

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

**This meeting
will be filmed.***



**Central
Bedfordshire**

please ask for Helen Bell
direct line 0300 300 4040
date 29 September 2016

NOTICE OF MEETING

DEVELOPMENT MANAGEMENT COMMITTEE

Date & Time

Wednesday, 12 October 2016 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 K C Matthews (Chairman), R D Berry (Vice-Chairman), M C Blair, Mrs S Clark, K M Collins, S Dixon, F Firth, E Ghent, C C Gomm, K Janes, T Nicols, T Swain and J N Young

[Named Substitutes:

D Bowater, A D Brown, Mrs C F Chapman MBE, I Dalgarno, R W Johnstone, Ms C Maudlin and I Shingler]

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.

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AGENDA

Welcome

1. **Apologies for Absence**

Apologies for absence and notification of substitute members

2. **Chairman's Announcements**

If any

3. **Minutes**

To approve as a correct record, the Minutes of the meeting of the Development Management Committee held on 14 September 2016

(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

Item	Subject	Page Nos.
5	Planning Enforcement Cases where formal Action Has Been Taken	7 - 14

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

Planning and Related Applications

To consider the planning applications contained in the following schedules:

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

Item	Subject	Page Nos.
6	Planning Application No. CB/1/03188/FULL	15 - 54

Address: Ashton Middle School, High Street North,
Dunstable, LU6 1NH

Conversion and refurbishment of Grade II listed former school building and associated curtilage listed buildings to form apartments comprising: Main School - 7No.1-bedroom and 12No. 2-bedroom apartments; Science Block - 4No.2-bedroom and 2No.1-Bedroom; Gymnasium - 5No. dwellings. Associated refuse, cycle storage, open space and landscaping proposals. Demolition of other modern curtilage listed buildings and extensions. Erection of new dwellings and apartments including: 3No. 4-bed houses fronting Ashton Road; 17No 3-bedroom houses; 23No. 1-Bedroom and 40No. 2-bedroom apartments. Vehicular and pedestrian access via High Street North and further pedestrian access via Ashton Road and Dog Kennel Path

Applicant: Trustees of the Ashton Foundation

7 **Planning Application No. CB/16/03189/LB**

55 - 68

Address: Ashton Middle School, High Street North,
Dunstable LU6 1NH

Full Planning and Listed Building Applications: Conversion and refurbishment of Grade II listed former school building and associated curtilage listed buildings to form apartments comprising: Main School - 7No.1-bedroom and 12No. 2-bedroom apartments; Science Block - 4No.2-bedroom and 2No.1-Bedroom; Gymnasium - 5No. dwellings. Associated refuse, cycle storage, open space and landscaping proposals. Demolition of other modern curtilage listed buildings and extensions. Erection of new dwellings and apartments including: 3No. 4-bed houses fronting Ashton Road; 17No 3-bedroom houses; 23No. 1-Bedroom and 40No. 2-bedroom apartments. Vehicular and pedestrian access via High Street North and further pedestrian access via Ashton Road and Dog Kennel Path

Applicant: The Weston Group Business Centre

8 **Planning Application No. CB/16/03232/FULL** 69 - 82

Address: 54 Mill Lane, Greenfield, Bedford MK45 5DF

Subdivision of the existing plot to erect a detached dwelling and associated curtilage.

Applicant: Mr N Brown

9 **Planning Application No. CB/16/02172/FULL** 83 - 98

Address: Lynmore House, Sharpenhoe Road, Sharpenhoe, Bedford, MK45 4SU

Formation of in-out drive with hardstand and landscaping in front of Lynmore House, including diversion of existing public footpath.

Applicant: Mr Dawkins

10 **Update on footpath No.28** 99 - 126

To consider legal advice relating to a Committee resolution made by Development Management Committee in 2013, on Footpath No.28, in light of the outcome of two public enquiries.

11 **Site Inspection Appointment(s)**

Under the provisions of the Members Planning Code of Good Practice, Members are requested to note that the next Development Management Committee will be held on 9 November 2016 and the Site Inspections will be undertaken on 7 November 2016.

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Meeting: Development Management Committee
Date: 12th October 2016
Subject: Planning Enforcement cases where formal action has been taken
Report of: Director of Regeneration and Business
Summary: The report provides a monthly update of planning enforcement cases where formal action has been taken.

Advising Officer: Director of Regeneration and Business
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**

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. 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 details of Minerals and Waste cases please contact Roy Romans on 0300 300 6039.

Appendices:

Appendix A – Planning Enforcement Formal Action Spreadsheet

Planning Enforcement formal action (DM Committee 12th October 2016)

	ENFORCEMENT CASE NO.	LOCATION	BREACH	DATE ISSUED	EFFECTIVE DATE	COMPLIANCE DATE	APPEAL	NEW COMPLIANCE DATE	RESULT	NOTES/FURTHER ACTION
1	CB/ENC/11/0402	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			Not complied	Presentation to PFMT - further work required before a decision on options to tackle all issues.
2	CB/ENC/11/0499	Land at Erin House, 171 Dunstable Road, Caddington, Luton. LU1 4AN	Enforcement Notice - unauthorised erection of a double garage.	03-Sep-13	01-Oct-13	01-Dec-13	Appeal dismissed March 2014 .Magistrates Prosecution successful March 2016. Appeal to Crown Court	27-Sep-14	Not complied	Garage remains. Appeal against the prosecution offence considered at Luton Crown Court on 21 September 2016. Application to retain smaller lower garage refused on the grounds of inappropriate development in the Green Belt due to scale of other extensions to original dwelling approved.(CB/01453/FULL).
3	CB/ENC/12/0199	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				Presentation to PFMT - further work required before a decision on options to tackle all issues.
4	CB/ENC/12/0508	Land at Site C, The Stables, Stanbridge Road, Great Billington, Leighton Buzzard, LU7 9JH	Enforcement Notice- Unauthorised creation of new access and erection of gates.	17-Nov-14	15-Dec-14	15-Mar-15 & 15-June-15			Not complied	Legal advice being sought as to next steps.
5	CB/ENC/12/0521	Random, Private Road, Barton Le Clay, MK45 4LE	Enforcement Notice 2 - Without planning permission the extension and alteration of the existing dwelling on the land.	24-Aug-15	24-Sep-15	24-Mar-16 & 24-June-16	Appeal dismissed 07/03/16	07-Mar-17		Recent application awaiting S.106 agreement. Enforcement Notice Compliance period ends 7 March 2017.
6	CB/ENC/12/0530	19 Ickwell Road, Northill, Biggleswade, SG18 9AB	Listed Building Enforcement Notice - Unauthorised works to a listed building.	07-Jul-15	07-Aug-15	07-Sep-15	Appeal part allowed, but Enforcement Notice upheld with revision	Jun-16		Appeal decision made on 19th May 2016 & allowed with regards to the retention of the plastic rainwater goods. Enforcement notice upheld with variations regarding the remaining unauthorised works. Further visit is being arranged with the owners to confirm full compliance.
7	CB/ENC/12/0530	19 Ickwell Road, Northill, Biggleswade, SG18 9AB	Breach of Condition Notice - Condition 6 attached to Planning permission MB/06/00408/LB - external finishes	07-Jul-15	07-Jul-15	07-Aug-15				Seeking confirmation of full compliance with breach of condition notice.

Planning Enforcement formal action (DM Committee 12th October 2016)

	ENFORCEMENT CASE NO.	LOCATION	BREACH	DATE ISSUED	EFFECTIVE DATE	COMPLIANCE DATE	APPEAL	NEW COMPLIANCE DATE	RESULT	NOTES/FURTHER ACTION
8	CB/ENC/12/0599	Millside Nursery, Harling Road, Eaton Bray, Dunstable, LU6 1QZ	Enforcement Notice - change of use to a mixed use for horticulture and a for a ground works contractors business	01-Sep-14	02-Oct-14	02-Jan-15				Planning permission granted 01/03/16 for a replacement horticultural building (App CB/15/00727/FULL), with condition requiring removal of all skips & containers prior to the building being brought into use.
9	CB/ENC/12/0633	Land at Plot 2, Greenacres, Gypsy Lane, Little Billington, Leighton Buzzard. LU7 9BP	Enforcement Notice - construction of timber building and the laying of hard standing.	17-Jan-13	14-Feb-13	14-Mar-13			Not complied	Presentation to PFMT - further work required before a decision on options to tackle all issues.
10	CB/ENC/13/0011	8 High Street, Biggleswade, SG18 0JL	Unauthorised advertisement							Further evidence to Legal 11/7/16 to consider prosecution action.
11	CB/ENC/13/0083	Land Adjacent to, Magpie Farm, Hill Lane, Upper Caldecote	Breach of Condition Notice -Condition 1 Boundary wall, Condition 2 Septic tank, outflows and soakaways	30-Jan-15	30-Jan-15	01-Mar-15		08-Dec-15		Further visit to be made to ascertain if works to comply with the condition has been completed.
12	CB/ENC/13/0336	The Stables, Dunstable Road, Toddington, Dunstable, LU5 6DX	2 Enforcement Notices - 1. Change of use from agriculture to a mixed use of agriculture, residential and retail sales and 2. building works for commercial purposes	11-Jul-14	15-Aug-14	15-Oct-14	Planning appeal received 07/06	Aug-15		Residential use remains. Application for Lawful use for use of dwellinghouse for residential purposes refused in March 2016(CB/15/04424) Appeal received. Hearing to be held on 20th December 2016. Prosecution action deferred pending outcome of the appeal.
13	CB/ENC/13/0452	Long Yard, Dunstable Road, Studham, Dunstable, LU6 2QL	3 X Enforcement Notices - 1 -Erection of timber building 2 - Material change of use from agriculture to storage of motor vehicles 3 - Material change of use of the land from agriculture to a mixed use for agriculture and the storage of motor vehicles, a touring caravan and building and hardore materials. 1X Enforcement Notice - Material change of use from agriculture to storage of motor vehicles and building and waste materials.	12-Aug-15 12-Aug-15 12-Aug-15 04-Feb-16	12-Sep-15 12-Sep-15 12-Sep-15 07-Mar-16	12-Nov-15 12-Nov-15 12-Nov-15 07-May 16 07-June-16			Not complied with Complied with	Enforcement Notice 1 has not been complied with. No further action needed Enforcement Notice 3 has been part complied with. Prosecution report prepared and with Legal for consideration.

Planning Enforcement formal action (DM Committee 12th October 2016)

	ENFORCEMENT CASE NO.	LOCATION	BREACH	DATE ISSUED	EFFECTIVE DATE	COMPLIANCE DATE	APPEAL	NEW COMPLIANCE DATE	RESULT	NOTES/FURTHER ACTION
14	CB/ENC/13/0607	Clements End Farm, Clements End Road, Studham, LU6 2NG	Enforcement Notice - Change of use from vehicle repairs to a mixed use for vehicle repairs and vehicle sales.	05-Jun-15	03-Jul-15	03-Sep-15	Appeal dismissed 15/03/16	15-Sep-16	Complied with	Recent site visit carried out confirmed that car sales use has ceased in accordance with enforcement notice. Case closed.
15	CB/ENC/14/0004	The Coach Yard, Streatley Road, Sundon, LU3 3PQ	Enforcement Notice - Change of use of the land for the siting of a mobile home for residential purposes	15-Dec-15	13-Jan-16	13-Mar-16	Appeal dismissed			Appeal dismissed. Compliance date 03/10/16. Mobile home has been removed and residential use ceased.
16	CB/ENC/14/0361	The Old Rose, 16 Blunham Road, Moggerhanger, MK44 3RA	Section 215 notice - untidy land and buildings	29-Apr-15	30-May-15	30-Aug-15				Sale of the property has been completed. New owners have commenced works to comply with the notice.
17	CB/ENC/14/0485	Clifton House and outbuildings, Church Street, Clifton, Shefford, SG17 5ET	Repairs Notice - Listed Building in state of disrepair	08-Jan-15	08-Jan-15	08-Mar-15		08/04/2015		Case escalated and we now have a detailed response from Assets for actioning this.
18	CB/ENC/15/0140	Springbank, Bottom Drive, Eaton Bray, LU6 2JS	Enforcement Notice - Unauthorised wall	09-Nov-15	08-Dec-15	08-Feb-16	Appeal decision 27/7/16 - Enforcement Notice upheld	27/09/2016		Appeal dismissed, Notice upheld, check compliance 27/9/16
19	CB/ENC/15/0182	8 The Avenue, Blunham, MK44 3NY	Enforcement Notice - Unauthorised fence	22-Mar-16	22-Apr-16	22-May-16			Not complied	As notice has not been complied with and no further planning application, file has been sent to legal department to consider prosecution action.
20	CB/ENC/15/0184	Land at New Road, Clifton	Breach of Condition Notice - Condition 13 attached to CB/13/01208/Full, Ground and tree protection. Breach of Condition Notice - Condition 14 Transport Assessment details Breach of Condition Notice - Condition 15 Works to Harbrook Lane	19-Oct-15 09-Feb-16 09-Feb-16	19-Oct-15 09-Feb-16 09-Feb-16	18-Nov-15 09-May-16 09-May-16			Complied with	Works have been carried out to Harbrook Lane but not yet completed, further visits to be made to verify full compliance.
21	CB/ENC/15/0258	The Coach and Horses, 95 The Green, Stotfold, SG5 4DG	Enforcement Notice - Unauthorised construction of play equipment	17-May-16	17-Jun-16	17-Jul-16	Appeal received 10/06/16			The outcome of the appeal is anticipated to be in December 2016 because the Inspector's site visit is planned for the end of November 2016.

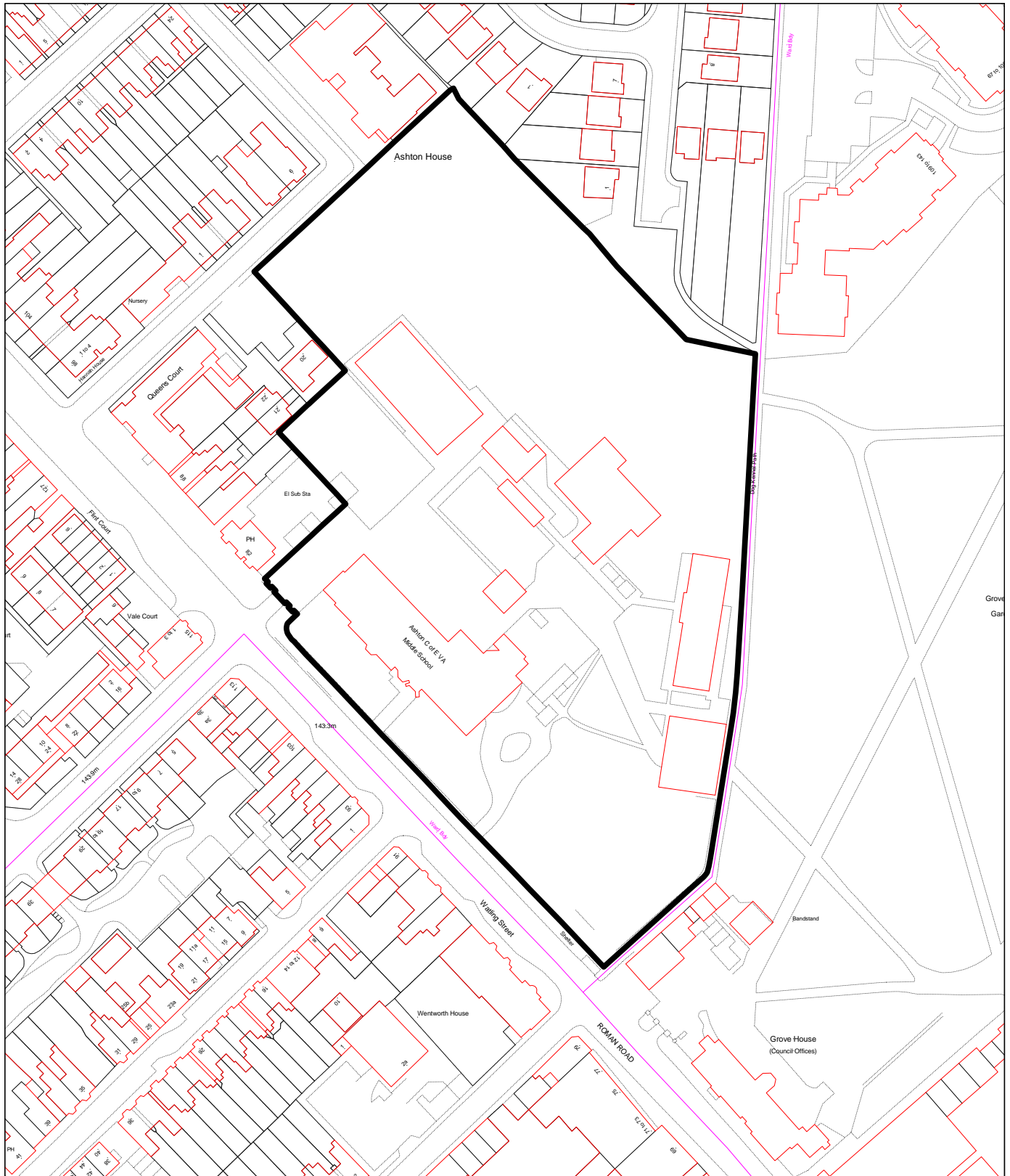
Planning Enforcement formal action (DM Committee 12th October 2016)

	ENFORCEMENT CASE NO.	LOCATION	BREACH	DATE ISSUED	EFFECTIVE DATE	COMPLIANCE DATE	APPEAL	NEW COMPLIANCE DATE	RESULT	NOTES/FURTHER ACTION
22	CB/ENC/15/0260	Gravenhurst Lane/A6, Silsoe	Section 215 notice - untidy land and buildings	06-May-16	08-Jun-16	08-Jul-16				Notice requirements not complied with. Legal dispute over land ownership. Site inspection arranged for early October 2016 to check condition of the land and the works carried out to the barn.
23	CB/ENC/15/0423	Land at, Astwick Road, Stotfold	Injunction served 22nd September 2015, continuation injunction served 5th October 2015 for unauthorised development for Gypsy and Traveller site. Enforcement Notice served 11/12/15	11-Dec-15	11-Jan-15	11-Jul-16 11-Oct-16	Appeal dismissed			Continuation of Injunction granted 5/10/15 to prevent further unlawful development. Planning application refused. Appeal decision - Enforcement Notice varied, enforcement appeal and planning appeal dismissed. Compliance with Enforcement Notice by 2/3/17 and 2/6/17.
24	CB/ENC/15/0530	47 Hitchin Road, Stotfold, SG5 4HP	Section 215 Notice - untidy land	31-Aug-16	30-Sep-16	30-Oct-16				Check compliance 30/10/16
25	CB/ENC/15/0542	Land at Honeywicke Cottage, Honeywick Lane, Eaton Bray, Dunstable, LU6 2BJ	Enforcement Notice - Material change of use from agriculture to use for Class B8 storage as a scaffolding contractors yard and the laying of hardstanding.	10-Feb-16	10-Mar-16	10-Sep-16 10-Oct-16		19-Jan-17	Appeal dismissed	Further application to retain development and use refused but an appeal has been lodged. Compliance with the Notice is due by 19/01/17.
26	CB/ENC/15/0585	10 Town Meadow, Shefford, SG17 5EF	Section 215 notice - untidy land	16-Jun-16	16-Jul-16	16-Aug-16				Further site meeting to take place in early October to ensure full compliance.
27	CB/ENC/16/0001	Rear of, 2 Wrestlingworth Road, Potton, SG19 2DP	Enforcement Notice - Material change of use of the land from agricultural use to a use for the storage of materials, equipment and machinery associated with the unauthorised demolition business.	01-Jun-16	01-Jul-16	01-Aug-16	Appeal received 10/06/16			Appeal statements submitted. Await outcome of appeal.
28	CB/ENC/16/0025	Bottom Wood, Park Road, Moggerhanger, MK44 3RN	Enforcement Notice - Material change of use of land from agriculture to an outdoor activity centre and siting of a marquee and stuctures.	18-Feb-16	18-Mar-16	18-Apr-16	Appeal received 18/03/16			Appeal hearing on 4/10/16. Await outcome of appeal.

