Ickwell Green, Ickwell, Biggleswade

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**Item No. 18**

**APPLICATION NUMBER** CB/12/04140/FULL  
**LOCATION** 16 Ickwell Green, Ickwell, Biggleswade, SG18 9EE  
**PROPOSAL** Single storey rear extension to garage  
**PARISH** Northill  
**WARD** Northill  
**WARD COUNCILLORS** Cllr Mrs Turner  
**CASE OFFICER** Mark Spragg  
**DATE REGISTERED** 22 November 2012  
**EXPIRY DATE** 17 January 2013  
**APPLICANT** Mr Turner  
**AGENT** Richard Beaty (Building Design) Ltd  
**REASON FOR COMMITTEE TO DETERMINE** The applicant is the son of Cllr Turner.

**RECOMMENDED DECISION** Full Application - Granted

**Site Location:**

The application site is a thatched roof property located on the edge of Ickwell Green. It is a one and a half storey dwelling with the first floor windows set into the roof at eaves level. To the rear is a two storey extension linked to the original house with a single storey glazed section and a modern detached hipped roof garage/store building. A gravel driveway runs from The Green alongside the dwelling to the garage at the rear.

The property is a grade II listed building and is within the Ickwell Conservation Area.

**The Application:**

Planning permission is sought for an extension to the existing detached garage.

The extension would be to the rear of the garage 3.2m in depth, extending across the whole width of the rear elevation, to provide additional storage space.

**RELEVANT POLICIES:**

**National Planning Policy Framework 2012**

**Core Strategy and Development Management Policies - North 2009**

CS14, DM3 High Quality Development

CS15, DM13 Heritage

**Supplementary Planning Guidance**

Design in Central Bedfordshire: A Guide for Development 2010  
Design Supplement 4 and 5

### Relevant Planning History

MB/02/00573                      Demolition of existing rear extensions and single garage.  
Erection of rear and side extension and single garage/store.  
Granted 31/05/02

### Representations: (Parish & Neighbours)

Northill Parish Council      No comments received

Neighbours                      No comments received

### Consultations/Publicity responses

Site notice                      12/12/12  
Newspaper Advert              7/12/12

Conservation and Design      Refers closely to the character, form, materials and detailing of the existing building. Acceptable - no objection

### Determining Issues

The main considerations of the application are;

1. The effect on the conservation area and the setting of the listed building
2. Impact on neighbouring amenities

### Considerations

#### 1. The effect on the conservation area and the setting of the listed building

The proposed extension would be constructed to mirror the design of the existing garage with exposed rafters at the eaves, a brick plinth, timber boarding and a hipped roof. All materials would match those on the existing building.

Given that the extension is to the rear, it would not be visible from the public realm, therefore it would preserve the Ickwell Conservation Area.

The garage is detached from the main house and located some 5m towards the rear. The design of the garage extension combined with its distance from the listed building would result in no harm to the listed house or its setting. As such the proposal is considered to be acceptable and in accordance with the Core Strategy and the National Planning Policy Framework.



## 2. Impact on neighbouring amenities

Due to the location of the garage and the significantly large gardens there are no neighbouring properties close enough to be affected by the proposal.

There are no further issues to consider.

### Recommendation

That Planning Permission be granted 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 All external works hereby permitted shall be carried out in materials to match as closely as possible in colour, type and texture, those of the existing building.

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 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers 11.50.03, 11.50. OSmap.

Reason: For the avoidance of doubt.

### **Statement required by the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 - Article 31**

Planning permission has been granted for this proposal. Discussion with the applicant to seek an acceptable solution was not necessary in this instance. The Council has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012.

### Reasons for Granting

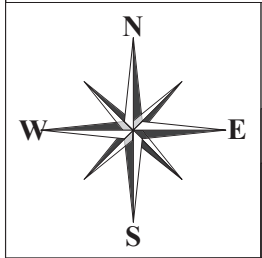
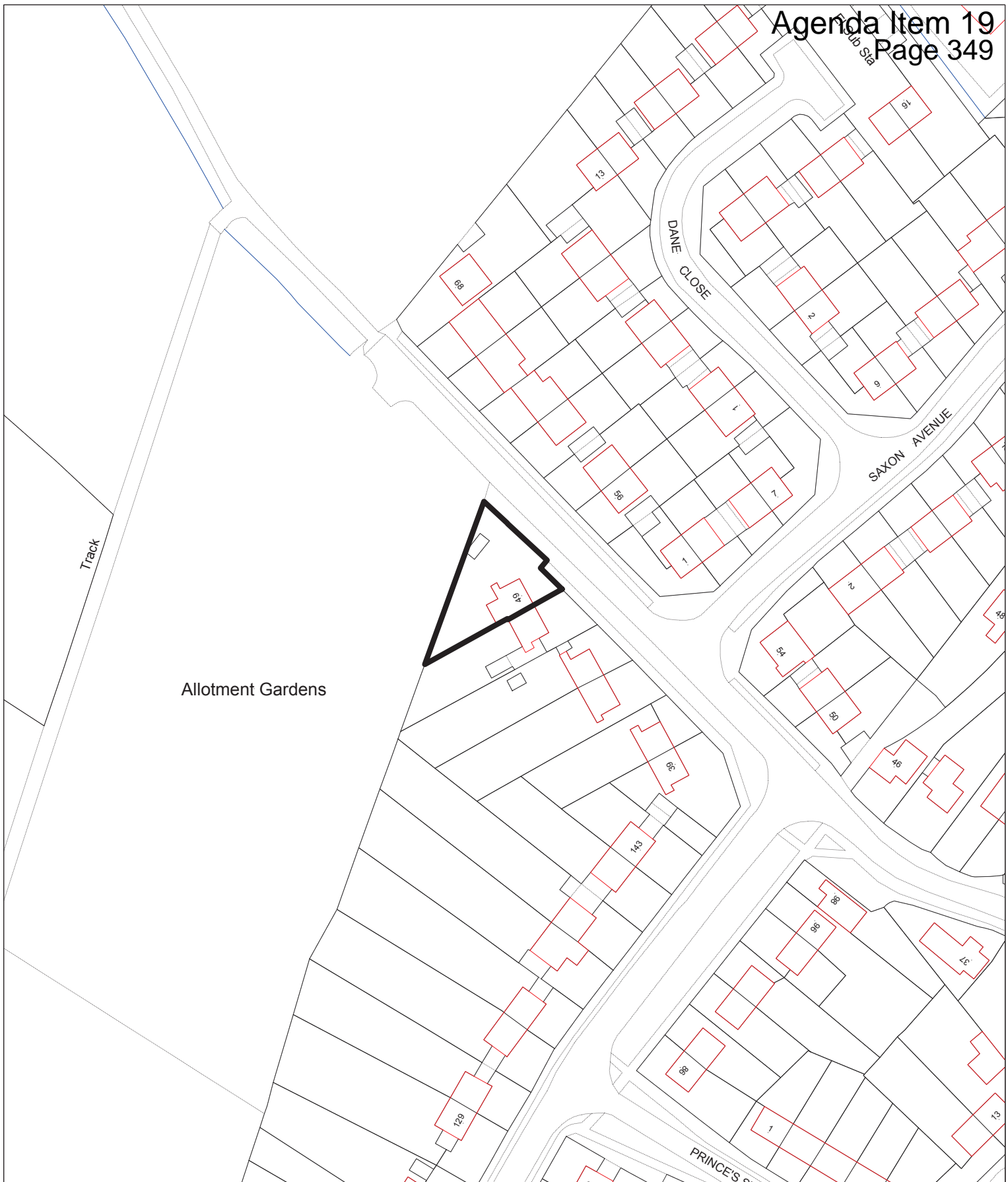
The proposed garage extension would not have a negative impact on the character of the conservation area or setting of the listed building. There would be no adverse impact on the residential amenity of neighbouring properties and is acceptable in terms of highway safety.

Therefore by reason of its size, design and location, the proposal is in conformity with Policies CS14, CS15, DM3 and DM13 of the Core Strategy and Management Policies, November 2009; and The National Planning Policy Framework, 2012. It is further in conformity with the Supplementary Planning Document: Design in Central Bedfordshire: A Guide for Development, 2010.

**Notes to Applicant**

**DECISION**

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Date: 28:January:2013  
Map Sheet No

CASE NO.

Scale: 1:1250

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**Item No. 19**

<b>APPLICATION NUMBER</b>	<b>CB/12/04247/FULL</b>
<b>LOCATION</b>	<b>49 Common Road, Stotfold, Hitchin, SG5 4DF</b>
<b>PROPOSAL</b>	<b>Two storey side extension and single storey front extension.</b>
<b>PARISH</b>	<b>Stotfold</b>
<b>WARD</b>	<b>Stotfold &amp; Langford</b>
<b>WARD COUNCILLORS</b>	<b>Cllrs Saunders &amp; Saunders</b>
<b>CASE OFFICER</b>	<b>Nicola Stevens</b>
<b>DATE REGISTERED</b>	<b>10 December 2012</b>
<b>EXPIRY DATE</b>	<b>04 February 2013</b>
<b>APPLICANT</b>	<b>Mr Nergaard</b>
<b>AGENT</b>	<b>James Isaac</b>
<b>REASON FOR COMMITTEE TO DETERMINE</b>	<b>Council employee</b>
<b>RECOMMENDED DECISION</b>	<b>Full Application - Granted</b>

**Site Location:**

The site is located on the western side of Common Road. The site lies within the settlement envelope of Stotfold and is bounded by existing residential development to the side and front and allotments to the side and rear.

**The Application:**

The application seeks full consent for the erection of a two storey side extension and single storey front extension.

**RELEVANT POLICIES:**

**National Policies**

National Planning Policy Framework (March 2012)

**Core Strategy and Development Management Policies Adopted November 2009**

CS14	High Quality Development
DM3	High Quality Development
DM4	Development Within and Beyond Settlement Envelopes

**Supplementary Planning Guidance**

Design Guide for Central Bedfordshire & DS4 Residential Alterations & DS7 Movement Streets and Places Adopted Jan 2010

Central Bedfordshire Local Transport Plan: Appendix F Parking Strategy (endorsed as interim technical guidance for Development Management purposes 2.10.12)

## Planning History

84/00636/FA                      Side extension. Approved 4.9.84

## Representations: (Parish & Neighbours)

Stotfold Town Council      No objection  
Neighbours                      No comments received

## Consultations/Publicity responses

Highway Officer                No objection subject to condition

## Determining Issues

The main considerations of the application are;

1. Principle of development
2. Visual impact
3. Residential amenity
4. Other issues

## Considerations

### 1. Principle of development

The site lies within the settlement envelope of Stotfold. Policy DM4 of the Core Strategy makes provision for the extension of existing properties provided they meet certain local plan criteria which will be assessed below.

### 2. Visual impact

The site is located at 49 Common Road, Stotfold a semi-detached property constructed of brown brick with small plain roof tiles. It is a two-storey house with an existing single storey extension to the side and another to the rear. The dwelling is set back from the road with a fairly large rear and side garden.

The new two storey side extension will replace the existing single storey side extension being of the same width. It will be set down from the main ridgeline of the host dwelling and set back from the front elevation at first floor level. A single storey extension is proposed across the full width of the extension and host dwelling projecting out approx 1.5m (when viewed from No 47) with a monopitch roof. This will be similar in depth to the existing single storey front extension on the adjoining semi-detached property.

In visual terms the proposal will be clearly visible within the streetscene due to its location on the side and front of the dwelling. However, in design terms the extensions will remain subservient and in keeping with the host dwelling and as such will have no harmful impact on the character and appearance of the area.

**3. Residential amenity**

No 49 Common Road is the last property situated along this part of Common Road with allotments situated to the side and rear. As such given the distances and relationships involved there would be no undue loss of light, privacy or overbearing impact to any surrounding properties.

Whilst the single storey extension would be situated on the shared boundary with No 47 Common Road it will only project out approx 1.5m and No 47 has no ground floor windows immediately adjacent or in the side of the existing front extension.

**4. Other issues**

Sufficient private amenity space will remain.

On site parking remains unchanged. A new bedroom would be created at first floor accessible from the host dwelling via a new stairway created at ground floor within the extension. The Highway Officer has stated that the proposal will add an extra bedroom to this existing 2 bedroom dwelling where at present there is a single garage with driveway parking for a further two vehicles. Despite the increase in bedrooms the proposal is therefore already compliant with the recently approved parking strategy. No alterations to the existing access arrangement is required and the submitted plan indicates acceptable surfacing and drainage to the existing parking area and traffic generation is unlikely to change to any noticeable degree. As such the Highway Officer has no objection and suggests a condition to ensure the garage is retained by attached to any permission.