Planning Enforcement formal action (DM Committee 12th October 2016)

	ENFORCEMENT CASE NO.	LOCATION	BREACH	DATE ISSUED	EFFECTIVE DATE	COMPLIANCE DATE	APPEAL	NEW COMPLIANCE DATE	RESULT	NOTES/FURTHER ACTION
29	CB/ENC/16/0077	Land to the South of, High Road, Shillington	Enforcement Notice - Material change of use from agriculture to the parking and storage of vehicles and trailers	24-May-16	24-Jun-16	24-Jul-16				Further site visit to be made to ensure continued compliance.
30	CB/ENC/16/0084	Unit 22 Pulloxhill Business Park, Greenfield Road, MK45 5EU	Enforcement Notice 1 (r/o Unit 14)- Material change of use of the land from amenity land to use for the storage, maintenance and cleaning of plant/machinery	05-Apr-16	06-May-16	06-June-16 06-July-16	Appeal received 06/05/16			Planning Inspector site visit has occurred and awaiting decision.
			Enforcement Notice 2 (r/o Unit 22)- Material change of use of the land from amenity land to use for the storage, maintenance and cleaning of plant/machinery	05-Apr-16	06-May-16	06-Jun-16				
31	CB/ENC/16/0109	Land opposite, The Elms and Upper Wood End Farm, Wood End, Marston Moretaine	Enforcement Notice - The unauthorised material change of use of the Land from agriculture to a mixed use for agriculture and the stationing siting and storage of a metal container, two water tanks, a wooden shelter and a wooden frame (being items and structures not associated with the lawful agricultural use of the Land).	04-Aug-16	04-Sep-16	04-Oct-16				Some items have been removed from the site and the remaining items including the container should be removed in line with the requirements of the enforcement notice.
32	CB/ENC/16/0179	Land at 81 The Rowlands, Biggleswade, SG18 8NZ	S215 Notice - Untidy land	02-Aug-16	02-Sep-16	02-Oct016				Check compliance 02/10/16
33	CB/ENC/16/0214	Land at 27 Gardeners Close, Maulden, Bedford, MK45 2DY	Enforcement Notice - Unauthorised erection of an outbuilding, a raised platform and supporting frame.	22-Aug-16	22-Sep-16	22-Oct-16				Check compliance 22/10/16
34	CB/ENC/16/0239	Four Winds Garage, West End, Haynes, MK45 3QT	Enforcement Notice - The unauthorised erection of a timber structure on the land located around the A6 Cafe units.	05-Aug-16	05-Sep-16	05-Oct-16	Appeal received 11/08/16			Await outcome of appeal.
35	CB/ENC/16/0254	Tree Tops, Heath Lane, Aspley Heath, MK17 8TN	Unauthorised felling of trees in a Conservation Area							Planting plan awaited from for Tree Officer to consider.
36	CB/ENC/16/0392	Waddingtons, Watling Street, Hockliffe, LU7 9LP	Temporary Stop Notice -Unauthorised works to develop the site, not in accordance with Planning Permission CB/15/04613/Full	26-Aug-16	26-Aug-16					No unauthorised work since TSN served. Awaiting revised planning application.

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	<p>Date: 27:September:2016</p>	
	<p>Grid Ref: 501622; 222258</p>	
<p>Scale: 1:1500</p>	<p>Ashton Middle School, High Street North, Dunstable, LU6 1NH</p>	

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Item No. 06

APPLICATION NUMBER	CB/16/03188/FULL
LOCATION	Ashton Middle School, High Street North, Dunstable, LU6 1NH
PROPOSAL	Conversion and refurbishment of Grade II listed former school building and associated curtilage listed buildings to form apartments comprising: Main School - 7No.1-bedroom and 12No. 2-bedroom apartments; Science Block - 4No.2-bedroom and 2No.1-Bedroom; Gymnasium - 5No. dwellings. Associated refuse, cycle storage, open space and landscaping proposals. Demolition of other modern curtilage listed buildings and extensions. Erection of new dwellings and apartments including: 3No. 4-bed houses fronting Ashton Road; 17No 3-bedroom houses; 23No. 1-Bedroom and 40No. 2-bedroom apartments. Vehicular and pedestrian access via High Street North and further pedestrian access via Ashton Road and Dog Kennel Path
PARISH	Dunstable
WARD	Dunstable Northfields
WARD COUNCILLORS	Cllrs Freeman & Warren
CASE OFFICER	Debbie Willcox
DATE REGISTERED	18 July 2016
EXPIRY DATE	17 October 2016
APPLICANT	Trustees of the Ashton Foundation
AGENT	
REASON FOR COMMITTEE TO DETERMINE	This is a Major Application which has received objections from the Town Council
RECOMMENDED DECISION	Full Application - Recommended for Approval

Summary of Recommendation

The proposal would secure the optimum viable use of a vacant Grade II Listed Building and would have both positive and less than substantial negative impacts on its character. The proposal would deliver needed housing and regeneration benefits to a vacant brownfield site in the centre of Dunstable. The proposal would have a positive impact on the character and appearance of the area and would not have unacceptable impacts on the amenity of neighbouring occupiers or the surrounding highway network. The benefits of the scheme would clearly outweigh the negatives and the scheme represents sustainable development, broadly in accordance with the National Planning Policy Framework and the South Bedfordshire Local Plan Review.

Site Location:

The application site comprises the former Ashton Middle School site, located on the north east side of High Street North in Dunstable. The site lies just outside the designated Dunstable Town Centre Boundary, and the south eastern section of the site is within the designated Conservation Area. The main school building is Grade II Listed and the other buildings on the site are considered to be curtilage listed.

The site is bounded to the south east by Dog Kennel Walk, a designated right of way which runs up to Dog Kennel Down; beyond the footpath is Grove Park. To the north east are dwellings in Printers Way and Crabtree Way and to the north west is Ashton Road and the Wheatsheaf public house on High Street North.

The site has a long frontage along High Street North which is dominated by the Grade II Listed Building. There are two early 20th century buildings on the eastern side of the site and a handful of post war buildings behind the main school building. The rear of the site comprises playing fields and landscaped areas. There are two vehicular accesses and a separate pedestrian access from High Street North. There are several mature trees along the boundaries of the site and in the eastern corner of the site.

High Street North is currently also the A5 Trunk Road, however, it is anticipated that the road will be de-trunked in 2017, following the opening of the Woodside Link Road.

Within the Grade II Listed Building is a library which comprises a War Memorial, which was established to commemorate former pupils who died within the First World War and is registered as a War Memorial with the Imperial War Museum. The panelling and original bookshelves within the room all form part of the War Memorial. The room also includes a panel commemorating those former pupils who died in the Second World War. The room is lined with panels and shelves and has a Victorian hammerbeam roof and stylistic entrance doors.

The Application:

The application seeks planning permission to convert the Grade II Listed Building and the two early 20th century buildings into flats and to demolish the remaining structures on the site, including some post war additions to the buildings which are to be retained. Within the grounds a further four blocks of flats and 20 houses would be erected with associated roads, parking, open space and gardens.

The mix of accommodation that would be provided would be 3 x 4 bed houses, 17 x 3 bed houses, 61 x 2 bedroom flats and 32 x 1 bedroom flats.

The new blocks of flats would be located along the rear, eastern and front boundaries of the site. The blocks in the north western corner of the site and the south eastern corner of the site would be three storey, the block in the north eastern corner would be four storey and would include a lift. The fourth block would be two storey, comprising garages on the ground floor and two units on the first floor.

The houses would be located in the central and western portions of the site, with three of them fronting onto Ashton Road. The houses would be two or two and a half storeys in height and would all have private gardens.

A formal garden would be established immediately behind the Grade II Listed Building. An area of more informal open space would be created in the eastern section of the site, measuring approximately 0.125 hectares. The existing mature trees and memorial garden in this section of the site would be retained and incorporated into this space.

There would be three vehicular access points, one from Ashton Road, which would access a private parking court serving only the three dwellings fronting Ashton Road; the two existing vehicular access points from High Street North would be retained, with the western point only accessing a parking court serving the flats in the Listed Building and the eastern point acting as the main vehicular access into the site. The road network within the site would predominantly be of a shared surface with only access points and turning areas being tarmaced.

The existing pedestrian access from High Street North would be retained and a new pedestrian access point would be created from Ashton Road. A further pedestrian access point would be created from Dog Kennel Walk, but this would be gated and only for the use of residents of the proposed development.

An application for Listed Building Consent for the same proposal is under consideration under application reference no. CB/16/01389/LB.

RELEVANT POLICIES:

National Planning Policy Framework (2012)

Section 4: Promoting sustainable transport

Section 6: Delivering a wide choice of high quality homes

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

BE8 Design Considerations

H2 Making Provision for Housing via 'Fall-in' Sites

H3 Meeting Local Housing Needs

H4 Providing Affordable Housing

R11 Provision of New Urban Open Space in New Residential Developments

T10 Parking - New Development

(Having regard to the National Planning Policy Framework, the age of the plan and the general consistency with the NPPF, policies BE8, H2 & R11 are still given significant weight. Policies H3, H4 and T10 are afforded less weight).

Development Strategy for Central Bedfordshire (June 2014)

At the meeting of Full Council on 19th November it was resolved to withdraw the Development Strategy. Preparation of the Central Bedfordshire Local Plan has begun. A substantial volume of evidence gathered over a number of years will help support this document. These technical papers are consistent with the spirit of the NPPF and therefore will remain on our web site as material considerations which may inform further development management decisions.

Supplementary Planning Guidance

Central Bedfordshire Design Guide: A Guide for Development:
Design Supplement 1: Placemaking in Central Bedfordshire, 2014
Design Supplement 3: The Historic Environment, 2014
Design Supplement 4: Public Realm, 2014
Design Supplement 5: Residential Development, 2014
affordable Housing guidance Note for Central Bedfordshire (South Area) (2016)

Relevant Planning History:

Application Number	CB/16/01389/LB
Description	Conversion and refurbishment of Grade II listed former school building and associated curtilage listed buildings to form apartments comprising: Main School - 7No.1-bedroom and 12No. 2-bedroom apartments; Science Block - 4No.2-bedroom and 2No.1-Bedroom; Gymnasium - 5No. dwellings. Associated refuse, cycle storage, open space and landscaping proposals. Demolition of other modern curtilage listed buildings and extensions. Erection of new dwellings and apartments including: 3No. 4-bed houses fronting Ashton Road; 17No 3-bedroom houses; 23No. 1-Bedroom and 40No. 2-bedroom apartments. Vehicular and pedestrian access via High Street North and further pedestrian access via Ashton Road and Dog Kennel Path.
Decision	Pending on this Committee.
Decision Date	N/A

Consultees:

Dunstable Town Council	That Central Bedfordshire Council be advised that the Town Council has no objection in principle to the proposed development but is concerned that it constitutes overdevelopment of the site. The Town Council, having heard strong representations from residents of neighbouring streets and given full consideration to the application, do object to the inadequate parking allocation within the development and are concerned that the design layout will encourage non-resident parking with ease of pedestrian access to those surrounding streets which currently suffer from a shortage of parking provision.
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Conservation Officer	Development impacting upon a grade II listed building in a designated Conservation Area location, with extended grounds forming immediate listed building and Conservation Area setting.
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This is a well-designed Scheme of site redevelopment following site vacancy, fully satisfying key criteria set out in paragraph 131 of the NPPF, which incorporates a significant historic and 'landmark' town centre building and associated (curtilage listed) buildings.

I consider that the developed Scheme secures the optimum viable use of these buildings and the site, and on this basis, and on the basis of the above, I lend full support to the application.

Highways Officer

I have made initial comments in relation to the planning performance submission and there have been various amendments of which I have given guidance. Subsequently, the applicant has submitted drawing number WH 182/16/P/10.01 which on the whole satisfies my concerns and observations. However, for completeness I will finalise my comments below:-

The proposal is to redevelop an existing school to form 113 dwellings and access the site by way of two existing priority junctions onto the A5 (High Street North) as well as forming a new access from Ashton Road. Along the east boundary there is a public footway cycleway.

High Street North is currently a trunk road and under the responsibility of Highways England, however, this road is shortly to be de-trunked and redesignated as the A505.

The main access is to serve the majority of the development and for clarity this will not be a vehicular through route to Ashton Road. This main access appears to utilise the existing bell mouth junction without modification. A footway has been provided along one side along with a pedestrian access beside the current brick pier which is acceptable.

This main entrance and the bell mouth appear to be to standard where it measures 4.8m with 2.0m footway/verge. This is acceptable for adoption.

The remainder of the access roads appear to measure 4.5 with a 1.5m or 1.0m path. In accordance with the authority's guidance this carriageway should be a 4.8m carriageway with 2.0m footway or verge on either side. However, mindful of the constraints of the site I am content that this standard could be relaxed with the clear understanding that this does not comply with the planning authority's standard and it will not be adopted by the highway authority.

There is a further access fronting the High Street North serving some 12 parking spaces and a number of flats. Since this is only a parking court and not one that is to be used by visitors or for deliveries I am content with this arrangement.

There is proposed to be 177 parking spaces. In accordance with the authority's standard the parking provision should be 241 spaces where 28 are allocated to visitors. This standard allows for some tandem parking which is proposed within the application.

At an early stage it was made clear to the applicant's agents that a lower provision would be considered if it could be demonstrated that this would be adequate for the demand created by the development. With that the agents were directed to the Residential Parking Research Document (RPRD) produced by Communities and Local Government.

Having gone through the RPRD myself I have made the following assumptions and determined that the required provision to satisfy the demand would be 177 spaces where 40 of which should be unallocated. While I emphasise that this unallocated provision must be adequately managed I am content that it is possible that this parking provision could accommodate the parking demand of the development.

However, this is subsequently below the authority standard and there should be a consideration that on street parking should also be increased. Further the current layout and road markings were in place to accommodate for the school which is now no longer a school.

For that reason the High Street North fronting the site should be altered as follows:-

I recommend that the space taken up with the current road markings should be better utilised by the introduction of a build out on the Ashton Middle School side which has the benefit of reducing the crossing length of the pelican crossing from 9.6m to 7.3m. This will involve the building out of the two junctions to the site with 4m and 6m radius at the minor and major junction respectfully. The TRO fronting the Public House (The Wheatsheaf) could be changed such that 3 parking spaces could be provided. There could be some tree planting in these build-outs and the overall benefit will be an increase in parking of 7 parking spaces. While there could be a discussion in relation to the introduction of a zebra in place of the PELICAN we should be mindful that this is a Sustrans route (number 6) so this will need a great deal of consideration.

Wherever feasible these spaces should be restricted between 7am-7pm to 2 hours waiting.

This section should be traffic calmed to a 20mph zone.

There is also an opportunity to alter the TRO within Union Street and Clifton Road which could increase the parking provision by between 3 and 6 spaces. A further space should be created outside number 103 High Street North. I am satisfied that this can be placed within a section 106 agreement and also understand that the developer is generally happy with the principle that it should be delivered.

In such a scenario I would not want to insist that these works are completed before occupation, however, I advise that it may be prudent to complete the junction works before house owners use it.

Highways England

No objections.

Archaeologist

The applicant has now provided the results of an archaeological trial trench evaluation.