**Recommendation**

That Planning Permission be Approved 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 All external works hereby permitted shall be carried out in materials to match as closely as possible in colour, type and texture, those of the existing building.

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 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.

- 4 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers [P01, P02, P03, P04A, P06 ].

Reason: For the avoidance of doubt.

**Statement required by the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 - Article 31**

Planning permission has been granted for this proposal. Discussion with the applicant to seek an acceptable solution was not necessary in this instance. The Council has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012.

**Reasons for Granting**

The proposal would not have a negative impact on the character or 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 CS14, DM4 and DM3 of the Core Strategy and Management Policies, November 2009; National Planning Policy Framework (March 2012). It is further in conformity with the technical guidance Design in Central Bedfordshire, a Guide for Development, 2010 and Central Bedfordshire Local Transport Plan: Appendix F Parking Strategy (endorsed as interim technical guidance for Development Management purposes 2.10.12).

**Notes to Applicant**



**DECISION**

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**Meeting:** Development Management Committee  
**Date:** 13 February 2013  
**Subject:** Consultation by Luton BC on Planning Application for expansion of London Luton Airport (our ref: CB/13/00088/OAC)  
**Report of:** Director of Sustainable Communities  
**Summary:** The report summarises the proposals in the Planning Application submitted to Luton Borough Council, provides for submission of specialist responses from CBC officers to this meeting, and makes comments on the proposals.  
**Reason for presentation to committee:** Call in by Executive Member – significant importance and implications to Central Bedfordshire.

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**Advising Officer:** Director of Sustainable Communities  
**Contact Officer:** John Spurgeon, Principal Planning Officer, Major Applications Team  
(Tel: 0300 300 5304)  
**Public/Exempt:** Public  
**Wards Affected:** All, but in particular Caddington Ward  
**Function of:** Council

#### **CORPORATE IMPLICATIONS**

##### **Council Priorities:**

Enhancing Central Bedfordshire – will have an impact on creation of jobs, managing growth, protecting countryside and enabling businesses to grow.

Promote health and wellbeing – has the potential to impact health and wellbeing through noise, road traffic and other factors.

Better infrastructure – would improve the capacity and facilities at the airport which has a major part to play in the accessibility of Central Bedfordshire from more distant locations.

##### **Financial:**

1. Has the capacity to generate income to local authorities not least in the potential for growth-related development in Central Bedfordshire.

##### **Legal:**

2. None.

**Risk Management:**

3. None

**Staffing (including Trades Unions):**

4. Not Applicable.

**Equalities/Human Rights:**

5. None

**Public Health**

6. The noise and air pollution aspects of the development need to be considered carefully to avoid further harm to residents of Central Bedfordshire, especially in the Parishes of Hyde, Slip End and Caddington.

**Community Safety:**

7. Negligible applicability.

**Sustainability:**

8. The proposal has sustainability significance in the location of development, proposed growth of airport travel and surface access to the airport.

**Procurement:**

9. Not applicable.

**RECOMMENDATION:**

**The Committee is asked to:**

1. Inform Luton Borough Council that this Council makes a holding OBJECTION on the proposal for the reasons given in section 17 below,
2. Inform Luton Borough Council of the additional comments which may be received by the date of this meeting following consultation within Central Bedfordshire Council.

**Background**

**The Application**

10. Luton Borough Council, as planning authority, has consulted us on the planning application they have received for works to London Luton Airport. The period of consultation expires on 19<sup>th</sup> February 2013. The application has been submitted by London Luton Airport Operations Limited (LLAOL), who operate the airport, as compared with London Luton Airport Limited (LLAL), a company wholly owned by Luton BC who own the airport. The proposal is:

*Proposed alterations to Airport Way/Airport Approach Road, infill extensions and alterations to terminal buildings, extensions to existing mid and long term*

*car parks, new taxiway (Foxtrot), extensions to the existing taxiway (Alpha) and aircraft parking aprons (including 6 new stands) and a new multi-storey car park linked to terminal building.*

The application may be inspected on the Luton BC website [www.eplan.luton.gov.uk](http://www.eplan.luton.gov.uk) under reference 12/01400.

11. In detail, these elements are as follows:

- (a) The existing airport approach road, from the Holiday Inn roundabout, under the taxiway to the terminal buildings, would be dualled, with new junctions. The extra land would use the spare tunnel portal;
- (b) Improvements to the transport hub to provide 18 dedicated bus bays;
- (c) Extension to medium and long term car parks;
- (d) New multi-storey car park;
- (e) Improvements to terminal building involving internal reorganisation and minor extensions and building works to provide added security, capacity in departures, more direct internal routes, smooth baggage return;
- (f) New 2-storey pier (elongated covered structure to deliver passengers directly to/from aircraft);
- (g) New taxiway parallel to Taxiway Delta, and new replacement stands and taxiway extensions,

#### **Airport statistics provided in the submissions**

12. (a) Passenger numbers –  
9.5m in 2011 on 99,299 air traffic movements (ATMs),  
Est.10.3m in 2013 on 112,000 ATMs.  
Current capacity 12.4m (but see reference to National Infrastructure Plan below)  
Proposed 18m by 2028 on 157,000 ATMs.  
LLA is 5<sup>th</sup> largest in UK.
- (b) Economic value – LLAOL has invested more than £215m since 1998. For comparison, the estimated cost of this proposal is £100m (letter sent by LLAOL to Gary Alderson, 7/1/13). Its annual economic value to the sub-regional economy is £789m, which would increase to £1.3bn by 2028.
- (c) Passenger car parking – 6,719 spaces at airport with planning permission for further 980 = 7,519 approved spaces. Proposed increase by 2,910 = 10,609 spaces.  
3 companies operate off-airport parking – 7,500 spaces.
- (d) Employment – Proposed staff increase from 8,250 to 13,350 jobs (17,750 indirect) by 2018. The Airport Masterplan sets the projected staff level at 9,900 jobs and the indirect total at 18,500 by 2031. 100 jobs during construction.  
To these figures we can add the estimate that about 20% of these jobs are/will be taken by CB residents.
- (e) Other facts:
- Lowest night noise infringement limit of any UK airport
  - Operates a Community Trust Fund and Charity of the Year
  - Estimated 73% increase in commercial passenger movements to

2031 within 40% growth in ATMs

- Increase to 40% of passengers travelling by public transport by 2017 (Airport Surface Access Strategy)
- Peak hour (0600 – 0859h) movements to increase from 34 (2011) to 40 (2018) but there would be peak spreading to accommodate other new flights
- LLAOL fines planes if excessive noise is produced on take-off – can be 6 x landing fee – money invested in community projects.

### **Basis of application and policy**

13. Par.33 of the National Planning Policy Framework states:

*“When planning for ports, airports and airfields that are not subject to a separate policy statement, plans should take account of their growth and role in serving business, leisure, training and emergency service needs. Plans should take account of this Framework as well as the principles set out in the relevant national policy statements and the Government’ framework for UK Aviation.”*

Current national aviation policy is the Future of Air Transport White Paper 2003. This supports full use of a single runway at Luton, on condition that the overall environmental impacts would be carefully controlled and adequate mitigation provided. There is potential to deliver employment-led growth and there would be sufficient demand to justify expansion to 30mppa and 240,000 ATMs up to 2030.

Draft Aviation Policy Framework 2012 sets out the Government’s objectives and will replace the FATWP. The primary objective is to achieve long term economic growth. It supports the aviation sector within a framework which maintains a balance between benefits of aviation and its cost, especially climate change and noise.

In respect of the National Infrastructure Plan 2011 (NIP) Luton could achieve 17mppa with maximum use of current capacity. The Davies Commission was established by the government to review these figures. However, LLAOL believes that this order of throughput increase cannot be delivered on present infrastructure without an unsatisfactory level of customer service. Accordingly it proposed this development to slightly exceed the NIP level of growth and to provide capacity for 18mppa. In 2012 LLAOL issued a scoping report on a smaller scheme (16mppa). Appendix B comprises CBC’s response to this as well as its response to LLAL’s proposals for 18mppa. The current scheme is for the higher figure and includes more environmental controls.

South Bedfordshire Local Plan Review (par. 5.20) supported the airport provided environmental impact is monitored in consultation with local communities below the flight path and minimised so far as possible, and that future expansion is kept within acceptable environmental limits.

The Central Bedfordshire Development Strategy Vision reflects the Council’s five Priorities, which are summarised above, under ‘Corporate Implications’. There is a presumption in favour of sustainable development and a keenness to deliver more jobs. Although Luton Airport is not mentioned as such (the great majority of it lies outside the Council’s area), par.6.14 states that:

*“During recent years, Central Bedfordshire has worked closely with our neighbours to ensure that the growth within Central Bedfordshire is complementary with growth in neighbouring authorities.”*

Although the thrust of the paragraph is that Central Bedfordshire will bear in mind growth needs of its neighbours, this works both ways in that Central Bedfordshire can expect benefits from growth opportunities in neighbouring areas.

Luton Airport Noise Action Plan 2010 – 15 was approved by DfT and Defra and identified 55 action items. The proposals would be supplemented by a specific package of additional control measures including quota on total level of aircraft during night time, restrictions on noisiest aircraft, penalties for straying from routes, and a new insulation grant scheme. This would be compatible with UK best practice. The day (57dB) and night (48 dB) noise contours, agreed in 1999, would not be ‘breached’ although more people would now lie within these contours.

14. LLAOL recognises that the space limitations dictate opportunities and the proposal is designed to consolidate the complex and to satisfy customer expectations.

#### **Consultations and responses**

15. Notification of this consultation has been sent to Ward councillors for Caddington Ward; Hyde, Slip End and Caddington Parish Councils; Cllrs Bowater, Egan, Jamieson, Shadbolt and Young; and officers specialising in noise, air pollution, archaeology, transport, ecology and landscape. They have been invited to reply to the author of this Report by the date of this meeting. The Strategic transport officer has made early comments (see Appendix D) and these are taken into account in section 17 below, which has enabled us to provide a provisional recommendation. Appendices B and C are earlier comments made by CBC to scoping and masterplan consultations and are included to show consistency in our stance. We will report the comments from other consultees on the Late Sheet.

#### **General comments**

16. The economic advantages of having London Luton Airport as a neighbour are recognised. Luton Borough cannot itself accommodate all employees of the airport and figures available show that 20% of the jobs would go to residents within Central Bedfordshire. There will continue to be benefits of injecting this income into the local economy as well as non-resident employees using other facilities that we have to offer. Tourism in the area should also benefit. At this stage we expect the main issues to be noise and traffic. The internal technical responses will be important in assessing the adequacy of the submission and potential impacts for our residents and corporate interests.

#### **Initial concerns**

17. There is insufficient information primarily on the effects of the proposal at local level within Central Bedfordshire. Given the sensitivity of a number of issues, until more detailed assessment is undertaken the Council is unable to fully ascertain key impacts and possibly acceptable mitigations. In particular, key

issues that must be addressed further are that:

- There should be appropriate and convenient public transport access to the airport from relevant areas within Central Bedfordshire and in particular Dunstable and Houghton Regis,
- The reported Transport modelling work appears to be inadequate and that the recently updated Central Bedfordshire and Luton Transport Model should be used to fully test the combined effect of the background traffic, airport generated traffic, and traffic related to the growth area on the local and wider road network of Central Bedfordshire and the surrounding area,
- The programme of surface access infrastructure development and the associated soft measures should be effectively tied to the stages of any agreed expansion plan,
- A means should be devised to limit passenger numbers, particularly having regard to the effectiveness of environmental safeguards, and there should be a maximum limit on the number of aircraft movements,
- Aircraft noise and air pollution aspects of the development need to be considered carefully to avoid further harm to residents of Central Bedfordshire, especially in the Parishes under the easterly arrival route. These are Slip End, Caddington, Kensworth, Studham and Whipsnade and to a lesser extent Eaton Bray. Slip End, Caddington and Hyde are also affected by some departure routes.
- Under the 2008 Planning Act, airport expansion applications have to be referred to PINS as a Nationally Significant Infrastructure Project if it results in an increase of at least 10mppa in the number of passengers for whom the airport is permitted to provide air passenger transport services. This plan proposes an increase of just under 10mppa which is just below that required for submission to the IPC thus allowing LBC to determine the application. The risk is that this may be the first of several incremental increases in capacity. For this reason, if this council is minded to support this plan, it may be wise to ask for assurance that no further expansion takes place within a reasonable time scale.