The archaeological trial trench evaluation involved the excavation of six trenches within the school grounds, the trench locations were largely dictated by existing ground conditions, but were fairly evenly distributed throughout the site. Despite the location of the school on the edge of the Roman and medieval settlements in Dunstable, the only archaeological remains recorded dated to the 19th and 20th centuries. Of particular interest is the possible air raid shelter that was encountered in two of the trenches. The school reputedly had more than one shelter, which were constructed at the beginning of the Second World War and had the capacity to house 180 pupils.

It is now recognised that despite the fact that air raid shelters form a relatively recent part of our past, our knowledge of the defensive structures of the Second World War is limited. On a regional and local level, gaining a greater understanding of these structures is a regional archaeological research objective (Gilman, Gould and Green 2000: 33, Oake 2007: 15 and Medlycott 2011: 80).

The structures found in trenches 1 and 6 during the archaeological evaluation (Albion Archaeology 2016) correspond both with the location of the school's shelters and the materials used to build air raid shelters during the Second World War. As a consequence, if this development proceeds it is vital that this important part of the school's history is recorded.

Paragraph 141 of the NPPF states that Local Planning Authorities should require developers to record and advance understanding of the significance of heritage assets before they are lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible (CLG 2012).

The proposed development will have a negative and irreversible impact upon any surviving archaeological deposits present on the site and particularly on the Second World War air raid shelters. This does not present an over-riding constraint on the development providing that the applicant takes appropriate measures to record and advance understanding of any historical and archaeological heritage assets found within the application area. This will be achieved by the investigation and recording of any historical and archaeological deposits or structures that may be affected by the development; the post-investigation analysis of any archive material generated and the publication of a report on the works. In order to secure this, please attach the supplied condition to any permission granted in respect of this application.

Sport England

Summary: No objection is made to the planning application subject to a commuted sum of £200,000 being secured through a section 106 agreement towards replacement playing field provision as set out in this response. If the authority is minded to approve the application without making provision for a section 106 agreement that secure this commuted sum in accordance with our advice our position on the planning application would be an objection and the provisions of the Town and Country Planning (Consultation) (England) Direction 2009 would apply i.e. the application would need to be referred to the Secretary of State, via the National Planning Casework Unit.

Leisure Officer

With regard to the Sport England comments to secure £200,000 from Ashton School to contribute to the provision of a second 3G artificial pitch at Creasey Park, I am happy to confirm that this is acceptable and Leisure will be progressing the provision of the 3G at Creasey Park.

With regard to play facilities - as per my pre-app comments - £20k should be secured toward the enhancement of existing play facilities within the vicinity of the development, in lieu of the provision of on-site play facilities.

Ecologist

Bat activity surveys identified 2 bat roosts in a tree and the roof of Building 1. As such any works which would impact on this tree or the roof of the building would need to be licensed by Natural England. A number of mature trees which are shown in the tree survey to require removal contain potential bat roost features, therefore I would suggest that a condition be applied which requires all trees to be fully assessed for bats prior to their removal and if necessary an EPS licence can then be applied for if further bat interest is found on site.

Overall the site was found to have relatively low ecological interest and the ecological assessment indicates that the proposals could deliver a net gain for biodiversity. In order to achieve this the supplied condition would be required.

Housing Development
Officer

Thank you for sending through the BPS viability review for Ashton Middle School. With the independent review broadly reflecting the CBRE viability appraisal in terms of demonstrating that no affordable housing can be achieved on site we will have to accept this finding. It will however be interesting to see the full outcome once the full costings have been received by BPS from CBRE to fully conclude the findings. However, based on the current report we do not expect to see any affordable housing delivered on site due to viability constraints.

We would expect a full viability review upon completion of the scheme and sale of all residential units. The viability review will then reflect all the actual cost incurred including the actual land value paid and sales values achieved from the development. I expect this viability to be independently reviewed by BPS (or other independent reviewer) at the cost of the developer. If the profit in GDV is 20%+ then the Council will receive a financial contribution towards affordable housing. We would also expect a review to take place if the unit types proposed on the development change and are replaced by larger more profitable units.

Pollution Officer

Noise:

Given the location and nature of the surrounding uses, I would normally expect to see a more robust noise assessment. However, there are existing residential premises in close proximity to the commercial premises and no substantiated complaints have been received in relation to noise in recent years.

With this in mind, I recommend the supplied condition be placed on any permission.

Contamination:

I am satisfied with the conclusions of the submitted contaminated land report and would recommend a condition based on them. I have drafted three conditions.

Air Quality:

I am satisfied with the conclusions of the air quality assessment in that due to the distance from the carriageway, the air quality will meet the national air quality objectives even in the AQMA. However, please see the comments in the general section below with regards to mitigating impacts from construction activities.

General:

Given the location and scope of this proposal, I recommend that a 'Code of Construction Practice' be submitted which should address noise, dust etc during the construction process. I have supplied a condition.

Tree & Landscape
Officer

I have examined the plans and documents associated with this application, in particular the Tree Survey Report prepared by Hayden's Arboricultural Consultants, the Planting Plans Sheets 1 to 3, as prepared by Allen Pyke Associates, and the Landscape Management Plan dated August 2016 (Ref 2677-RE-01).

It should be recognised that 20 healthy trees are being felled to accommodate this development, and this figure excludes the 9 "U" Category trees being removed in respect of their poor condition. Of the 20 healthy trees being removed, 5 are classed as "B" category (moderate quality) and 15 as "C" (low quality). These "B" and "C" trees are being removed as they have been identified as being in conflict with proposed buildings, footpaths, hard surfacing, access requirements and for new garden provision. The loss of 3 of the "B" category specimens, namely 3 Yew trees in G004 is particularly regrettable, as they are located along the frontage of the site along the A5, making a positive contribution to the visual amenity and character of the streetscene.

It should also be recognised that the "U" category trees being removed on account of their poor condition are not being afforded space for adequate replacements in the scheme; most notably the large 5 mature Ash (located in G007) along the frontage with Ashton Road, where the loss of these diseased trees would be most apparent to surrounding residential properties, but where no space is

being made available for new tree planting. Therefore, the strategic value of boundary planting areas has been overlooked on the basis that certain trees presently occupying these key areas have been identified as being of poor quality and low expected life expectancy, and it subsequently appears that advantage has been taken of this, to replace them with buildings rather than to safeguard these areas for effective new tree planting, where they could be allowed sufficient space to develop natural crown spreads.

This leads on to my wider concern in that there is insufficient provision being made within parts of the scheme to replace those trees being felled, which although were of good stature, they nevertheless have structural or physiological drawbacks that would prevent them being considered a constraint to development. Regrettably, the limited planting space being allowed in the new scheme has resulted in the use of smaller replacement species that would offer insufficient size, scale and proportion within the building layout. For example, Amelanchier lamarckii 'Robin Hill' is being used throughout Sheet 1, and whilst this is an attractive tree, it is of limited stature in being effective in softening the built form. Whilst I appreciate that the landscape architect is only making the most of the limited planting space being made available, this suggests that the site is being overdeveloped at the expense of sufficient areas being set aside for landscape planting.

This problem is now being further exacerbated by the pressure for more parking areas, as being requested by Highway Officers, where landscaping space is being surrendered to enable an increase in the spaces being made available. In certain areas, this will result in the scheme having little effective, vertical landscaping element, and that parts of the site, especially as shown on Sheet 1 of the Planting Plan, would subsequently lose its previous spatial, landscaped quality, and its once attractive balance of treescape with the surrounding built form.

Landscape Officer

Native planting and habitat creation - The Landscape Strategy describes the design concept to create a semi rural character, using a mix of native hedge planting and 'extensive use of wildflower meadow'. The landscape planting plans do not reflect this design concept; the specified species are predominantly non native, there is a very limited area of wildflower planting. The opportunity to include more native tree and shrub species needs to be included along with more areas of wildflower meadow planting. The opportunity to describe how planting

supports and enhances biodiversity within the development and beyond would be helpful.

SuDS - It is disappointing that surface water attenuation appears to primarily rely on crate systems within highway areas; utilising landscape on site to attenuate and filter surface water runoff needs to be considered further in accordance with the CBC SuDS Guidance.

Boundary treatments - the use of brick walls and railings to define boundaries is in keeping with the character of the site and development. The proposed boundary treatment along the interface with Dog Kennel path will allow informal surveillance of the footpath and the proposed box hedging internally along this boundary will form a feature but will need to be maintained at a consistent level to retain the feature. The inclusion of 1.8m high close board timber privacy screen between residential units along this feature edge is not acceptable and I recommend an alternative design treatment is considered which complements this elevation, enables proper maintenance of the box hedging and maintains some privacy between residents' gardens.

Rights of Way Officer

Public Footpath no. 1, Dunstable, runs partially along the site's eastern boundary within Grove House Gardens. The current route of the Public Footpath on the Definitive Map stops at the edge of the Dunstable Excluded area and so is not currently mapped to High Street North, however the route is also a tarmac public footway/highway and cycleway NCN Route 6 maintained by Highways. The path is known locally as Dog Kennel Path.

Although I do not object to the proposals as the Public Footpath would appear to remain unaffected, I have a number of queries which I was unable to find the answers to within the submitted documents.

"Apart from the suggestion of the street scenes, no specific details seem to be provided regarding boundary treatments and what fencing and/or hedging is proposed along the eastern boundary. The landscape strategy plan (Figure 6.10) within the design and access statement may have some information but this is not readable.

"The submitted drainage plan (Flood Risk assessment document- Appendix J - Proposed Drainage Strategy) seems to suggest that some of the proposed soakaways to be provided will lie outside of the new property boundaries and within the route of the Public Footpath/Cycleway. If this is the case, consent would be needed from Highways for these to be installed (plus

street works licence?) and it is likely that the path will have to be closed temporarily whilst work is carried out. Information would also be needed as to who would maintain these long-term.

Other observations:-

"A temporary closure of the path may be needed whilst demolition of buildings takes place or if any scaffolding is to overhang the public footpath/cycleway.

"Detail needs to be provided as to the long-term maintenance of any trees and hedges not lying within the plots of individual properties, particularly any boundary hedges which could encroach upon the Public Footpath/cycleway and cause an issue long-term.

"Ideally all properties should overlook the Public Footpath/Cycleway. It is not completely clear from the submitted plans which properties are facing and which are not. Standard close boarded fencing alongside public rights of way should be avoided as it can make them dark and feel enclosed, discouraging use and encouraging anti-social behaviour.

Sustrans

This site is adjacent to NCR6, an important part of the National Cycle Network. I am concerned that changes to the southern boundary fencing could make the route a corridor between fence lines. This reduces the quality of the location and reduces the sense of the place as a safe place to be.

NCR6 also links to the busway cycle path (NCR606) and the wider Dunstable & Houghton Regis cycle network so permeability across this boundary would be an asset to the site.

Public Art Officer

Central Bedfordshire Council actively encourages the inclusion of Public Art in new developments and looks to developers / promoters of sites to take responsibility for funding and managing the implementation of Public Art either directly or through specialist advisers and in consultation with Town and Parish Councils and Central Bedfordshire Council.

Key requirements are:

Public Art be integrated in the development design process and be addressed in Masterplans and Design Codes.

Where possible artists should be appointed as part of the design team.

Public Art should be site specific; responding to place and people including environment and materials.

Public Art should be unique, of high quality and relevant

to local communities.

Public Artists can include:

Artists and artisans, artist architects, landscape artists - with experience in working in collaboration with developers, design teams and local communities.

If the application were to be approved I request a Condition be applied.

SuDS Team

We consider that planning permission could be granted to the proposed development if the supplied conditions are included as set out below to investigate and confirm the most sustainable form of managing the surface water within the site and secure the appropriate construction and future management of this.

Anglian Water

The sewerage system and Water Recycling Treatment centre has capacity for the anticipated flows.

Requests an informative be included on the decision notice.

Green Infrastructure Officer

The applicant has demonstrated some consideration of how to integrate the site's drainage with the green space (in terms of its potential to compensate for areas at risk of surface water flooding where the dwellings will be raised to minimise the risk), but otherwise, there is little integration of the proposals for the site's drainage with the green infrastructure.

The development relies on soakaway drainage, including larger crated soakaways associated with the highways. These do not deliver a range of multifunctional uses (in terms of the biodiversity and amenity benefits that at surface storage and infiltration can), and do not demonstrate the local requirements for sustainable drainage set out in CBC's adopted SPD. This requires a focus on multi-functional uses, designing for easy access and maintenance, and the enhancement of biodiversity. The reliance of crated solutions will be more difficult to maintain than surface solutions, and fail to deliver multi-functional benefits, including biodiversity.

The applicant has failed to finalise proposals for the adoption and maintenance of these features. National Policy requires Local Planning Authorities to be confident that there are clear arrangements in place for the management and maintenance of drainage features over the lifetime of the development. The applicant notes that they have not identified who will adopt the large crated storage and infiltration soakaways. We cannot therefore

be satisfied that there are clear arrangements in place. The current proposals are therefore contrary to national policy.

The failure to design in multifunctional SuDS, and the lack of clear information about management and maintenance means that the proposals are not acceptable in terms of local and national policy. The applicant should be required to re-submit their drainage proposals, demonstrating multi-functional design, and setting out clear arrangements for the maintenance of all the SuDS features. The proposals should not be permitted without this information.

Managing the
Accommodation Needs
of Older People
(MANOP)

The needs of older people should be considered as part of this proposal and we would support a significant proportion of dwellings in the scheme being suitable for older people, by incorporating some or all of the supplied design features.

Sustainable
Development Officer

The proposed development is located within south Central Bedfordshire area and development management policies are set by the saved policies from the South Bedfordshire Local Plan. Policy BE8: Design and Environmental Standards states that proposals should maximise energy efficiency and conservation through orientation, layout and design of buildings, use of natural lighting and solar gain, and take full advantage of opportunities to use renewable or alternative energy sources. It also requires proposals to demonstrate how trees and vegetation have been used to achieve visual, acoustic, energy saving, wildlife and other environmental benefits.

The development should be designed with climate change in mind taking account of increase in rainfall and temperature. The development should therefore minimise hard standing surfaces and increase green, natural areas to allow rainwater infiltration and minimise heat island effect through evaporation and tree shading. Light colour building and landscaping materials should be prioritised over dark coloured which absorb more sun light and retain heat increasing urban heat island effect.

The policy does not stipulate amount of energy to be delivered from the renewable sources. The Council has undertaken review of renewable and low carbon technologies to establish a reasonable expectation for renewable energy generation. The study concluded that 10% energy demand can be met from renewable or low carbon sources on site and is both technically feasible and economically viable to achieve. The study used the

2013 Part L to determine energy demand baseline.

Energy demand in dwellings can be minimised through a careful design of construction details and application of passive house principles. I note that a small proportion of dwellings will be located in converted listed building and it's listing status may limit a choice of measures to improve energy efficiency of the fabric. Care therefore should be taken to reduce energy demand through installation of efficient services and application of renewable energy to offset some of the fabric limitations.

I also note that most of the proposed flats will have a single orientation that significantly reduces opportunities for natural cross ventilation. Dwellings with single westerly orientation are particularly at risk of overheating due to solar gains. I would recommend that efficient mechanical ventilation and appropriate solar control measures such as brise soleil, solar control glazing and external shading are installed to control thermal comfort and minimise risk of overheating.

The policy also requires efficient use of scarce resources. Central Bedfordshire is located within water stressed area as identified in the Council's Climate Change Risk Assessment study. All developments in Central Bedfordshire are required to achieve a higher water efficiency standard of 110 litres per person per day to mitigate against potential water shortages. This standard can be easily achieved through installation of water efficient fittings.

The above requirements on energy efficiency, renewable energy contribution, water efficiency and adaptation to climate change are supported by the NPPF policies in section 10: Meeting the Challenge of climate change, flooding and coastal change.

I request the supplied conditions be attached, should planning permission be granted for this development.

Waste Services

Individual dwellings will be provided with the following bins: 1 x 240 litre residual waste bin

1 x 240 litre recycling bin

1 X 240 litre green waste bin

The Council operates alternate weekly collections for individual dwellings.

Please note that bins are chargeable for all properties and developers will be required to pay for all required bins prior to discharging the relevant condition. Our current costs for these are: £25 +VAT per 240l bin.

Swept path analysis needs to be provided to demonstrate the council's collection vehicles can access the development. The following measurements must be used as a minimum. The developer also needs to consider the impact of parked cars to ensure they do not block access for the collection vehicles.

Bin collection points will need to be provided for plots 109 & 110 and plots 23-27 as the private roadways are not accessible for our collection vehicles. Each bin collection point will need to be able to accommodate two bins per property.

Apartments

Apartments will be provided with communal bins on a weekly collection, both residual waste and recycling bins will be provided.

All bins must be paid for by the developer prior to them being delivered to site.

The Council will provide each flat with 90 litre of residual waste capacity per week and 90 litre of recycling capacity per week, the developer can use the bin sizes set out above to get as close to the required capacity as possible. The developer must ensure that the bins stores marked are sufficiently sized to accommodate the required capacity for each block and this must be demonstrated to the Council. Please be aware that the crew will under no circumstance pull bins a distance greater than 25m.

Bin stores should be easily accessible from the main highway and it is crucial that the store is secure with a lock to prevent potential fly tipping issues. A lock code will need to be provided to the Central Bedfordshire Waste Services Team. The door used by the collection crews will need to be wide enough to allow for easy removal of bins from the storage area.

A dropped kerb will need to be provided to enable easy manoeuvrability, access and egress of the bins. Lighting within the bin store should be provided so that the bins can be used safely by residents when it is dark.

Other Representations:

Neighbours & Members
of the Public:

3, 4, 5 & 6 Ashton
Road, 15, 20 & 25
Crabtree Way, 1 & 5
Printers Way, 6 & 16
George Street, 103
High Street North, 286
West Street, 16 Richard
Street, 3 Bunhill Close,
Burr Street, Garden
Road Dunstable, 100
Westminster Gardens,
Houghton Regis
and Plymouth Close,
Luton

Object to the proposals for the following reasons:

- There are severe existing parking problems on the surrounding streets of Ashton Road, George Street, Crabtree Way and Printers Way and congestion on Ashton Road. The development, especially the new vehicular access onto Ashton Road would exacerbate these problems;
- The proposed development does not provide enough parking spaces, there should be a minimum of 2 spaces per unit. It is likely that residents and visitors would seek to park on the surrounding streets and this would be exacerbated by the pedestrian accesses onto Ashton Road and Dog Kennel Walk;
- Increased vehicle movements on Ashton Road would reduce pedestrian safety and increase air pollution;
- The development should be inward facing and no part of it should face or access Ashton Road;
- More development should be located near the park instead of near Ashton Road and open space should be located near Ashton Road;
- The proposed density is too high;
- The trees along Ashton Road should be retained as they enhance the streetscape of Ashton Road and the setting of the Grade II Listed Building;
- All the trees on the site should be retained and protected;
- The proposal would result in a loss of privacy to the occupiers of Nos. 1 & 5 Printers Way and the tree screening would be insufficient as the trees are deciduous;
- The proposal would result in a loss of light to No. 5 Printers Way;
- Light spill from standard street lighting would result in light pollution to dwellings in Printers Way;
- The proposal would increase noise pollution to dwellings in Printers Way;
- Proposed Block 1 would be overbearing on properties in Printers Way and is too large to be appropriate for the setting of a Grade II Listed Building;
- The proposal would result in a loss of privacy to properties in Ashton Road;
- The school should not be closed, there may be a requirement for more school places in Dunstable in the future and this is part of the heritage of Dunstable;
- Would like confirmation that no site traffic would come down Ashton Road or George Street;
- Would like confirmation that the car parking area at the north end of Ashton Road would not be opened to

Ashton Road;

- The proposal would destroy the town;
- The building should be converted into something for the town, like a museum;
- Object to alterations to the fabric of the Listed Building;
- The alterations to the interior of the Listed Building would be unsympathetic;
- The plaques in the main hall of the Listed Building should be retained, they may be very fragile;
- The setting of the Listed Building should be undeveloped;
- The proposed Juliet Balconies to the new dwellings should be omitted, they do not weather well and are not in keeping with the Listed Building or the wider area;
- No affordable housing is proposed;
- The development should be reserved for elderly people;
- The proposal would cause a loss of privacy to the occupiers of No. 103 High Street North;
- One of the accesses onto High Street North hasn't been used since 1980's as it is opposite Union Street and therefore unsafe. It should not be opened.

8 Falcon Close,

Made the following comments on the proposals:

- Could a new access be created through the site from the Waterlows Estate to ease pressure on George Street?

Responses to a reconsultation on amendments to the scheme will be reported on the Late Sheet

Determining Issues:

The main considerations of the application are;

1. Principle
2. The Historic Environment
3. Impact on the Character and Appearance of the Area
4. Neighbouring Amenity
5. Highways Considerations
6. Open Space and Impact on the Rights-of-Way
7. SuDS, Landscape and Ecology
8. Affordable Housing and Section 106
9. The Planning Balance
10. Other Considerations

Considerations

1. Principle

- 1.1 The application site constitutes a disused, former school, which is no longer required thus is a brownfield site located in a highly sustainable location in the

heart of Dunstable and therefore the principle of residential development on the site is considered to be acceptable.

- 1.2 However, the site contains an important, Grade II Listed Building and existing playing fields and therefore the proposal can only be considered acceptable if it has an acceptable impact on the historic environment, represents sustainable development and is in accordance with the National Planning Policy Framework (NPPF) and the saved policies within the South Bedfordshire Local Plan Review (the Local Plan). This will be examined below.

2. The Historic Environment and Impact on the Character and Appearance of the Area

- 2.1 The application site includes an important Grade II Listed Building which functions as a landmark within the Dunstable townscape. The front section of the site is located within the Dunstable Conservation Area and there are two further curtilage listed buildings on the site, the former science building and the former gymnasium, which are considered to make positive contributions to the historic significance of both the setting of the Listed Building and the Conservation Area. It is therefore imperative that the impact of the proposal in relation to the historic environment is carefully considered.

- 2.2 Paragraph 131 of the NPPF states that, in determining planning applications, Local Planning Authorities should take into account:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.

- 2.3 Paragraph 134 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

- 2.4 In this case, the Grade II Listed Building is vacant and there is little realistic prospect of it being utilised for its former use. As such, it is vital that the optimum viable use of the building be secured as this is the best opportunity for preserving the historic significance of the building.

- 2.5 It is considered by officers that the optimum viable use for the building and the wider site is that of residential development. The proposal would result in some positive enhancements to the historical significance of the building and the wider site, including the restoration of the building, which is in poor repair in places, and also the removal of modern and inappropriate internal and external additions which conceal original features. The proposal would also restore and retain as public space the library of the former school, which comprises a War Memorial. However, the proposal would also result in some less than significant harm to the historic significance of the building, including the alteration to its use, the sub-division of original spaces and the insertion of

new internal openings and (in some places) the insertion of mezzanine floors. More detailed consideration of the impacts of the internal changes is contained within the accompanying report provided for application reference no. CB/16/01389/LB, the accompanying Listed Building application for the proposal.

- 2.6 In terms of the impact on setting, the retention of the curtilage listed buildings, the retention of the mature trees along the front and rear boundaries of the site and the eastern section of the site, the retention of the boundary wall along the front of the site and the creation of open spaces around and near the building are all considered to be positive. It is considered that the impact of new residential development within the grounds would, in principle, have a limited harmful impact on significance, however, this would also be categorised as being less than substantial harm. The benefits of the new residential development is that it would act as enabling development to the restoration and conversion of the Grade II Listed Building, and would provide a new community in the heart of Dunstable, providing much need housing and regeneration benefits to the wider community. The phasing of the development is to be secured by way of the Section 106 Agreement
- 2.7 Having due regard to Section 12 of the NPPF, it is considered that the proposal would secure the optimum viable use for the Grade II Listed Building and the wider application site and bring positive benefits to the historic significance of the Grade II Listed Building, its setting and the Conservation Area. These benefits would outweigh the less than substantial harm to the historic significance of these heritage assets and the proposal is therefore considered to accord with Section 12 of the NPPF.
- 2.8 The comments of the Archaeologist are noted and it is considered appropriate to impose a condition requiring the investigation and recording of the archaeological features prior to the beginning of ground works. This will allow the conversion works of the Listed Building to begin while the archaeological works take place.
- 3. Impact on the Character and Appearance of the Area**
- 3.1 The application site is located within a diverse location in Dunstable. To the south and west are predominantly Victorian and Edwardian commercial, retail and residential properties with medium-high densities, two - three storey buildings and an urban feel. To the north is a modern, suburban housing estate with lower densities and building heights of two storey and to the north east is the recent Parklands development with a density of 110 dwellings per hectare and building heights of up to four storeys. To the east is Grove Park, with Dog-Kennel Walk running along the boundary with the park.
- 3.2 The proposed layout has been formulated following pre-application consultation with officers. It was important that the proposal made the most efficient and optimum use of the site (in accordance with Policy H2 of the Local Plan and Section 7 of the NPPF) whilst complementing the character and appearance of the area and the setting of the Grade II Listed Building and the Conservation Area.

- 3.3 The proposed gross density is 55 dwellings per hectare, which is similar to that found in Ashton Road and George Street and significantly lower than the recent development to the north east. The Central Bedfordshire Design Guide states that developments in Town Centres and other accessible locations should have higher densities (over 50 dwellings per hectare). The density of the proposed development is therefore considered to be appropriate and in keeping with the character of the area and to represent an efficient use of the site.
- 3.4 The layout was designed around the constraints of the site, in particular, the requirements for the retention of the Grade II Listed Building and the more important, older curtilage listed buildings and the mature trees on the front and rear boundaries of the site and Memorial Garden in the eastern sector of the site. It meets an expressed desire from the Conservation Officer for the creation of a 'campus' feel which would be most sympathetic to the setting of the Grade II Listed Building and the former school use of the site.
- 3.5 The proposed layout proposes a mix of housing types and scales, with two and two and a half storey family dwellings with private gardens concentrated in the centre and to the west of the site, and larger blocks of flats to the eastern and rear boundaries. The highest block is positioned in the north eastern corner of the site, relating to the development to the north east on the other side of Dog Kennel Walk and away from the more suburban dwellings in Printers Way and Crabtree Way.
- 3.6 The architectural treatment of the new development would be a modern interpretation of the Grade II Listed Building and the wider Victorian character of development to the south and east of the site, taking architectural cues and using a similar palette of materials, but utilising them in a contemporary manner. The detailed design of the new residential development and the palette of materials is considered to represent high quality design.
- 3.7 Three dwellings are proposed to face Ashton Road and this element of the scheme would be self contained, with a full complement of parking in accordance with the Council's standards being provided. No access to the rest of the site is provided to these dwellings and the scale and design of these dwellings is significantly more traditional than the rest of the new residential development on the site. It is considered important that the development addresses Ashton Road, allowing it to integrate well into its surroundings, and this design solution allows this while still providing well defined boundaries to the site.
- 3.8 The proposal would result in the loss of the trees on Ashton Road, which would have a minor detrimental impact on the character of the streetscene. This is considered to be mitigated against by the quality of the design of the three dwellings, which would create an active frontage on this side of Ashton Road, in character with the traditional Victorian streets to the west of the site. Further mitigation would be provided by the proposal to plant a replacement tree on the Ashton Road frontage.
- 3.9 The loss of these trees is not considered to have an unacceptable impact on the setting of the Grade II Listed Building as they do not immediately flank the

Listed Building and are separated from it by Nos. 20-22 Ashton Road and its associated car park.

- 3.10 It is considered that the proposed development would complement and harmonise with the character and appearance of the area and be sympathetic to the setting of the Grade II Listed Building and the Conservation Area. The proposal is therefore considered to be in accordance with Sections 7 & 12 of the NPPF, Policies BE8 and H2 of the Local Plan and the Central Bedfordshire Design Guide.

4. Neighbouring Amenity

- 4.1 The development is most likely to have an impact upon those occupiers who immediately border the site, those in Ashton Road, 1-5 Printers Way, 1 & 3 Crabtree Way and in the flats above the shops on the opposite side of High Street North.
- 4.2 Dwellings in Printers Way and Crabtree Way would be impacted by the proposed three storey Blocks 1 and 2, which would be positioned along the rear boundary. At its closest point to the boundary, this block would be positioned 7.5m away from the boundary, and would have a maximum height of 9m, with a crown roof sloping away from the boundary. This separation distance is considered to be sufficient to prevent the building from appearing unduly overbearing, creating an unacceptable sense of enclosure to rear gardens or resulting in an unacceptable loss of sunlight. The biggest impact on the occupiers of Printers Way and Crabtree Way is therefore likely to be on privacy.
- 4.3 In regards to privacy, Design Supplement 5 of the Central Bedfordshire Design Guide states that, in conventional suburban environments, a 'rule of thumb' of approximately 21 metres distance between the rear of one 2 storey property and the rear of another facing it (at first floor level in both instances), is an acceptable norm, but there may be circumstances where lower distances are acceptable.
- 4.4 The occupiers of No. 1 Printers Way would be most impacted by the development. The first floor windows of this property would be located only 20m away from the first floor windows in Blocks 1 & 2, which would serve bedrooms and living rooms. The second floor windows would be located slightly further away, being set in the roof slope of the block and serving only bedrooms. This is slightly less than the suggested 'rule of thumb' separation distance, however, it is noted that the trees, despite being deciduous, would provide some degree of screening, even in winter, as a result of branches, twigs etc, and thus would not allow uninterrupted interlooking between the properties. It is also noted that a similar relationship to that proposed currently exists between the neighbouring Ashton Lodge Care Home and dwellings further along Printers Way. Finally it is noted that the proposal has been revised during the course of the application to replace proposed full height windows to the first floor to more standard cill heights. Having regard to these factors, it is considered that the impact of the proposal on the occupiers of No. 1 Printers Way would be within acceptable limits.

- 4.5 The proposed development would have less of an impact on the occupiers of No. 3 Printers Way, as the separation distance between the first floors of this dwelling and Blocks 1 & 2 dwelling would be 22m, and tree screening continues in this location. The occupiers of the dwelling of No. 5 Printers Way would be even less affected, being offset from the site and backing onto the neighbouring Ashton Lodge Care Home. As a result, views of No. 5 Printers Way from the development would only be oblique, and also masked by tree screening.
- 4.6 In regards to dwellings in Crabtree Way it is noted that the rear elevations of the dwellings do not back onto the site, but are at a 45 degree angle to the rear boundary line (and thus the rear building line of Blocks 1 & 2). It is considered that the angle is sufficiently oblique that the proposal would not give rise to interlooking between the new development and the dwellings in Crabtree Way. The impact of the proposal on the occupiers of these dwellings is therefore considered to be acceptable.
- 4.7 Block 1 would flank Ashton Lodge Care Home, the side elevation of which contains windows that serve habitable rooms. The side elevation of Block 1 would not contain any windows and therefore there would be no impact on the privacy of the occupiers of Ashton Lodge Care Home. The boundary is currently vegetated to first floor level and the separation distance between the buildings would be 5m. The eaves height of the roof would be only 6m and therefore it is considered that the proposal would not appear unacceptably overbearing or result in an unacceptable loss of sunlight to these windows. The impact on the occupiers of Ashton Lodge Care Home is therefore considered to be acceptable.
- 4.8 Dwellings on the opposite side of Ashton Road would have a front to front separation distance of 14m. This is standard for the Victorian streets which surround the site to the south and west and the same as the front to front separation distances in neighbouring George Street. It is therefore not considered that the proposal would have a harmful impact on the occupiers of the dwellings on the opposite side of Ashton Road in terms of loss of privacy or light.
- 4.9 No. 20 Ashton Road is a bungalow located in a corner created by the development site and dwellings are proposed both to the rear and northern side boundary of the small garden serving the bungalow. The proposed dwelling to the rear would be set 5.5m away from the rear boundary of the bungalow's rear garden and would have no windows looking towards the bungalow. The eaves height of the proposed dwelling would be 5m, with a roof sloping away from the bungalow and it is therefore considered this proposed dwelling would not appear unacceptably overbearing or result in an unacceptable loss of sunlight to the occupiers of No. 20.
- 4.10 The scheme has been revised during the course of the application to lessen the impact of the development on No. 20 and improve the separation distance between the side boundary of No. 20 and the closest dwelling to the northern side boundary. This separation distance would now be 4.5m and the eaves height of the proposed dwelling (which would also have no windows facing No. 20) would be 5.8m, with the roof sloping away. It is considered that this

relationship is sufficient to prevent the proposed dwelling to the north from appearing overbearing or resulting in loss of light. The impact of the development on the occupiers of No. 20 is also therefore considered to be within acceptable limits.

- 4.11 An objection has been received from occupiers of one of the flats on the opposite side of High Street North on the basis that the conversion of the Listed Building to residential would negatively impact on their privacy. However, the front-to-front separation distance is 32m and it is considered that this is more than sufficient to prevent any meaningful loss of privacy.
- 4.12 Concerns have also been raised from neighbours that the development would result in an increase in noise and activity on the site, which would have a detrimental impact on their quality of life. It is acknowledged that the development is likely to result in increased noise and disturbance at the evenings and weekends compared to the previous use of the site as a school. However, there is no reason to believe that the proposal would result in an increase in noise levels beyond that which is typical of a residential area and it is not considered that the proposal would give rise to such an increase in noise and activity as to have an unacceptable impact on the quality of life of neighbouring residents.
- 4.13 Neighbouring occupiers have also raised concerns in regards to street lighting around the development and the possible impact this could have by means of light pollution to rear windows and private residential gardens. This is considered to be a legitimate concern and it is proposed that the lighting scheme for the development be controlled by condition.
- 4.14 Subject to the above mentioned condition, it is not considered that the proposal would have an unacceptable impact on the amenities of any neighbouring occupiers. In this aspect, the proposal is considered to accord with Sections 7 and 11 of the NPPF, Policies BE8 & H2 of the South Bedfordshire Local Plan Review and the Central Bedfordshire Design Guide.

5. Highways Considerations

- 5.1 The agent has worked with the Council's Highways Officer from an early stage in the pre-application process to produce a layout with appropriate accesses and sufficient parking that it would be fit for purpose and not have a detrimental impact on the surrounding highway network
- 5.2 The proposal would provide 113 dwellings and 177 on-site car parking spaces. This is below the Council's parking standards as set out within the Central Bedfordshire Design Guide. However, the Central Bedfordshire Design Guide does state that sites with good access to public transport and local facilities may, if supported by sufficient evidence, not require the same level of parking.
- 5.3 The application site is located in a highly sustainable location, immediately adjacent to Dunstable Town Centre and with excellent transport links, including the Guided Busway within a 200m walk from the site. Furthermore, the application was accompanied by solid evidence prepared in reference to the government's Residential Parking Research Document and amplified by

reference to local circumstances in the form of census data. This has been scrutinised by the Highways Officer in great detail and he has confirmed that the proposed level of parking for the site is sufficient to cater for the needs (including visitors) of the development.