Accordingly it is recommended that this council lodge a holding objection in response to this application because insufficient information is provided to satisfy us that there would be no adverse effect resulting from the proposed expansion of the airport. Given the sensitivity of a number of issues, until more detailed assessment is undertaken, the Council is unable to fully ascertain key impacts and possibly acceptable mitigations.

#### **Appendices:**

Appendix A – General layout plan of the airport showing location of works.

Appendix B – CBC response to LLAL Scoping Report, March 2012.

Appendix C – CBC response to LLA consultation on London Luton Airport revised Masterplan, October 2012.



Appendix D – Background to ‘Initial concerns’ section.

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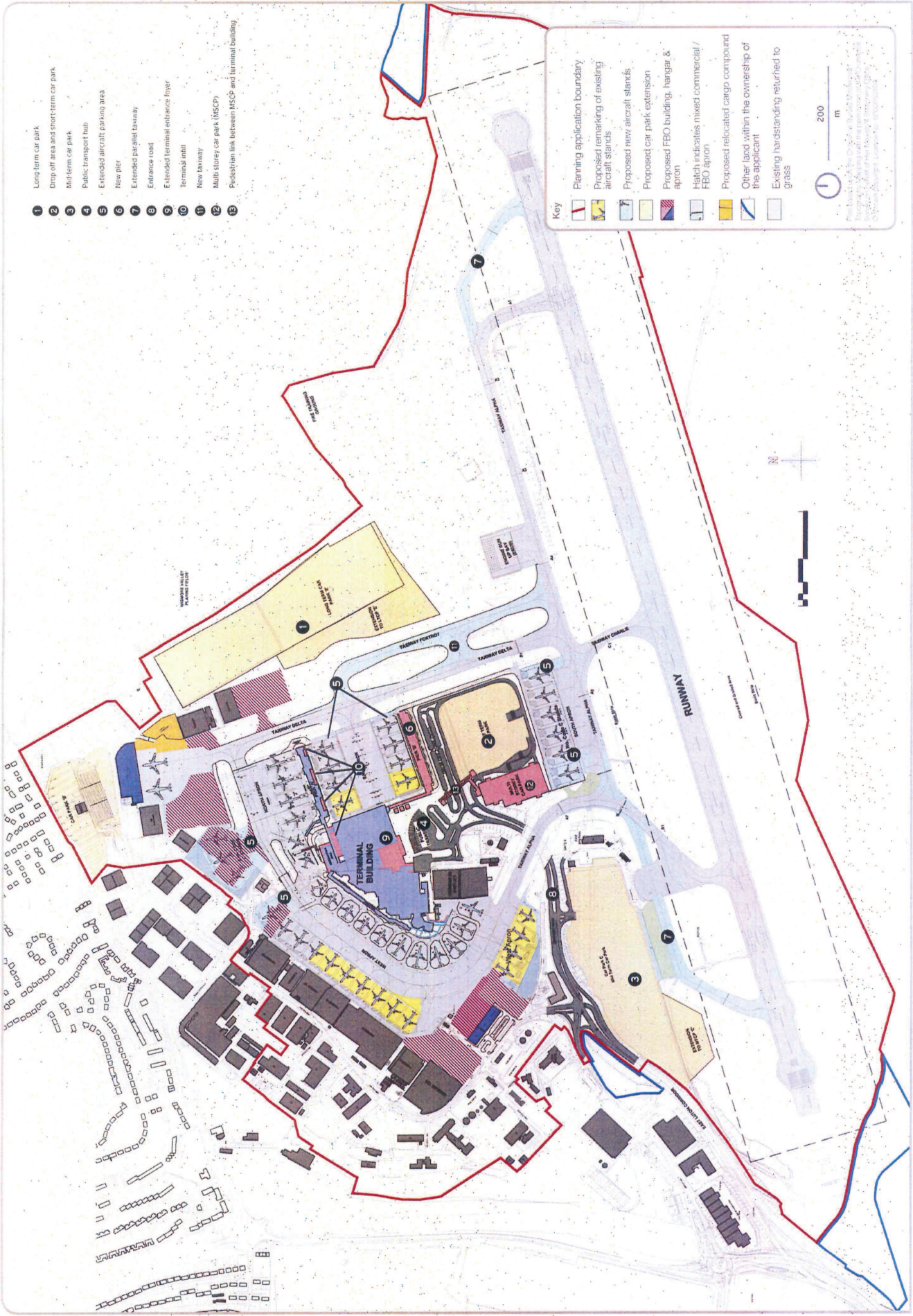


Figure 3.1 Proposed land use at the Airport

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Central Bedfordshire Council Response to:

London Luton Airport Limited Scoping Report (Future Luton:  
Optimisation) March 2012

And:

London Luton Airport Operations Limited EIA Scoping Report  
March 2012

Both London Luton Airport Limited (Owners of the Airport) and London Luton Airport Operations Limited (Current operator of the airport) have submitted separate Scoping Reports in advance of preparing and submitting their Environmental Impact Assessment report as part of their planning application for the proposed expansion of the airport.

Airport developments which result in an increase of more than 10million passengers per annum (mppa) should be submitted to the Infrastructure Planning Commission (IPC); In this case as both the LLAL proposal (an increase of around 8mppa) and the LLAOL proposal (an increase of around 4 to6 mppa) are lower that of the IPC trigger figure, they are submitted to Luton Borough Council who is the local planning authority.

As a general comment, I would like to draw attention to the following points:

- Aviation White Paper 2003 Report which, in the absence of other policy, represents current Government Policy explicitly requires a full-length runway for further development of the London Luton Airport. This appears to be contrary to the current expansion proposals.
- Comparing aircraft noise in 2025 with the proposed development and that without the development, may not be the best indicator of the 'worst case scenario' The pattern of increase number of flights, and aircraft improvement may produce one or more years when the increase in aircraft noise may be worse that of 2025. This needs to be carefully and clearly established
- The increase or reduction in the number of night flights, as opposed to the proportion needs to be clearly determined.