- 5.4 However, in light of the failure to comply with the Council's parking standards, and the impact of the closure on the school, it is considered legitimate to require the developers to provide improvements to High Street North and alterations to the TROs in Clifton Street and Union Street which would result in the further provision of an additional 11-14 public parking spaces within the immediate vicinity of the development, whilst enhancing the streetscene of High Street North in safety and appearance. The developers have agreed to a programme of enhancements.
- 5.5 The proposal was revised following public consultation which originally showed two vehicular accesses onto Ashton Road, including one which would have linked through to the access onto High Street North. This was removed following representations from residents of Ashton Road. The remaining access onto Ashton Road serves only a parking court for a small self-contained section of the development comprising three family homes, which is not accessible to the rest of the development by vehicle or foot. This parking court would comply with the parking standards for the three proposed dwellings. The additional traffic generated by these dwellings would not have a significant impact upon the amount of traffic utilising Ashton Road.
- 5.6 The western access onto High Street North would also serve a limited parking court and the Highways Officer is satisfied that the access would not have a detrimental impact on the safety of the highway network.
- 5.7 It is acknowledged that there are existing parking problems within the area, particularly on Ashton Road, George Street and streets to the north of the development site, however, while it is legitimate to require the development to not contribute to these problems, the development cannot be expected to solve existing problems within the area. The provision of another vehicular access linking Crabtree Way to High Street North through the site was not considered either necessary or appropriate in light of the impact that this would have had on both the setting of the Grade II Listed Building and the potential impact of residents of surrounding streets seeking to park on the site.
- 5.8 When considering the implications of a development on the highway network, the most relevant consideration is Section 4 of the NPPF. Paragraph 32 states that all developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. Decisions should take account of whether:
- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;
 - safe and suitable access to the site can be achieved for all people; and
 - improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the

residual cumulative impacts of development are severe.

5.9 Cycle parking would be provided throughout the development and the site is located within close proximity to local and national cycle routes.

5.10 Having due regard to the comments of the Highways Officer, it is not considered that the impact of the proposal on transport and highways considerations would be severe, particularly in light of the compliance of the scheme with the evidence provided in regards to parking demand of the scheme and the proposed mitigation improvements to the highway network. Subject to the conditions recommended by the Highways Officer and the securing of the highway improvements, the proposal is therefore considered to conform with Section 4 of the NPPF and Policies BE8 and H2 of the Local Plan.

6. Open Space and Impact on the Right-of-Way

6.1 There are currently playing pitches on the application site which would be lost as a result of the proposed development. Paragraph 74 of the NPPF states:

Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
- the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.

6.2 In this case the agent, council officers and Sport England have agreed that a financial contribution of £200,000 towards a replacement 3G pitch and associated facilities to be located at Creasey Park in Dunstable would result in the equivalent provision in terms of quantity and quality in a suitable location.

6.3 The proposal includes both a formal public garden and more informal public landscaped amenity space which is broadly in line with the requirements of the Leisure Strategy. No children's play equipment is proposed, however, the site is immediately adjacent to Grove Park, which includes children's play equipment, and the applicants have agreed a financial contribution of £20,000 towards the upgrading of this facility.

6.4 Some of the private gardens of the proposed houses are slightly below standard in terms of size, however, all are usefully shaped and the proximity of Grove Park and the provision of open space upon the site is considered to provide adequate open space for future residents of the development.

6.5 Dog Kennel Walk, a public right-of-way and cycle route runs along the eastern boundary of the site and from an early stage in the pre-application discussions it was considered important that the development enhance the natural surveillance of the footpath.

- 6.6 The proposal would provide blocks of flats of up to four stories that would overlook the footpath, including full height windows and Juliet balconies. Furthermore, private outdoor seating areas to some of the ground floor flats would face the footpath.
- 6.7 Concerns have been raised by a number of consultees about the boundary treatment of these private seating areas, however, amended details have now been submitted showing low walls with railings, which will provide surveillance of the path even from people sitting down within these seating areas. It is therefore considered that the proposal would result in an enhancement to the safety and security of users of Dog Kennel Walk. The proposed pedestrian access between the site and Dog Kennel Walk would be gated and reserved for the use of residents within the development.
- 6.8 In answer to the query of the Rights-of-Way Officer, it has been confirmed that there would not be any soakaways located outside the confines of the site.
- 6.9 In terms of open space and impact on the adjoining Right-of-Way, it is considered that the proposal would accord with Section 8 of the NPPF, Policies BE8 and H2 of the Local Plan and the Central Bedfordshire Design Guide.
- 7. SuDS, Landscape and Ecology**
- 7.1 The proposed Sustainable urban Drainage System (SuDS) scheme was designed in consultation with the Council's SuDS team and, subject to their recommended condition regarding management and maintenance, it is considered that it would be fit for purpose.
- 7.2 It is acknowledged that the proposed scheme is not fully compliant with the Council's Design Guidance for SuDS as it is not multifunctional and this is a disadvantage of the proposal. However, on its own, this is not considered to be sufficient to justify a refusal for the development.
- 7.3 The comments of Tree & Landscape Officer and the Landscape Officer have resulted in revisions to the proposed landscaping scheme. The comments of these officers on the revised landscaping scheme will be reported on the Late Sheet.
- 7.4 Subject to the imposition of the condition recommended by the Ecologist, it is considered that the proposal would not result in harm to any protected species and would result in a net enhancement of the biodiversity on the site.
- 7.5 It is considered that, subject to the revised landscaping scheme being acceptable and the above mentioned conditions being imposed, the proposal would be in accordance with Sections 10 & 11 of the NPPF and Policy BE8 of the Local Plan.
- 8. Affordable Housing and Section 106**
- 8.1 The application does not propose to deliver any affordable housing on the site, which is contrary to Local Plan policy H4 and the supplementary planning guidance issued in 2016.

- 8.2 However, the NPPF recognises at 173, the need to provide both land owners and developers with a competitive return to encourage land owners to release land for development. A viability assessment has been submitted with the application and independently appraised and this has confirmed that the scheme would not be viable if there was a requirement to either provide affordable housing on-site or contributions towards the off-site provision of affordable housing. The National Planning Practice Guidance instructs local planning authorities to be flexible in applying policy requirements where the viability of a scheme is in question.
- 8.3 The key benefit of the scheme is the restoration and conversion of the Grade II Listed Building and the cost of this work has significant implications on the costs of the scheme. The new residential development on the site can be considered as enabling development, which has additional benefits in delivering needed housing to Dunstable and also performing a regeneration role within the wider community. In light of these benefits, and having due regard to the findings of the appraisal of the submitted viability assessment, it is considered that the lack of affordable housing on the site is outweighed by the benefits that the scheme would bring.
- 8.4 The appraisal of the viability assessment has suggested that an out turn review mechanism be included within the Section 106 Agreement, such that moneys could be recouped for affordable housing should the development prove to be viable in practice.
- 8.5 The Ashton Schools Foundation is a registered charity who are the trustees of two other schools within Dunstable. As the capital receipt from the sale of the site will be dedicated to the provision of education, no education contributions were sought in relation to this application.
- 8.6 If planning permission were to be granted, a Section 106 Agreement would be completed with the following heads of terms:
- The out turn review mechanism on the viability of the development;
 - The phasing of the development such that the restoration and conversion of the Grade II Listed Building would take place first and the remainder of the development, including the other conversion works would be phased in accordance with a scheme to be agreed;
 - The delivery of the improvement works to the surrounding highway network;
 - The financial contributions of £220,000 towards the provision of a replacement 3G pitch at Creasey Park and the upgrade of the children's play area within Grove Park;
 - The arrangements for the ongoing maintenance and public access to the library within the Grade II Listed Building.

9. The Planning Balance

- 9.1 The above sections have identified that the proposal would not be fully compliant with the development plan, particularly in regards to the provision of affordable housing. It would result in less than substantial harm to the significance of the Grade II Listed Building and its setting. The proposal would also not be fully compliant with the Council's Design Guide in regards to parking provision and design of the SuDS system. However, it is considered

that the benefits of the scheme, would clearly outweigh the disbenefits of the scheme. The benefits would include securing the optimum viable use of the Grade II Listed Building and providing enhancements to its significance through the loss of unsympathetic modern additions; providing much needed housing, thus contributing to the Council's five year housing land supply (which is showing a negligible deficit at the time of writing) within a highly sustainable location and providing regeneration benefits to the wider area; enhancements to the security of Dog Kennel Walk; enhancements to the surrounding highway network; a significant contribution towards a replacement 3G pitch at Creasy Park and enhancements to Grove Park and the securing of the ongoing maintenance and public access to the War Memorial within the Grade II Listed Building.

- 9.2 The impact of the development on the character and appearance of the area would be beneficial and the proposal would not have an unacceptable impact on the amenity of neighbouring occupiers or on the surrounding highway network. It is therefore considered that the proposal would constitute sustainable development and would be broadly in line with the development plan.

10. Other Considerations

10.1 Waste

An updated refuse strategy and tracking diagrams have been provided to the Waste Officer in response to her comments and have now been approved.

10.2 Public Art

A draft scheme for the provision of public art on the site has been proposed and is in discussion with the Public Art Officer. An update will be provided on the Late Sheet.

10.3 Pollution

The proposed conditions recommended by the Pollution Officer are recommended to be imposed.

10.4 Accommodation for Older People

Block 3 has been provided with a lift in order to make the flats within it more suitable for older people or people with mobility issues.

10.5 Human Rights issues

The proposal raises no Human Rights issues.

10.6 Equality Act 2010:

The proposal raises no other issues other than as discussed in this report under the Equality Act 2010.

Recommendation:

That Planning Permission be APPROVED subject to the following:

RECOMMENDED CONDITIONS

- 1 The development hereby permitted 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 No demolition or groundworks shall take place until a written scheme of heritage asset resource management has been submitted to and approved in writing by the Local Planning Authority. The written scheme of heritage asset resource management must include provision for the structural recording and excavation of the Second World War air raid shelter; a contingency for investigating and recording any other archaeological remains that may be present on the site, the post investigation analysis of any archive material generated and the full publication of the results. The development hereby approved shall only be implemented in full accordance with the approved heritage asset resource management scheme."

Reason: The scheme of heritage asset resource management must be approved and implemented as agreed in the approved scheme prior to the commencement of any demolition or groundworks, as a failure to secure appropriate historical and archaeological investigation in advance of development would be contrary to paragraph 141 of the National Planning Policy Framework (NPPF) that requires developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) as a consequence of the development.
(Section 12, NPPF)

- 3 **No development shall take place until an ecological design strategy (EDS) addressing mitigation, compensation and enhancement has been submitted to and approved in writing by the Local Planning Authority. The EDS shall include the following;**

- a) **Review of site potential and constraints.**
- b) **Purpose and conservation objectives for the proposed works**
- c) **Detailed working methods to achieve stated objectives including locations of integrated bird and boxes to be erected in accordance with RSPB and BCT guidelines on appropriate scale maps and plans**
- d) **Details of lighting considerations to prevent disturbance to bats .**
- e) **Type and source of materials to be used where appropriate, e.g. native species of local provenance.**
- f) **Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.**
- g) **Persons responsible for implementing the works.**
- h) **Details of initial aftercare and long-term maintenance.**
- i) **Details for monitoring and remedial measures.**
- j) **Details for disposal of any wastes arising from works.**

The development shall be implemented in accordance with the approved EDS.

**Reason: The condition must be discharged prior to commencement to prevent harm being caused to protected species and to enable proper consideration of the impact of the development on nature conservation.
(Section 11, NPPF)**

- 4 No conversion works or above ground works shall take place until a scheme for protecting the proposed dwellings from noise from road traffic has been submitted to and approved in writing by the Local Planning Authority. The scheme shall follow the recommendations identified in Stansted Environmental Services Ltd report (Ref: ENV1-DUNS-041Ashton Middle School) dated 7th September 2016. None of the dwellings shall be occupied until such a scheme has been implemented in accordance with the approved details, and shown to be effective, and it shall be retained in accordance with those details thereafter.

Reason: In order to provide an acceptable noise environment and level of amenity for future occupants of the development.
(Policies BE8 & H2, SBLPR and Section 11, NPPF)

- 5 No demolition or ground works in association with the development approved by this permission shall take place until a Phase 2 investigation report, as recommended by the Stansted Environmental Services report (ref: CON1-DUNS-042-Ashton Middle School, Dunstable) dated 18th April 2016, has been submitted to and approved in writing by the Local Planning Authority. Where found to be necessary by the phase 2 report a remediation strategy to deal with the risks associated with contamination of the site shall also be submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall include an options appraisal giving full details of the remediation measures required and how they are to be undertaken. The strategy shall include a plan providing details of how the remediation works shall be judged to be complete and arrangements for contingency action. No part of the development shall be first occupied until a Verification Report demonstrating the completion of the works set out in the remediation strategy has been submitted and approved by the Local Planning Authority.

Reason: To protect human health and the environment.
(Section 11, NPPF)

- 6 If during any site investigation, excavation, engineering or construction works evidence of land contamination is identified, the applicant shall notify the Local Planning Authority without delay. Any land contamination identified, shall be remediated to the satisfaction of the Local Planning Authority to ensure that the site is made suitable for its end use.

Reason: To protect human health and the environment.
(Section 11, NPPF)

- 7 **Prior to the commencement of the development hereby approved a Code of Construction Practice shall be submitted to and approved in writing by the Local Planning Authority. This shall detail methods that all developers, contractors and sub-contractors will employ at all times during demolition, construction and other engineering operations on**

the site. The Code of Practice shall include:

- **Measures to be used to control dust;**
- **Measures to be used to reduce the impact of noise and vibration arising from noise and vibration generating activities on site in accordance with best practice as set out in BS5228:2009 'Code of practice for noise and vibration control on construction and open sites';**
- **The siting and layout of any works compounds;**
- **The construction working hours for noisy works on site.**

The approved Code of Practice shall be implemented throughout the construction period.

Reason: The condition must be discharged prior to commencement to safeguard the amenity of the occupiers of neighbouring residential premises throughout the construction period.

(Section 11, NPPF)

- 8 No part of the development hereby approved shall be occupied until a finalised 'Maintenance and Management Plan' including a final detailed drainage layout drawing for the entire surface water drainage system, inclusive of any adoption arrangements and/or private ownership or responsibilities, and confirmation that the approved surface water drainage scheme has been correctly and fully installed as per the final approved details has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the implementation and long term operation of a sustainable drainage system (SuDS) is in line with what has been approved, in accordance with Written Statement HCWS161.

(Section 10, NPPF)

- 9 The development hereby permitted shall not be occupied or brought into use and no external lighting shall be installed on the site until the details of any external lighting to be installed on the site, which shall utilise light emitting diodes (LEDs), including the design of the lighting unit, any supporting structure, the level of illumination and the extent of the area to be illuminated, have been submitted to and approved in writing by the Local Planning Authority. The external lighting shall be installed in accordance with the approved details.

Reason: To ensure the proposed highways are adequately lit and to protect the visual amenity of the site and its surrounding area, to protect the habitats of bats and to protect the amenity of neighbouring residents.

(Policy BE8, SBLPR and Sections 7 & 11, NPPF, NPPF)

- 10 Notwithstanding the provisions of Part 1, Class A, B, C or D of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions or external alterations to the buildings hereby permitted shall be carried out without the grant of further specific planning permission from the Local Planning Authority.

Reason: To control the external appearance of the buildings in the interests of the character and historical significance of the application site and to protect the amenity of neighbouring residents
(Policies BE8 & H2, SBLPR and Sections 7 & 12, NPPF)

- 11 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no alterations to the boundary treatment to Dog Kennel Walk or the rear gardens of Plots 23, 24, 25, 26 and 27 shall be made without the grant of further specific planning permission from the Local Planning Authority.

Reason: To control the development in the interests of the amenity and safety of the neighbouring public footpath.
(Policy BE8, SBLPR and Section 8, NPPF)

- 12 The maximum gradient of all vehicular accesses onto the estate roads shall be 10% (1 in 10).

Reason: In the interests of the safety of persons using the access and users of the highway.
(Policies BE8 & H2, SBLPR and Section 4, NPPF)

- 13 No construction access shall be taken from Ashton Road.

Reason: Ashton Road is a narrow residential street which is inappropriate for HGVs and other construction traffic and so the condition will ensure the safe operation of the surrounding road network in the interests of road safety.
(Section 4, NPPF)

- 14 **No development shall take place 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: The condition must be discharged prior to commencement to ensure adequate off street parking during the construction period in the interests of road safety.
(Policy BE8, SBLPR and Section 4, NPPF)**

- 15 No part of the development hereby approved shall be first occupied until a scheme for the management of the visitor parking spaces as shown on approved drawing no. WH182/16/P/10.03 rev B has been submitted to and approved in writing. These spaces shall not be allocated and, n

Reason: To minimise the potential for on-street parking and thereby safeguard the interest of the safety and convenience of road users.
(Policies BE8 & H8, SBLPR and Section 4, NPPF)

- 16 Prior to the occupation of any dwelling on the site, a scheme for the provision of waste receptacles for each dwelling shall be submitted to and

agreed in writing by the Local Planning Authority. The receptacles shall be provided before occupation takes place.

Reason: In the interest of residential amenity and to reduce waste generation in accordance with the Council's Minerals and Waste Local Plan 2014, Policy WSP5 and the adopted SPD "Managing Waste in New Developments" (2006).

- 17 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers WH182/16/P/05.01, WH182/16/P/05.02, WH182/16/P/10.01 Ref B, WH182/16/P/10.03 Ref B, WH182/16/P/10.04 Ref B, WH182/16/P/25.01, WH182/16/P/25.01 Rev A, WH182/16/P/25.02, WH182/16/P/25.03 Rev A, WH182/16/P/25.05 Rev A, WH182/16/P/25.06 Rev A, WH182/16/P/25.07 Rev A, WH182/16/P/25.08, WH182/16/P/25.09, WH182/16/P/25.10 Rev A, WH182/16/P/25.11, WH182/16/P/25.12, WH182/16/P/25.13, WH182/16/P/25.14 Rev A, WH182/16/P/25.15, WH182/16/P/25.16, WH182/16/P/25.17, WH182/16/P/25.18 Rev A, WH182/16/P/25.19 Rev A, WH182/16/P/25.20, WH182/16/P/25.21, WH182/16/P/25.22, WH182/16/P/25.23, WH182/16/P/25.24, WH182/16/P/25.25, WH182/16/P/25.26 Rev A, WH182/16/P/25.27, WH182/16/P/55.01 Rev A, WH182/16/P/55.02 Rev A, WH182/16/P/55.03 Rev A, WH182/16/P/55.03 Rev A.

Reason: To identify the approved plans and to avoid doubt.

INFORMATIVE NOTES TO APPLICANT

1. In accordance with Article 35 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the reason for any condition above relates to the Policies as referred to in the South Bedfordshire Local Plan Review (SBLPR) and the National Planning Policy Framework (NPPF).
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 applicant and the developer are advised that this permission is subject to a legal obligation under Section 106 of the Town and Country Planning Act 1990.
4. Anglian Water has assets close to or crossing this site or there are assets subject to an adoption agreement. Therefore the site layout should take this into account and accommodate those assets within either prospectively adoptable highways or public open space. If this is not practicable then the sewers will need to be diverted at the developers cost under Section 185 of the Water Industry Act 1991. or, in the case of apparatus under an adoption agreement, liaise with the owners of the apparatus. It should be noted that the diversion works should normally be completed before development can commence.

5. In order to discharge the surface water condition as recommended, the following information shall be provided, based upon the principles contained within the 'Flood Risk Assessment' (CWA-14-305, 16.10.15) compiled by CWA:
 - a) Where an outfall discharge control device is to be used such as a hydrobrake or twin orifice, this should be shown on the plan with the rate of discharge stated and proposed mitigation of blockages.
 - b) Details of the structural stability of the system, and the use of materials and/or construction techniques to ensure this during extreme events e.g. long periods of rainfall causing saturation, and management of health and safety considerations for the system.
 - c) Details of the long term operational and reasonable maintenance requirements, and which body will be responsible for vesting and maintenance of individual aspects of the drainage proposal, with confirmation of land ownership of all land required for drainage.
 - d) A final as built detailed drainage layout drawing for the entire surface water drainage system supplied to CBC flood risk /SuDS team.
 - e) Any relevant correspondence with stakeholders and drainage bodies.
 - f) CBC are unable to adopt public open space SuDS at present, the Highways team should be consulted regards to gully soakaways.

Additional advice:

Ref 6.16 of the FRA.

If permeable paving (this is better than using an interceptor) is used on car park areas the petrol/oil interceptor is not required, this could save costs in the long run. They will both require a maintenance plan, but an interceptor will require more regular maintenance by a specialist. The proper construction of the permeable paving will also mean the soakaways for that area are unlikely to be needed, due to the good drainage on site it is likely to directly infiltrate.

6. 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, Priory House, Monks Walk, Chicksands, Shefford, Bedfordshire, SG17 5TQ.
7. The applicant is advised that if it is the intention to request Central Bedfordshire Council as Local Highway Authority, to adopt the proposed highways as maintainable at the public expense then details of the specification, layout and alignment, width and levels of the said highways together with all the necessary highway and drainage arrangements, including run off calculations shall be submitted to the Development Management Group, Central Bedfordshire Council, Priory House, Monks Walk, Chicksands, Shefford SG17 5TQ . No development shall commence until the details have been approved in writing and an Agreement made under Section 38 of the Highways Act 1980 is in place.
8. All roads to be constructed within the site shall be designed in accordance with Central Bedfordshire Council's publication "Design in Central

Bedfordshire (Design Supplement 7 - Movement, Street and Places" and the Department of the Environment/Department of Transport's "Manual for Street", or any amendment thereto.

9. The applicant is advised that in order to construct the access onto Ashton Road it will be necessary for the developer of the site to enter into an agreement with Central Bedfordshire Council as Highway Authority under Section 278 of the Highways Act 1980 to ensure the satisfactory completion of the access and associated road improvements. Further details can be obtained from the Development Management Group, Central Bedfordshire Council, Priory House, Monks Walk, Chicksands, Shefford SG17 5TQ.

Statement required by the Town and Country Planning (Development Management Procedure) (England) Order 2015 - Part 5, Article 35

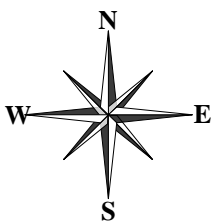
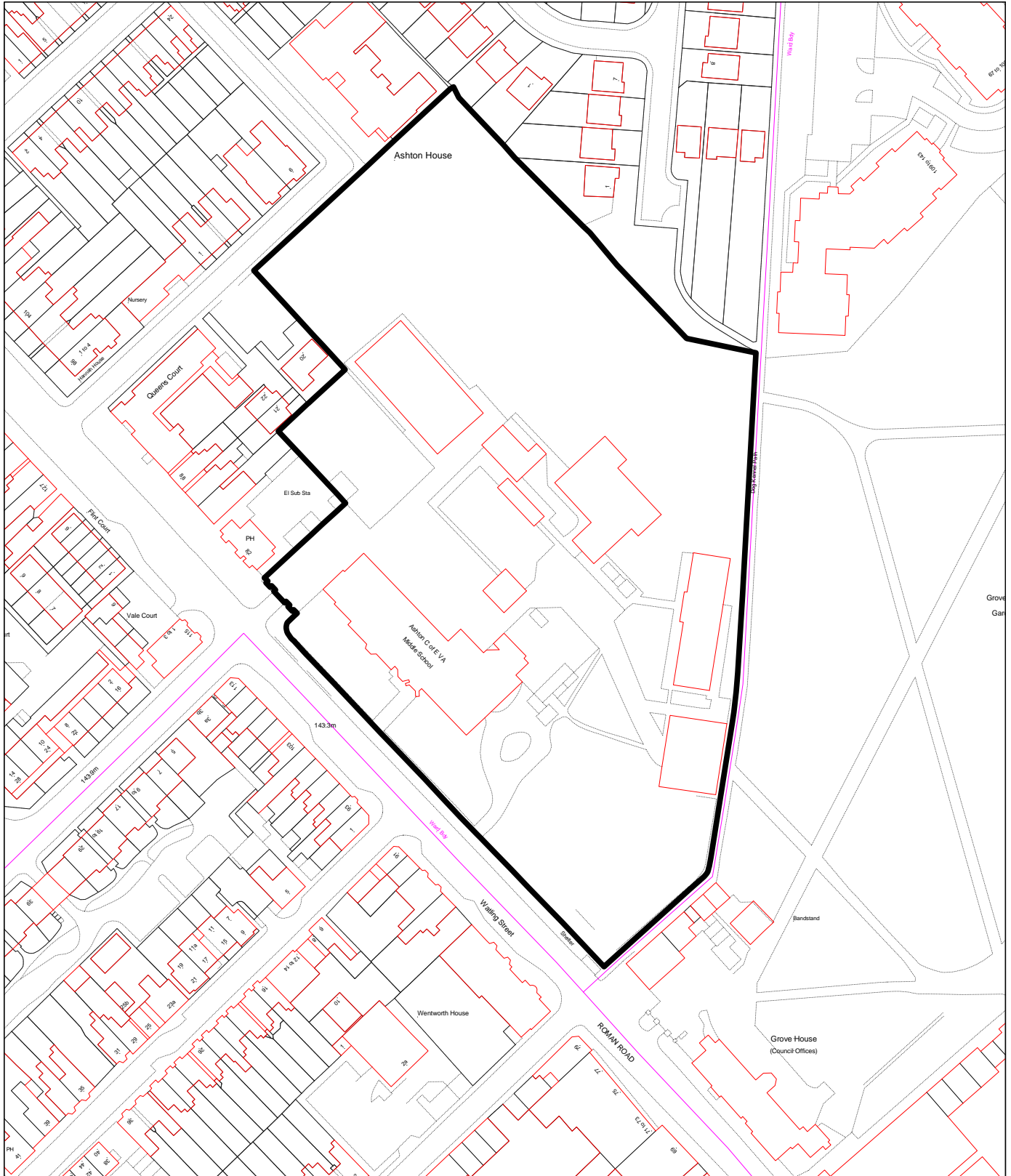
The Council acted pro-actively through positive engagement with the applicant at the pre-application stage and during the determination process which led to improvements to the scheme. The Council has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

DECISION

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Central Bedfordshire Council
Licence No. 100049029 (2009)
Date: 27:September:2016
Grid Ref: 501622; 222258

Application Number
CB/16/03189/LB

Scale: 1:1500

Ashton Middle School, High Street North, Dunstable, LU6 1NH

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Item No. 07

APPLICATION NUMBER	CB/16/03189/LB
LOCATION	Ashton Middle School, High Street North, Dunstable, LU6 1NH
PROPOSAL	Full Planning and Listed Building Applications: Conversion and refurbishment of Grade II listed former school building and associated curtilage listed buildings to form apartments comprising: Main School - 7No.1-bedroom and 12No. 2- bedroom apartments; Science Block - 4No.2- bedroom and 2No.1-Bedroom; Gymnasium - 5No. dwellings. Associated refuse, cycle storage, open space and landscaping proposals. Demolition of other modern curtilage listed buildings and extensions. Erection of new dwellings and apartments including: 3No. 4-bed houses fronting Ashton Road; 17No 3-bedroom houses; 23No. 1- Bedroom and 40No. 2-bedroom apartments. Vehicular and pedestrian access via High Street North and further pedestrian access via Ashton Road and Dog Kennel Path
PARISH	Dunstable
WARD	Dunstable Northfields
WARD COUNCILLORS	Cllrs Freeman & Warren
CASE OFFICER	Debbie Willcox
DATE REGISTERED	18 July 2016
EXPIRY DATE	17 October 2016
APPLICANT	Trustees of the Ashton Foundation
AGENT	
REASON FOR COMMITTEE TO DETERMINE	This is a Major Application which has received objections from the Town Council
RECOMMENDED DECISION	Listed Building - Recommended for Approval

Summary of Recommendation

The proposal would secure the optimum viable use of the Grade II Listed Building and result in positive enhancements to the significance of the Grade II Listed Building and its setting by the removal of unsympathetic modern additions and outbuildings and the restoration of original features. These benefits would outweigh the less than substantial harm that would result to the significance of the building and its setting as a result of the conversion works and the development of the grounds. The proposal is therefore considered to be in accordance with Section 12 of the National Planning Policy Framework, Policy BE8 of the South Bedfordshire Local Plan Review and Design Supplement 3 of the Central Bedfordshire Design Guide.

Site Location:

The application site comprises the former Ashton Middle School site, located on the north east side of High Street South in Dunstable. The site lies just outside the designated Dunstable Town Centre Boundary, and the south eastern section of the site is within the designated Conservation Area. The main school building is Grade II Listed and the other buildings on the site are considered to be curtilage listed.

The site is bounded to the south east by Dog Kennel Walk, a designated right of way which runs up to Dog Kennel Down; beyond the footpath is Grove Park. To the north east are dwellings in Printers Way and Crabtree Way and to the North West is Ashton Road and the Wheatsheaf public house on High Street North.

The List description for the Grade II Listed building is as follows:

1887-94 by E R Robson. Free Tudor style. Built of red brick with stone dressings, tile-hanging and red tiled roof. Above the entrance is an octagonal tower surmounted by an octagonal bell turret. To left of entrance is hall with large mullion and transom windows and central octagonal fleche on roof. To right of entrance is 2 storey wing, ground floor of brick and stone, first floor tile-hung. Timber framed dormer.

The Grade II Listed building sits close to the front boundary of the site and is a key feature within the streetscene of High Street North. It is visually imposing and of high quality architecturally. With the exception of modern extensions to the rear and side, the fabric is predominantly original, which enhances the historical significance of the building.

Internally, the most significant rooms are the school hall and the library. The school hall is a double height room in a neo-Tudor style, with a hammer-beam ceiling; vertically extended tripartite lancet windows; oriel windows in the north eastern and north western corners and the original timber flooring. Timber plaques are displayed to the upper sections of the walls showing the name of yearly awardees of the Frances Ashton Trophy from the year of the schools' foundation.

The library comprises a War Memorial, which was established to commemorate former pupils who died within the First World War and is registered as a War Memorial with the Imperial War Museum. The room also includes a panel commemorating those former pupils who died in the Second World War. The room is lined with panels and shelves and has a Victorian hammerbeam roof and stylistic entrance doors.

Many other rooms within the building retain original features, including staircases, flooring, doors, skirting boards, ornamental carvings.

The immediate setting of the Grade II Listed Building comprises the ancillary curtilage buildings, playing fields, playgrounds and car parking existing on the site, with the wider setting including Grove Park and the Grade II Listed Grove House, Victorian and Edwardian development on High Street North and Ashton Road and the more modern housing developments to the rear of the site.

The Application:

The application seeks Listed Building Consent to convert the Grade II Listed

Building and the two early 20th century buildings (the former science block and gymnasium) into flats and to demolish the remaining structures on the site, including some post war additions to the buildings which are to be retained. Within the grounds a further four blocks of flats and 20 houses would be erected with associated roads, parking, open space and gardens.

The new blocks of flats would be located along the rear, eastern and front boundaries of the site. The blocks in the north western corner of the site and the south eastern corner of the site would be three storey, the block in the north eastern corner would be four storey and would include a lift. The fourth block would be two storey, comprising garages on the ground floor and two units on the first floor.

The houses would be located in the central and western portions of the site, with three of them fronting onto Ashton Road. The houses would be two or two and a half storeys in height and would all have private gardens.

A formal garden would be established immediately behind the Grade II Listed Building. An area of more informal open space would be created in the eastern section of the site, measuring approximately 0.125 hectares. The existing mature trees and memorial garden in this section of the site would be retained and incorporated into this space.

With the exception of the library comprising the War Memorial, all parts of the Grade II Listed Building (including the basement) and the two curtilage listed buildings to be retained would be converted into flats.

The library would be maintained as a library, to be accessible to residents of the development and members of the public on request. With the exception of the removal of some recent, modern bookcases which obscure original panelling, and the restoration of the parquet floor, no alterations are proposed to the library.

The conversion works would necessitate a certain amount of subdivision of existing rooms and spaces and the creation of new internal openings. In some places, including the double height school hall, it is proposed to insert mezzanine flooring. The school hall would be subdivided into two units. A single conservation rooflight would be inserted into the rear roof slope of the Listed Building. An existing internal, modern staircase would be replaced.

Some of the existing windows in the school hall would have opening panes inserted within them. The mezzanine floor in the school hall would be set well back from the windows, and contained in the rear part of the room. The oriel windows and hammer-beam ceiling would be retained and restored, as would the parquet flooring. The wall plaques to either end of the hall would be relocated to communal spaces within the Grade II Listed Building and the former Science block.

The plaques on the rear wall of the room are painted on stone and are unstable and many are deteriorating or have been re-touched. These will either be directly conserved (where possible) or replica plaques will be produced on timber and arranged around the proposed party wall.

The proposed conversion works would include the demolition of a number of small post-war additions to the Grade II Listed building and ancillary curtilage listed

buildings and the restoration of the original fabric in these locations.

The conversion works to the ancillary, curtilage listed buildings (former science block and gymnasium) would include some alterations to the fenestration to create doors. A new staircase is proposed to the former science block to allow the creation of units within the ceiling voids.

RELEVANT POLICIES:

National Planning Policy Framework (2012)

Section 12: Conserving and enhancing the historic environment

South Bedfordshire Local Plan Review Policies

BE8 Design Considerations

(Having regard to the National Planning Policy Framework, the age of the plan and the general consistency with the NPPF, policy BE8 is still given significant weight.)

Development Strategy for Central Bedfordshire (June 2014)

At the meeting of Full Council on 19th November it was resolved to withdraw the Development Strategy. Preparation of the Central Bedfordshire Local Plan has begun. A substantial volume of evidence gathered over a number of years will help support this document. These technical papers are consistent with the spirit of the NPPF and therefore will remain on our web site as material considerations which may inform further development management decisions.

Supplementary Planning Guidance

Central Bedfordshire Design Guide: A Guide for Development:
Design Supplement 3: The Historic Environment, 2014

Relevant Planning History:

Application Number CB/16/01388/FULL

Description Conversion and refurbishment of Grade II listed former school building and associated curtilage listed buildings to form apartments comprising: Main School - 7No.1-bedroom and 12No. 2-bedroom apartments; Science Block - 4No.2-bedroom and 2No.1-Bedroom; Gymnasium - 5No. dwellings. Associated refuse, cycle storage, open space and landscaping proposals. Demolition of other modern curtilage listed buildings and extensions. Erection of new dwellings and apartments including: 3No. 4-bed houses fronting Ashton Road; 17No 3-bedroom houses; 23No. 1-Bedroom and 40No. 2-bedroom apartments. Vehicular and pedestrian access via High Street North and further pedestrian access via Ashton Road and Dog Kennel Path.

Decision Pending on this committee.

Decision Date N/A

Consultees:

Dunstable Town Council That Central Bedfordshire Council be advised that the Town Council has no objection in principle to the proposed development but is concerned that it constitutes overdevelopment of the site. The Town Council, having

heard strong representations from residents of neighbouring streets and given full consideration to the application, do object to the inadequate parking allocation within the development and are concerned that the design layout will encourage non-resident parking with ease of pedestrian access to those surrounding streets which currently suffer from a shortage of parking provision.

Conservation Officer

Development impacting upon a grade II listed building in a designated Conservation Area location, with extended grounds forming immediate listed building and Conservation Area setting.