### **LLAL and LLAOL EIA Scoping Reports**

Before I make comments on specific topics within each of the two scoping reports I would like to highlight the following issues which are of particular concern to the residents and businesses of Central Bedfordshire:

**a) Aircraft noise disturbance**

- Strategic Noise Maps, Noise Contours and other relevant technical data are extremely useful; However, what is important is how, and to what extent, the noise disturbance affects a specific community.
- We are mindful of the Government's aim to limit and where possible reduce the number of people in the UK significantly affected by aircraft noise. However DEFRA Guidance recognises that there will be occasions where this policy may conflict with the measures to protect quiet areas. The region of Central Bedfordshire affected by the activities of London Luton Airport is largely rural with low background noise and therefore relatively tranquil. Any additional noise will be more noticeable and disruptive than that within an area with higher background noise. This needs to be taken into account when resources are allocated to mitigate the effect of disturbance from aircraft noise.
- Most flights in and out of the airport have some effect on one or more parts of the region. However, noise from landing aircraft during airport's easterly operations is the greatest source of concern, particularly for people living under the flight path in south west central Bedfordshire. Hence we consider that introduction of aircraft noise monitoring systems within these communities could help keep the effect of noise from those aircrafts in check.
- In addition to the above, the part of Central Bedfordshire most affected by the operations of the airport lies almost entirely within the Chilterns Area of Outstanding Natural Beauty and the aircraft noise problem within the Chiltern AONB extends beyond the boundary of Central Bedfordshire. As such the Council expects the airport to explicitly address the problem of noise created by aircrafts which overfly the Chiltern AONB

**b) Surface access, traffic and transport**

- Impact of additional trips to and from the airport on the surrounding road network, public transport, Luton Parkway stations and walking and cycling routes has to be very carefully considered to ensure that solutions are available and these are fully in place at the time when they are needed.
- Central Bedfordshire and Luton Transport Model (2012) is a useful tool to assess the impact of the airport traffic on local and the wider

road network. Central Bedfordshire Council is happy to discuss arrangements for the use of this Model.

- Increased passenger numbers will result in demand for additional car parking spaces; this together with the limited space within the airport boundary could result in demand for additional off-site carparking within Central Bedfordshire. The EIA needs to address this potential

## Specific points

### 1- London Luton Airport Limited (LLAL) Scoping Report

#### a) Aircraft Noise and Transport

- No Transport Assessment provided with this scoping report
- Paragraph 5.145 makes clear that the  $L_{\text{night}}$  index is not sufficient to highlight noise disturbance in an individual location or at specific time; whereas the aggregate of aircraft noise at night which is the  $L_{\text{night}}$  index may be within the acceptable threshold noise disturbance, specific aircraft noise in a location such as a village below the flight path could cause severe cause for concern. For this reason, it is necessary to identify the effect of the aircraft noise at these specific locations and where necessary to introduce mitigation measures.

#### b) Landscape and Biodiversity

##### **Application - 12/00333 – Future Luton Optimisation - Ove Arup**

This is a detailed Scoping Report - and it is helpful to have included the photographs and maps. ( these are particularly useful for the biodiversity )

We do not agree that a landscape and visual assessment should be "scoped out " on the grounds that the development is contained within an existing site.

We recommend that there are targeted landscape studies which would pick up the changes in the skyline caused by the new multi-storey carpark and the resultant landscape impact. We are not given an idea of the scale of the building - so at this stage , without the design parameters, I cannot see how the impact on the surrounding landscape , which includes sensitive sites such as Luton Hoo, Someries Castle ( as well as residential areas ) can be assessed.

## 2- London Luton Airport Operations Limited (LLAOL) Scoping Report

### a) Aircraft Noise and Transport

- Paragraph 13.10 refers to the 'identification of noise sensitive receptors around the airport' and paragraph 13.15 states 'this (*noise contours*) will be supplemented with a consideration of effects at specific locations' We expect that the noise sensitive locations identified to include residential areas and schools under the flight path.

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### b) Landscape and biodiversity

#### Application -12/00334- LLA operations Ltd - Terence O'Rourke

Our understanding is that this application will not result in an increase in height of the built form, although the density of the massing might increase . Again, it is not proposed that a visual assessment is undertaken. This is more reasonable, but the EIA should still examine the change in skyline and also the night-time impact of the proposed changes

#### Landscape Enhancement -

Quality design is required to limit the impact on CBC countryside and communities.

Both LBC and CBC planning policies require development to contribute to the landscape quality of the site and it's setting. On site, this will be primarily through hard landscape design and the use of quality materials. Mitigation of new buildings , particularly the Multistorey Car park, requires innovative treatment eg with finishes and features to mitigate visual intrusion, such as a green roof to aid integration and water management. .

The redevelopment provides the opportunity to create a richer identity for the Airport - which should be seen as the gateway to the Chilterns. Vernacular materials such as chalk and flint create identity; chalk subsoil could be used to create new calcareous grassland .

The SBDC Landscape Character Assessment describes the adjacent landscape as being "*predominantly exposed with open, long distance views to undeveloped horizons .....which are interrupted by the terminal buildings "* It is acknowledged that the Airport reduces the sensitivity of the landscape , but the area is still considered to be *moderately sensitive to change*.

The strategy for the area emphasises the need to safeguard Someries castle and to conserve the views to and from Luton Hoo.

Development at the Airport should also fund landscape enhancement of roads and lanes in the wider landscape. Hedgerows with standard trees are characteristic , but many would benefit from management or re-establishment where cleared. Such treatment would help to absorb the impact of increased road traffic in the area.



**Requirement for increased car parking within CBC area**

We are concerned that the increased passenger numbers will result in demand for additional off-site carparking, which can result in storage which detract from the local environment. The EIA needs to address this potential.

**Loss of Tranquillity -**

This issue is of the highest importance as it affects the health, wellbeing and amenity of residents and the countryside generally. Tranquillity is recognised as a valued landscape attribute and is particularly relevant to communities and also protected landscapes such as the Chiltern's AONB and the Registered Parkland of Luton Hoo , which also falls within the former AGLV.

The EIA will need to explore changes in tranquillity.

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.....



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11<sup>th</sup> October 2012

Please reply to:  
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**Central Bedfordshire Council response to London Luton airport Consultation**

**London Luton Airport revised Masterplan**

Central Bedfordshire Council supports the proposed improvements outlined in the London Luton Airport's revised masterplan. In particular, we welcome the predicted employment and business opportunities as well as improvements to airport access routes, public transport enhancement and improved opportunity to travel. However, there are concerns which need to be resolved during the planning application stage.