This is a well-designed Scheme of site redevelopment following site vacancy, fully satisfying key criteria set out in paragraph 131 of the NPPF, which incorporates a significant historic and 'landmark' town centre building and associated (curtilage listed) buildings.

I consider that the developed Scheme secures the optimum viable use of these buildings, and on this basis, and on the basis of the above, I lend full support to the application with the supplied Conditions applied.

Historic England

To be reported on the Late Sheet.

The Society for the Protection of Ancient Buildings

To be reported on the Late Sheet.

The Ancient Monuments Society

To be reported on the Late Sheet.

The Council for British Archaeology

To be reported on the Late Sheet.

The Georgian Group

To be reported on the Late Sheet.

The Victorian Society

To be reported on the Late Sheet.

The Twentieth Century Society

To be reported on the Late Sheet.

Other Representations:

Neighbours and General Public
(1 & 5 Printers Way, 5 Ashton Road, 286 West Street, 16 Richard Street, 3 Bunhill Close,

Object to the proposal for the following reasons:

- The trees along Ashton Road should be retained as they enhance the streetscape of Ashton Road and the setting of the Grade II Listed Building
- All the trees on the site should be retained and protected;

Dunstable, 100
Westminster Gardens,
Houghton Regis,
Plymouth Close, Luton

- Proposed Block 1 would be too large to be appropriate for the setting of a Grade II Listed Building;
- The school should not be closed, it is part of the heritage of Dunstable;
- The building should be converted into something for the town, like a museum;
- Object to alterations to the fabric of the Listed Building;
- The alterations to the interior of the Listed Building would be unsympathetic;
- The plaques in the main hall of the Listed Building should be retained, they may be very fragile;
- The setting of the Listed Building should be undeveloped;

Determining Issues:

The main considerations of the application are;

1. Impact on the Historical Significance of the Grade II Listed Building and its Setting
2. Other Issues

Considerations

1. Impact on the Historical Significance of the Grade II Listed Building and its Setting

- 1.1 This application solely considers the impact of the proposal on the historical significance of the Grade II Listed Building and its setting, with all other issues being considered as part of the accompanying planning application, CB/16/01388/FULL.
- 1.2 Paragraph 131 of the NPPF states that, in determining planning applications, Local Planning Authorities should take into account:
 - the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
 - the desirability of new development making a positive contribution to local character and distinctiveness.
- 1.3 Paragraph 134 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
- 1.4 In this case, the Grade II Listed Building is vacant and there is little realistic prospect of it being utilised for its former use. As such, it is vital that the optimum viable use of the building be secured as this is the best opportunity for preserving the historic significance of the building.

- 1.5 It is considered by officers that the optimum viable use for the building and the wider site is that of residential development.
- 1.6 Furthermore, the proposal would result in some positive enhancements to the historical significance of the building and the wider site, including the restoration of the main school building, which is in poor repair in places, and also the removal of modern and inappropriate internal and external additions which conceal original features. The restoration and retention of the library and making this available to the public is also considered to be a benefit of the scheme.
- 1.7 However, it is acknowledged that the proposal would result in some less than substantial harm to the significance of the Grade II Listed Building, including the alteration to its use, the sub-division of original spaces, the insertion of a roof light and alterations to the front windows to allow them to open, the insertion of new internal openings and the insertion of mezzanine floors.
- 1.8 Both the general approach and the details of the proposed conversion works have been developed in close consultation with the Council's Conservation Officer and it is considered that the resulting proposal represents the most sensitive and respectful approach possible, while achieving the objective of securing the optimum viable use.
- 1.9 The former school hall is considered to be one of the most historically significant and sensitive rooms in the building, both in terms of its character and features and in regards to the wall plaques which have a high social history value. The greatest level of harm to the significance of the building as a result of the proposal would be the subdivision (both horizontally and vertically) of this space. However, the key features of the room are all to be retained, with the exception of the timber plaques, which are to be relocated to more public spaces. The stone based plaques (the oldest within the room) are to be restored and retained or replicated and kept in situ as it was considered that retaining these in context was the most appropriate solution. Having regards to the benefits of the scheme as a whole, it is considered that the level of harm that would result from the alterations to the hall would be outweighed by the scheme.
- 1.10 In terms of the impact on setting, the retention of the two most important, older curtilage listed buildings, the retention of the mature trees along the front and rear boundaries of the site and within the eastern section of the site, the retention of the boundary wall along the front of the site and the creation of open spaces around and near the building are all considered to be positive. It is considered that the impact of new residential development within the grounds would, in principle, have a limited harmful impact on significance, however, this would also be categorised as being less than substantial harm, particularly in regards to the campus style layout to the rear of the main building. The public benefits of the new residential development is that it would act as enabling development to the restoration and conversion of the Grade II Listed Building, and would provide a new community in the heart of Dunstable, providing much need housing and regeneration benefits to the wider community.

- 1.11 Having due regard to Section 12 of the NPPF, it is considered that the proposal would secure the optimum viable use for the Grade II Listed Building and the wider application site and bring positive benefits to the historic significance of the Grade II Listed Building, its setting and the Conservation Area. These benefits would outweigh the less than substantial harm to the historic significance of these heritage assets and the proposal is therefore considered to accord with Section 12 of the NPPF.

2. Other Issues

- 2.1 The comments of Dunstable Town Council do not concern the impact of the proposal on the Grade II Listed Building and its setting and are addressed within the accompanying report for planning application CB/16/03188/FULL, which seeks planning permission for the same proposal.

Recommendation:

Subject to consideration of any materially new comments received from the outstanding consultees, it is recommended that Listed Building Consent be APPROVED subject to the following:

RECOMMENDED CONDITIONS

- 1 The works shall begin not later than three years from the date of this consent.

Reason: To comply with Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 Notwithstanding the details submitted with the application, no works shall take place on any external modifications to the buildings to be retained until samples of materials to be used in the proposed external modifications to the retained buildings have been made available on site for inspection and approved in writing by the Local Planning Authority and the approved development shall be undertaken thereafter strictly in accordance with the approved details.

Reason: To ensure that the development is carried out in a manner that safeguards the historic significance and traditional character of the listed buildings of the site and to safeguard the character and appearance of the Conservation Area and its immediate setting of which the site is part. (Policy BE8, SBLPR and Section 12, NPPF)

- 3 Notwithstanding the details submitted with the application, and prior to the commencement of any external alterations to the buildings to be retained, a full external finishes Schedule for the existing buildings to be retained, including colours expressed as RAL nos. or demonstrated by colour swatches, has been submitted to and approved in writing by the Local Planning Authority and the approved development shall be undertaken thereafter strictly in accordance with the approved details.

Reason: To ensure that the development is carried out in a manner that safeguards the historic significance and traditional character of the listed

buildings of the site and to safeguard the character and appearance of the Conservation Area and its immediate setting of which the site is part.
(Policy BE8, SBLPR and Section 12, NPPF)

- 4 Notwithstanding the details submitted with the application, and prior to commencement of any works of demolition or alteration to the buildings to be retained, details and the proposed specification/method of any 'making good' to the internal fabric of the retained buildings required as a result of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority and the approved works shall be undertaken thereafter strictly in accordance with the approved details.

Reason: To ensure that the development is carried out in a manner that safeguards the historic significance and traditional character of the listed buildings of the site and to safeguard the character and appearance of the Conservation Area and its immediate setting of which the site is part.
(Policy BE8, SBLPR and Section 12, NPPF)

- 5 Notwithstanding the details submitted with the application, and prior to commencement of any works to the exterior of the buildings to be retained, full details of works of external making-good and exterior stonework/brickwork cleaning to be undertaken in respect of the retained buildings shall be submitted to and approved in writing by the Local Planning Authority and the approved development shall be undertaken thereafter strictly in accordance with the approved details.

Reason: To ensure that the development is carried out in a manner that safeguards the historic significance and traditional character of the listed buildings of the site and to safeguard the character and appearance of the Conservation Area and its immediate setting of which the site is part.
(Policy BE8, SBLPR and Section 12, NPPF)

- 6 Notwithstanding the details submitted with the application, and prior to commencement of any external works to the buildings to be retained, full details of the windows and external doors (including depth of reveal), conservation rooflights and roof lantern proposed to be installed in respect of the retained buildings shall be submitted to and approved in writing by the Local Planning Authority and the approved development shall be undertaken thereafter strictly in accordance with the approved details.

Reason: To ensure that the development is carried out in a manner that safeguards the historic significance and traditional character of the listed buildings of the site and to safeguard the character and appearance of the Conservation Area and its immediate setting of which the site is part.
(Policy BE8, SBLPR and Section 12, NPPF)

- 7 Notwithstanding the details submitted with the application, and prior to commencement of any alterations to the windows of the Grade II Listed Building hereby approved, full details of the refurbishment/modification of windows of the former school hall, to incorporate opening window sections, shall be submitted to and approved in writing by the Local Planning Authority and the approved development shall be undertaken thereafter strictly in accordance with the approved details.

Reason: To ensure that the development is carried out in a manner that safeguards the historic significance and traditional character of the listed buildings of the site and to safeguard the character and appearance of the Conservation Area and its immediate setting of which the site is part.
(Policy BE8, SBLPR and Section 12, NPPF)

- 8 Notwithstanding the details submitted with the application, and prior to commencement of any works to the former school library / war memorial room, full details of the making good of the wall panelling of the retained former school library/war memorial room following removal of book cases hereby approved, shall be submitted to and approved in writing by the Local Planning Authority and the approved development shall be undertaken thereafter strictly in accordance with the approved details.

Reason: To ensure that the development is carried out in a manner that safeguards the historic significance and traditional character of the listed buildings of the site and to safeguard the character and appearance of the Conservation Area and its immediate setting of which the site is part.
(Policy BE8, SBLPR and Section 12, NPPF)

- 9 Notwithstanding the details submitted with the application, and prior to commencement of any internal works to the former school hall and retained former library / war memorial room, a full internal finishes Schedule for the former school hall and retained former library/war memorial room, with colours expressed as RAL nos. or demonstrated by colour swatches, shall be submitted to and approved in writing by the Local Planning Authority and the approved development shall be undertaken thereafter strictly in accordance with the approved details.

Reason: To ensure that the development is carried out in a manner that safeguards the historic significance and traditional character of the listed buildings of the site and to safeguard the character and appearance of the Conservation Area and its immediate setting of which the site is part.
(Policy BE8, SBLPR and Section 12, NPPF)

- 10 Notwithstanding the details submitted with the application, and prior to commencement of any works to the former school hall, full details of the proposed retention in situ of the School Award name plaques established across the north wall of the former school hall, shall be submitted to and approved in writing by the Local Planning Authority and the approved development shall be undertaken thereafter strictly in accordance with the approved details.

Reason: To ensure that the development is carried out in a manner that safeguards the historic significance and traditional character of the listed buildings of the site and to safeguard the character and appearance of the Conservation Area and its immediate setting of which the site is part.
(Policy BE8, SBLPR and Section 12, NPPF)

- 11 Notwithstanding the details submitted with the application, and prior to commencement of any works to the roofs of the retained buildings, full details of any proposed roof repairs/refurbishment in respect of the retained

buildings shall be submitted to and approved in writing by the Local Planning Authority and the approved development shall be undertaken thereafter strictly in accordance with the approved details.

Reason: To ensure that the development is carried out in a manner that safeguards the historic significance and traditional character of the listed buildings of the site and to safeguard the character and appearance of the Conservation Area and its immediate setting of which the site is part.
(Policy BE8, SBLPR and Section 12, NPPF)

- 12 Notwithstanding the details submitted with the application, and prior to commencement of internal works to the buildings to be retained, drawn section details at a scale between 1:10 and 1:20 as appropriate clearly demonstrating the following, in respect of the retained buildings, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out only in accordance with the approved details.

- new/replacement staircases to be installed
- new ceilings to be installed
- new floors to be installed.

Reason: To ensure that the development is carried out in a manner that safeguards the historic significance and traditional character of the listed buildings of the site and to safeguard the character and appearance of the Conservation Area and its immediate setting of which the site is part.
(Policy BE8, SBLPR and Section 12, NPPF)

- 13 This consent relates only to the details shown on the submitted plans, numbers WH182/16/P/05.01, WH182/16/P/05.02, WH182/16/P/10.01 Ref B, WH182/16/P/10.03 Ref B, WH182/16/P/10.04 Ref B, WH182/16/P/25.01, WH182/16/P/25.01 Rev A, WH182/16/P/25.02, WH182/16/P/25.03 Rev A, WH182/16/P/25.05 Rev A, WH182/16/P/25.06 Rev A, WH182/16/P/25.07 Rev A, WH182/16/P/25.08, WH182/16/P/25.09, WH182/16/P/25.10 Rev A, WH182/16/P/25.11, WH182/16/P/25.12, WH182/16/P/25.13, WH182/16/P/25.14 Rev A, WH182/16/P/25.15, WH182/16/P/25.16, WH182/16/P/25.17, WH182/16/P/25.18 Rev A, WH182/16/P/25.19 Rev A, WH182/16/P/25.20, WH182/16/P/25.21, WH182/16/P/25.22, WH182/16/P/25.23, WH182/16/P/25.24, WH182/16/P/25.25, WH182/16/P/25.26 Rev A, WH182/16/P/25.27, WH182/16/P/55.01 Rev A, WH182/16/P/55.02 Rev A, WH182/16/P/55.03 Rev A, WH182/16/P/55.03 Rev A.

Reason: To identify the approved plans and to avoid doubt.

INFORMATIVE NOTES TO APPLICANT

1. This consent relates only to that required under the Planning (Listed Building and Conservation Areas) Act 1990 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.

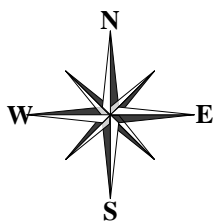
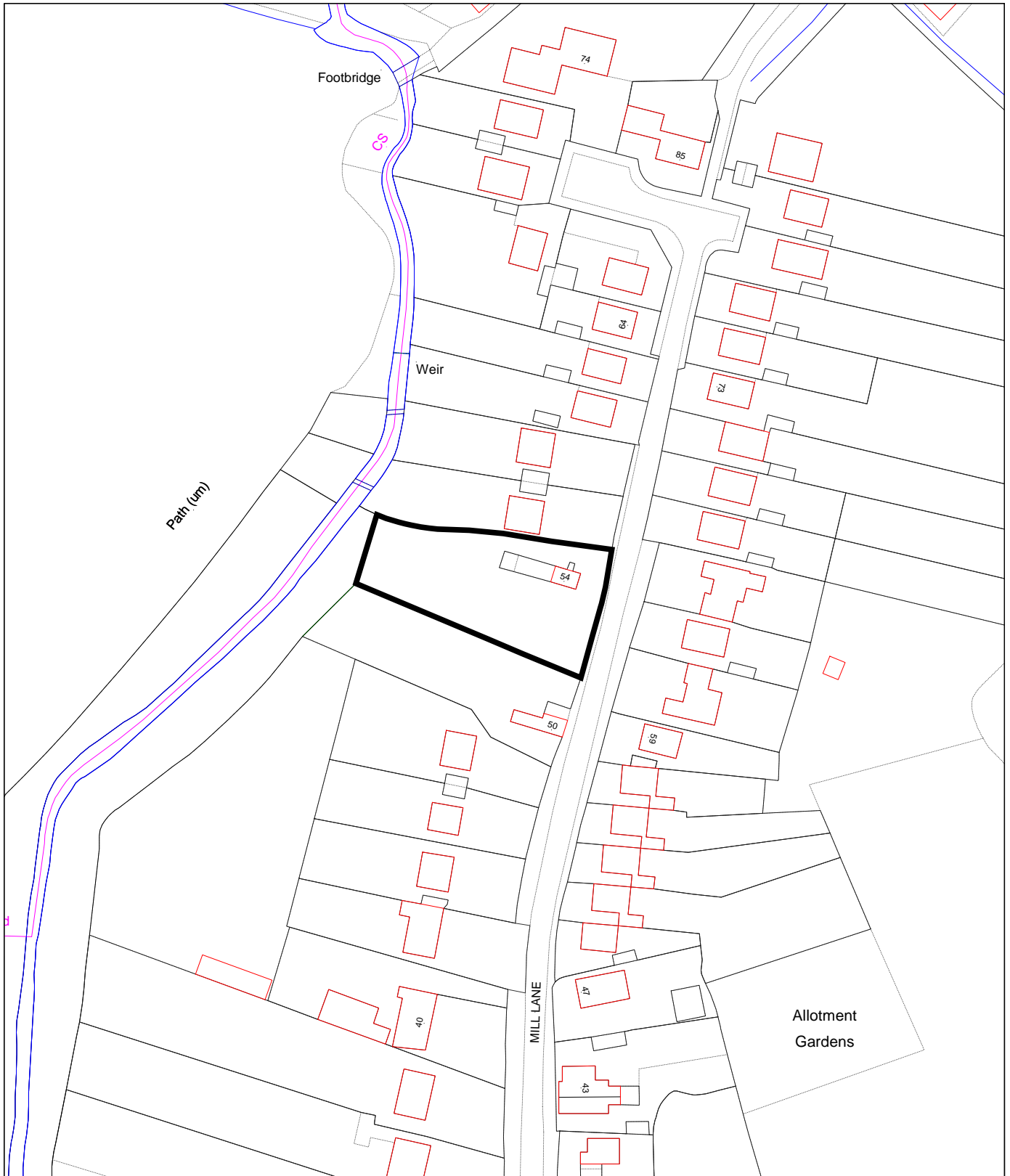
2. In accordance with Article 35 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the reason for any condition above relates to the Policies as referred to in the South Bedfordshire Local Plan Review (SBLPR) and the National Planning Policy Framework (NPPF).