These concerns are related to;

- a) The impact of additional traffic on the surrounding road network

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- b) Negative effect of increased aircraft movement on wellbeing of the residents particularly those who live directly under the flight path.
- c) Airports have a far greater impact on surrounding area than any other major infrastructure. For this reason, affected local authorities particularly those close to the airport should be given real opportunities to influence the decisions made and try to ensure that interest of their residents and businesses are taken into consideration. (Statutory Consultant role is not sufficient in these cases)
- d) During the term of the Airport operators' contract, it may be possible to increase the passenger through put beyond the 18 mppa without having to make any substantive changes to the structure of the airport. For this reason it may be sensible to include an 18 mppa ceiling as part of the planning conditions

As a general comment, we would like to draw your attention to the following points:

- Comparing aircraft noise in 2025 with the proposed development and that without the development, may not be the best indicator of the 'worst case scenario' The pattern of increase number of flights, and aircraft improvement may produce one or more years when the increase in aircraft noise may be worse than that of 2025. This needs to be carefully and clearly established
- The increase or reduction in the number of night flights, as opposed to the proportion needs to be clearly determined.

Matters of particular concern to the residents and businesses of Central Bedfordshire:

**a) Aircraft noise disturbance**

- Strategic Noise Maps, Noise Contours and other relevant technical data are useful; however, what is important is how, and to what extent, the noise disturbance affects a specific community.
- We are mindful of the Government's aim to limit and where possible reduce the number of people in the UK significantly affected by aircraft noise. However DEFRA Guidance recognises that there will be occasions where this policy may conflict with the

measures to protect quiet areas. The region of Central Bedfordshire affected by the activities of London Luton Airport is largely rural with low background noise and therefore relatively tranquil. Any additional noise will be more noticeable and disruptive than that within an area with higher background noise. This needs to be taken into account when resources are allocated to mitigate the effect of disturbance from aircraft noise.

- Most flights in and out of the airport have some effect on one or more parts of the region. However, noise from landing aircraft during airport's easterly operations is the greatest source of concern, particularly for people living under the flight path in south west central Bedfordshire. Hence we consider that introduction of aircraft noise monitoring systems within these communities could help keep the effect of noise from those aircrafts in check.
- In addition to the above, the part of Central Bedfordshire most affected by the operations of the airport lies almost entirely within the Chilterns Area of Outstanding Natural Beauty and the aircraft noise problem within the Chiltern AONB extends beyond the boundary of Central Bedfordshire. As such the Council expects the airport to explicitly address the problem of noise created by aircrafts which overfly the Chiltern AONB

#### **b) Surface access, traffic and transport**

- Impact of additional trips to and from the airport on the surrounding road network, public transport, Luton Parkway stations and walking and cycling routes has to be very carefully considered to ensure that solutions are available and these are fully in place at the time when they are needed. Recently constructed Luton Dunstable Busway could make a major contribution to the improvement of access to the airport and the employment and business areas in the vicinity of the airport. This needs to be carefully assessed and plans put in place to take full advantage of this resource.
- Central Bedfordshire and Luton Transport Model (2012) is a useful tool to assess the impact of the airport traffic on local and the wider road network. Central Bedfordshire Council is happy to discuss arrangements for the use of this Model.
- Increased passenger numbers will result in demand for additional car parking spaces; this together with the limited space within the airport boundary could result in demand for additional off-site car parking within Central Bedfordshire. The likelihood and impact of off-site parking facilities needs to be carefully considered

**c) Landscape and biodiversity**

The Council welcomes the landscape and visual survey that will be taken to help inform the design; the choice of materials for the car park will also be crucial to help mitigate it's impact in the views from the surrounding countryside, which includes high quality sites important for recreation and cultural heritage. Sympathetic on site treatments e.g. the use of sustainable drainage and appropriate restoration of grassland margins will also help to safeguard wildlife habitat.

Yours faithfully

Manouchehr Nahvi



Consultation by Luton Borough Council on Planning Application for expansion of London Luton airport

## Comments on Transport Assessment, Surface Access Strategy, Travel Plan, Noise Action Plan and Sustainability issues

Prepared by: Manouchehr Nahvi, Council's Supporting Officer at the London Luton Airport Consultative Committee

### Surface Access Strategy

The published Airport Surface Access Strategy sets out to include clearly defined transport objectives, simple performance targets, tangible transport measures and clear areas of responsibility.

This Council supports the above aims and the need for the integrated package of transport measures listed as required to deliver the Airport's Surface Access Strategy provided that the programme of surface access infrastructure development and the associated soft measures are effectively tied to the stages of any agreed expansion plan and the following issues of concern to this council are properly dealt with.

Central Bedfordshire Council is pump-priming investment into promoting the new guided busway service that will serve the airport, as well as actively promoting sustainable travel in areas which include many of the airport's staff and passengers. It would assist the airport travel plan and The Airport Surface Access Strategy to meet their targets were the airport to invest in measures that make public transport access to the airport more attractive for staff and visitors, including funding to increase busway service frequencies to the airport, promotional measures, incentives and other measures deemed fit.

The Surface Strategy document states that the results of bus and coach passenger forecast indicate that despite the assumed increase in passenger numbers the majority of the bus and coach services would still maintain the ability to cater for predicted demands based on existing services. This way of gauging the demand is only valid if all future Bus and coach passenger want to travel where these services cover. Besides that, it ignores the very likely possibility that the passenger demand limitation is a factor of lack of available services to places where people may want to travel.

We expect that the LLAOL will :

- Work with local bus operators and local highway authorities, and if necessary consider making financial contributions to develop an extended network of bus services to link the proposed growth areas in

and around Luton, Dunstable and Houghton Regis with the Airport and surrounding employment areas

- Deliver, as soon as judged necessary by the Local Planning and Highway Authorities, a tracked transit system between the Parkway Railway Station and the Airport and;
- To introduce a *Quality Score* target to increase the quality of the bus or coach services serving the airport

The Council can also support the objectives of widening travel choice, integration and sustainable accessibility, but suggest that airport expansion could offer more scope for developing innovative schemes particularly in the area of influencing modal shift. The airport must take advantage of these opportunities to help develop a sustainable surface access strategy.

We expect that the LLAOL will fully commit to:

- Delivering their contributions to the Strategy when they are needed, and that support will be provided to other authorities in delivery of their schemes.
- Work with Network Rail and the DfT Rail to improve interchange facilities.
- LLAOL aims to maximise the accommodation of projected parking requirements on site. It should also use innovative and best practice parking management methods to encourage more sustainable means of travel.

The Council welcomes the acknowledgement apparent in LLAOL's Surface Access Strategy that Luton Airport is also an inter-modal transport hub and accepts its share of responsibility for the Airport problems which are not their direct responsibility, but are nevertheless exacerbated by the Airport functions. Wherever necessary it will be essential for LLAOL to make financial contributions to help progress the schemes that improve surface access.

### **Transport Assessment**

Transport modelling work undertaken so far to test the impact of the airport expansion only concentrates on roads in and around the airport and Luton. The only place in Central Bedfordshire where the impact of the expansion is considered is along the route of the A505. The information provided as part of the assessment is inadequate as the impact of the traffic resulting from airport activities is more than likely to spread wider in Central Bedfordshire area than just along the A505. In turn there is also likely to be a strategic impact of airport related traffic on non-airport journeys across Central Bedfordshire, which is likely to influence mode (road, rail and bus) and route choice.



It is therefore essential that the recently updated Central Bedfordshire and Luton Transport Model is used to fully test the combined effect of the background traffic, airport generated traffic, and traffic related to the growth area on the local and wider road network of Central Bedfordshire and the surrounding area.

### **Framework Travel Plan (FTP)**

There is a lack of clarity on who, and how the FTP will be managed and monitored. The commitment to a Travel Plan Co-ordinator (TPC) and funding is welcomed. However more definition is required on responsibilities for engaging partner employers on the site and a contingency plan should these not be met. A clearer view of the expectations of other partners in terms of the type of Travel Plan they are expected to produce, how this fits within the LLAOL FTP, who will monitor against overall targets and the decision making process for funding and its allocation.

### **Aircraft noise**

#### General comments

- We are mindful of the Government's aim to limit and where possible reduce the number of people in the UK significantly affected by aircraft noise. However DEFRA Guidance recognises that there will be occasions where this policy may conflict with the measures to protect quiet areas. The region of Central Bedfordshire affected by the activities of London Luton Airport is largely rural with low background noise and therefore relatively tranquil. Any additional noise will be more noticeable and disruptive than that within an area with higher background noise. This needs to be taken into account when resources are allocated to mitigate the effect of disturbance from aircraft noise.
- Most flights in and out of the airport have some effect on one or more parts of the region. However, noise from landing aircraft during airport's easterly operations is the greatest source of concern, particularly for people living under the flight path in south west central Bedfordshire.
- In addition to the above, the part of Central Bedfordshire most affected by the operations of the airport lies almost entirely within the Chilterns Area of Outstanding Natural Beauty and the aircraft noise problem within the Chiltern AONB extends beyond the boundary of Central Bedfordshire. As such the Council expects the airport to explicitly address the problem of noise created by aircrafts which overfly the Chiltern

#### Specific Points

- This Council Supports the introduction of the Quota Count system (QC) and the resulting ban on operations by aircrafts with a QC of more than 2<sup>1</sup>. However, the maximum limit of 10200 aircraft movements per year reported in paragraph 4.28 of the sustainability statement appears to be too high.
- We appreciate the prompt action taken to monitor aircraft noise in Eaton Bray, Studham and Kensworth following our request that aircraft noise in CBC villages under the airport flight path should be regularly monitored and seek assurance that a firm programme is in place to monitor the rest of the parishes under the flight path. In particular village of Caddnton and Slip End. We also seek assurance that this aircraft noise measurement is repeated at relevant intervals to monitor the impact of the changes in the number of aircraft movements over these villages.

## **POSITION TO DATE**

This Council has previously supported a modest expansion of the airport to maintain its 'niche role', indicating a preference for concentrating additional strategic capacity elsewhere in the South East. The Council has been mindful of the potential economic benefits to the sub-region but has consistently raised concerns about the consequential high environmental impact of the more significant expansion plans.

This is reflected in the adopted South Bedfordshire Local Plan which remains part of the statutory plan and states that support for the airport is qualified by its concern that the environmental impact is monitored in consultation with local communities below the flight paths, and minimised so far as possible, and that any future expansion is kept within acceptable environmental limits.

## **Initial concerns related to the current application**

There is insufficient information primarily on the effects of the proposal at the local level within Central Bedfordshire. Given the sensitivity of a number of issues, until a more detailed assessment is undertaken, the Council is unable to ascertain key impacts and possible acceptable mitigations. In particular, key issues that must be addressed further are:

- ❖ There should be appropriate and convenient public transport access to the airport from relevant areas within Central Bedfordshire and in particular Dunstable and Houghton Regis,
- ❖ The reported Transport modelling work appears to be inadequate and that the recently updated Central Bedfordshire and Luton Transport Model should be used to fully test the combined effect of the

background traffic, airport generated traffic, and traffic related to the growth area on the local and the wider road network of Central Bedfordshire and the surrounding area,

- ❖ The programme of surface access infrastructure development and the associated soft measures should be effectively tied to the stages of any agreed expansion plan,
- ❖ A means should be devised to limit passenger numbers, particularly having regard to the effectiveness of environmental safeguards, and there should be a maximum limit on the number of aircraft movements,
- ❖ Aircraft noise and air pollution aspects of the development need to be considered carefully to avoid further harm to residents of Central Bedfordshire, especially in the Parishes under the easterly arrival route. These are Slip End, Caddington, Kensworth, Studham and Whipsnade and to a lesser extent Eaton Bray. Slip End, Caddington and Hyde are also affected by some departure routes.

#### **Recommendation**

Accordingly it is recommended that this council should lodge a holding objection in response to this application because insufficient information is provided to satisfy us that there would be no adverse effect resulting from the proposed expansion of the airport. Given the sensitivity of a number of issues, until more detailed assessment is undertaken, the Council is unable to fully ascertain key impacts and possible acceptable mitigations.

\*1 Noise classification of the aircrafts with QC2 is 93-95.5 EPNdB (Effective Perceived Noise in decibels)