Statement required by the Town and Country Planning (Development Management Procedure) (England) Order 2015 - Part 5, Article 35

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) Order 2015.

DECISION

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Date: 26:September:2016

Map Sheet No

Application No:
CB/16/03232/Full

Scale: 1:1250

54 Mill Lane, Greenfield, MK45 5DF

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Item No. 08

APPLICATION NUMBER CB/16/03232/FULL
LOCATION 54 Mill Lane, Greenfield, Bedford, MK45 5DF
PROPOSAL Subdivision of the existing plot to erect a detached dwelling and associated curtilage.
PARISH Flitton/Greenfield
WARD Westoning, Flitton & Greenfield
WARD COUNCILLORS Cllr Jamieson
CASE OFFICER Mark Spragg
DATE REGISTERED 21 July 2016
EXPIRY DATE 15 September 2016
APPLICANT Mr N Brown
AGENT DLP (Planning) Ltd
REASON FOR COMMITTEE TO DETERMINE The Applicant is an Officer working in Development Management

RECOMMENDED DECISION Full Application - Approval

Summary of Recommendation

The planning application is recommended for approval, it would be in accordance with Central Bedfordshire Core Strategy and Development Management Policies DM3, CS1, DM4, DM13, CS15. It would not have a significant impact upon the residential amenity of any adjacent properties, the significance or the setting of the adjacent Listed Building and would result in a new development suitable for the location. It is considered that the design is in accordance with the Central Bedfordshire Design Guide and National Planning Policy Framework.

Site Location:

The application site is within the settlement envelope of Greenfield, which is identified in Policy CS1 of the Core Strategy as a small village. The site occupies an area of approximately 0.1ha and extends to a depth of approximately 62m. Beyond the rear of the site to the west is a stream, with an additional parcel of land (under the ownership of the applicant) edged blue on the submitted site plan.

The site is currently occupied by a detached one and a half storey Grade II Listed thatched cottage, with white rendered walls and weatherboarding, and a modern lean to extension at the rear.

The cottage is sited within the northern half of the site close to the boundary with No.56, a modern chalet house. It is positioned perpendicular to Mill Lane and has a long narrow footprint with a gap of approximately 17m between it and the southern boundary with No.50.

The surrounding area comprises a mix of property styles, though unlike the application site they are mostly of modern appearance.

The Application:

Planning permission is sought for the erection of a 3 bedroom detached one and a half storey dwelling with a long and narrow footprint (4.5 x 14.4m).

The application drawings indicate a dwelling finished with a mix of smooth render and weatherboarding on its elevations and a plain clay tiled roof. Gable windows are shown to each end with rooflights serving the accommodation within the roofspace. An open entrance canopy would project on the front (south facing) elevation.

A new access is proposed close to the southern boundary, extending up to a parking and turning area for 2 cars. The existing property would continue to be served by an access located centrally within the plot.

The application has been accompanied by a Planning Statement, Design and Access Statement, an Arboricultural Impact Assessment, an Ecology appraisal, a Phase One Environmental Study and an Archaeological Assessment.

This application has been subject to pre application discussions with the Conservation Officer, Tree Officer and Planning Officer, and follows a previously withdrawn application for a two storey dwelling.

RELEVANT POLICIES:

National Planning Policy Framework (NPPF) (March 2012)

Core Strategy and Development Management Policies - North 2009

DM3 Amenity
CS14 High Quality Development
CS15 Heritage
DM13 Heritage in Development
CS1 Development Strategy

Development Strategy

At the meeting of Full Council on 19 November 2015 it was resolved to withdraw the Development Strategy. Preparation of the Central Bedfordshire Local Plan has begun. A substantial volume of evidence gathered over a number of years will help support this document. These technical papers are consistent with the spirit of the NPPF and therefore will remain on our website as material considerations which may inform further development management decisions.

Supplementary Planning Guidance/Other Documents

Central Bedfordshire Design Guide (March 2014)

Relevant Planning History:

16/01410/FULL - Subdivision of the plot to erect a detached dwelling and associated curtilage. Withdrawn.

Consultees:

Flitton and Greenfield
Parish Council **Objection**

The major change this time is the much reduced size and height of the proposal which is much more in keeping with the listed cottage next door. However the other big reason for our previous objection is the siting of the dwelling, which is set to the rear of the site and well back from the housing line of all adjacent dwellings and all the other dwellings on the same side of Mill Lane.

Siting of proposed dwelling is adjacent to the rear gardens of numbers 50 and 56 which will mean their rear gardens are overlooked by the property.

The parking for vehicles is adjacent to the dwelling which will mean that vehicles will be using a long drive very close to the house and garden of No.50 will be parked to the rear of the listed cottage and a line with the rear gardens of numbers 50 and 56. This could cause disturbance to the enjoyment of the rear gardens of these properties.

However, if the siting of the dwelling was moved to be in line with adjacent properties we would have no objection to building here which would be acceptable infill.

Highways Officer

No objection subject to conditions.

Conservation Officer

No objection subject to conditions.

The proposal has been developed from a previously proposed scheme which was deemed to have a negative impact on the setting of the listed building.

The current proposal would relate better to the listed building in terms of its size, depth, height and bulk.

Tree and Landscape
Officer

No objection subject to conditions

No objection to removal of the trees identified for removal subject to requiring new boundary planting and protection of trees to be retained.

Archaeology

No objection subject to condition requiring a written scheme of investigation prior to commencement.

Bedfordshire and River
Ivel Internal Drainage
Board

No objection.

Ecologist **No objection subject to condition.**

Control of Pollution **No objection.**

Other Representations:

Neighbours One representation has been received, from the occupant of 56 Mill Lane:

The comments made are summarised as follows:

- the boundary goes through the centre of a redundant stream ditch.
- Pleased to note removal of the Maple tree which overshadows No.56.

Determining Issues:

The main considerations of the application are;

1. Principle of residential development
2. Affect on the character and appearance of the area and setting of the listed building
3. Impact on the amenity of neighbouring occupiers
4. Highway Considerations
5. Contributions & Affordable Housing
6. Other Considerations

Considerations

1. Principle of residential development

- 1.1 Greenfield is identified as a small village within Policy CS1 of the Core Strategy, wherein Policy DM4 states that within such areas development should be limited to infill.
- 1.2 The application site is within the settlement envelope. Whilst the proposed dwelling would not be located directly between two properties it would visually infill the gap between No's 50 and 54, albeit the proposed dwelling would be set back behind both properties.
- 1.3 The Council cannot currently demonstrate a 5 year supply of deliverable housing, and therefore policies with respect to the supply of housing (including Settlement Envelopes) are deemed out of date as per paragraph 49 of the NPPF. In this context, the presumption in favour of sustainable development applies and permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the development (NPPF paragraph 14). The proposed development therefore needs to be considered against the three strands of sustainability, social, environmental and economic, to determine whether any adverse impacts of granting planning permission for residential development on this site would outweigh the benefits of the proposal.
- 1.4 Social - The development would be beneficial in that it would be likely to result

in some, albeit limited additional use of nearby local community facilities in the village such as pubs and shops but would also put additional pressure on facilities without any infrastructure contributions to mitigate the additional pressure from the increased use. It is concluded that on balance the development would have a neutral social benefit.

- 1.5 Economic - The development would be in close proximity to Greenfield village centre and its facilities and would help to support local businesses and provide temporary construction jobs. As such it is considered that there would be a small economic benefit.
- 1.6 Environmental - The proposal would result in the loss of existing trees, however those to be removed are not considered to be of merit and worthy of protection. The tree officer considers that alternative native hedge planting would be more appropriate. As such the environmental benefit is considered neutral albeit other matters such as the impact on the listed building will need to be considered.
- 1.7 On the basis of the above, in light of the fact that the Council cannot demonstrate a 5 year supply of deliverable housing and on the basis that it is not considered there are any social, environmental and economic impacts which would outweigh the benefits of the proposal a set out in the NPPF there is a presumption in favour of sustainable development. The proposal is therefore acceptable in principle subject to consideration of all other relevant matters to be assessed in this report.

2. Affect on the character and appearance of the area and setting of the listed building

- 2.1 The proposed dwelling, unlike that previously applied for, has had better regard to the design and siting of the existing listed cottage. It would have similar proportions in terms of orientation, width and depth to the listed building, with the roof kept to a minimal height (6.6m), such that it would not appear significantly higher (approx 0.8m) taking into account a proposed lower ground level. The proposal would be of a barn style with elements of cladding on the upper part and a steep pitched roof to reflect elements of the existing cottage.
- 2.2 Given the significant gap from the cottage to the southern boundary, the plot would be capable of accommodating another dwelling and the infilling with a narrow dwelling such as that proposed would maintain visual separation between buildings and boundaries without appearing harmful to the streetscene.
- 2.3 Comment has been made that the new dwelling could be brought forward such that it would be located between No.50 and 54. Whilst this was discussed at the pre application stage it was considered that this would have a greater impact on the listed building and have the potential to prejudice the privacy and amenity of both neighbouring properties.
- 2.4 The Conservation Officer has concluded that this amended proposal would satisfactorily relate to the adjacent listed building in terms of depth, height and bulk, and considers the proposal acceptable in respect of its impact on the setting of the listed building.
- 2.5 The proposal includes the removal of some trees within the site to facilitate the development. However, the Tree Officer does not consider those trees to be of

worthy of retention and supports the introduction of new native hedge species along the south boundary. In addition, further planting is proposed alongside the new access.

- 2.6 Given the siting of the proposed dwelling and its design it is considered that it would respect the character and appearance of the surrounding area and setting of the listed building. The proposal is therefore in conformity with Policy DM3, DM13, CS14, CS15 of the Core Strategy and Development Management Policies for Central Bedfordshire (North), and also the principles of good design contained within the Central Bedfordshire Council Design Guide (2014)..

3. Impact on the amenity of neighbouring occupiers

- 3.1 No. 50 Mill Lane is located close to the front boundary with Mill Lane, whilst extending back at the rear. There would be a gap of approximately 2m from the new access to the side boundary with No.50 and a further 2m to the flank wall of the neighbours property. New planting is proposed to infill gaps in the boundary, whilst additional fencing could be provided as appropriate. Given the proximity of No.50 to the Mill Lane it is not considered that the introduction of a new access in this location serving only one property would adversely impact on the amenity of its occupants. Having regard to the location of the proposed property, with the rooms in the south facing roof served by rooflights, it is not considered that any undue loss of privacy to No.50 would result. Whilst some views at ground level over the rear part of No.50's garden may be possible this is not considered unreasonable as the main private area immediately to the rear and side of the property would maintain privacy.
- 3.2 No.56 is located approximately 20m from the proposed dwelling with a gap of 11-13m shown to the side boundary. All windows in the north elevation would also be rooflights and as such no direct overlooking of the garden or house would result.
- 3.3 The only first floor window facing towards No.54 would be a small bedroom window in the front gable. However, this would be located at an acute angle to the front windows of No.54 and whilst it would overlook the garden area it is not considered that such a relationship would be unacceptable.
- 3.4 In respect of neighbouring privacy and amenity, the proposal is considered to be in accordance with Policy DM3 of the Core Strategy and Development Management Policies Development Plan Document and also the Central Bedfordshire Council Design Guide (2014).

4. Highway Considerations

- 4.1 Parking and turning for 2 cars is shown to be provided for the proposed three bed dwelling together with a new access off Mill Lane. The Highways Officer has raised no objections to the proposed development subject to a number of conditions.

5. Contributions & Affordable Housing

- 5.1 As set out in National Planning Practice Guidance there are specific circumstances where contributions for affordable housing and planning obligations should not be sought from small scale and self-build development. As this development is for one dwelling, no affordable housing or S106 contributions can be sought.

6. Other Considerations

6.1 Human Rights issues

There are no Human Rights issues

6.2 Equality Act 2010

There are no issues under the Equality Act

Recommendation:

That Planning Permission be approved subject to the following:

RECOMMENDED CONDITIONS / REASONS

- 1 The development hereby permitted 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 **No development shall take place, notwithstanding the details submitted with the application, until details of the materials to be used for the external walls and roofs of the development hereby approved have been 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 control the appearance of the building in the interests of the visual amenities of the locality. (Section 7, NPPF)

- 3 **No development shall take place until drawings of all new and proposed replacement windows and doors to a scale of 1:10 or 1:20, together with a specification of the materials and finishes has been submitted to and approved in writing by the Local Planning Authority. Details provided shall clearly show a section of the glazing bars, frame mouldings, door panels, the position of the door or window frame in relation to the face of the wall, the depth of the reveal and arch and sill details. The development shall be carried out only in accordance with the approved details.**

Reason: To ensure that the proposed development/work is carried out in a manner that safeguards the historic character and appearance of

the adjacent listed building. (Section 12, NPPF).

- 4 Notwithstanding the approved plans, all new rainwater goods shall be of black painted [cast iron/aluminium] and shall be retained thereafter.

Reason: To safeguard the special architectural and historic interest of this statutorily listed building. (Section 12, NPPF)

- 5 A scheme shall be submitted for approval in writing by the Local Planning Authority indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved scheme before the building is occupied and be thereafter retained.

Reason: To safeguard the appearance of the completed development and the visual amenities of the locality.(Section 7, NPPF)

- 6 **No development shall take place until details of the existing and final ground and slab levels of the buildings hereby approved have been submitted to and approved in writing by the Local Planning Authority. Such details shall include sections through both the site and the adjoining properties, the location of which shall first be agreed in writing with the Local Planning Authority. Thereafter the site shall be developed in full accordance with the approved details.**

**Reason: To ensure that an acceptable relationship results between the new development and adjacent buildings and public areas.
(Section 7, NPPF)**

- 7 **No development shall take place until a landscaping scheme to include all hard and soft landscaping and a scheme for landscape maintenance for a period of five years following the implementation of the landscaping scheme have been 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 in accordance with the approved landscape maintenance scheme and any which die or are destroyed during this period shall be replaced during the next planting season.**

**Reason: To ensure an acceptable standard of landscaping.
(Sections 7 & 11, NPPF)**

- 8 **No equipment, machinery or materials shall be brought on to the site for the purposes of development until substantial protective fencing for the protection of any retained tree(s), has been erected in the positions shown on Drawing No. 9175 TPP 01 Rev A (included within the Arboricultural Impact Assessment). The fencing shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made,**

unless otherwise agreed.

Reason: To protect the trees so enclosed in accordance with Section 8 of BS 5837 of 2012 or as may be subsequently amended. (Sections 7 & 11, NPPF)

- 9 The proposed vehicular access shall be constructed and surfaced in a bituminous or other similar durable material (not loose aggregate) as may be approved in writing by the Local Planning Authority for a distance of 5m into the site, measured from the highway boundary, before the premises are occupied. Arrangements shall be made for surface water drainage from the site to be intercepted and disposed of separately so that it does not discharge into the highway.

Reason: In order to minimise danger, obstruction and inconvenience to users of the highway and the premises. (Section 4, NPPF).

- 10 Visibility splays shall be provided on each side of the junction of the vehicular access with the public highway. The splays shall extend to the limits of the site's highway frontage on each side of the access from a point on the centre line of the access measured 2.4m back from the road channel. The vision splays so described shall be maintained free of any obstruction to visibility.

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. (Section 4, NPPF).

- 11 **No development shall commence until details of a scheme showing the provision of a 1.5m wide footway on the western side of Mill Lane across the site frontage has been submitted to and approved by the Local Planning Authority and the proposed dwelling shall not be occupied until the footway has been constructed in accordance with approved details. Any Statutory Undertakers equipment or street furniture shall be re-sited to provide an unobstructed footway.**

Reason: In the interests of road safety and pedestrian movement. (Section 4, NPPF).

- 12 The dwelling shall not be occupied until the junction of the proposed vehicular access with the highway has been constructed in accordance with the approved details (see note to applicant)

Reason: In order to minimise danger, obstruction and inconvenience to users of the highway and the premises. (Section 4, NPPF).

- 13 The development shall not be brought into use until a turning space for a service/delivery sized vehicle (6.25m length) has been constructed within the curtilage of the site in a manner to be approved in writing by the Local Planning Authority.

Reason: To enable vehicles to draw off, park and turn outside of the highway limits thereby avoiding the reversing of vehicles on to the highway. (Section 4, NPPF).

- 14 **Notwithstanding the submitted plans no development shall take place until a scheme showing off-street parking and turning has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the development is first occupied or brought into use and thereafter retained for this purpose.**

**Reason: To ensure provision for car parking and turning clear of the highway.
(Section 4, NPPF)**

- 15 Notwithstanding the provisions of Part 1, Classes A -E of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development other than that approved shall be carried out without the grant of further specific planning permission from the Local Planning Authority.

Reason: To control the external appearance of the building/s in the interests of the amenities of the area and the setting of the listed building. (Section 7, NPPF)

- 16 All rooflights in the development shall be located a minimum of 1.7m above the floor of the rooms in which the windows are installed.

Reason: To safeguard the privacy of occupiers of adjoining properties
(Section 7, NPPF)

- 17 The dwelling hereby approved shall not be occupied until details of the bin [storage/collection] areas have been submitted to and approved in writing by the Local Planning Authority and the bin storage/collection areas have been implemented in accordance with the approved details. The bin [storage/collection] areas shall be retained thereafter.

Reason: In the interest of amenity. (Section 7, NPPF)

- 18 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers PL100, PL201, PL202, PL203 (elevations and sections), PL203 (plans and elevations), 79175 TPP 01 Rev A.

Reason: To identify the approved plans and to avoid doubt.

INFORMATIVE NOTES TO APPLICANT

1. In accordance with Article 35 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the reason for any condition above relates to the Policies as referred to in the National Planning Policy Framework (NPPF) and the Core Strategy for North Central Bedfordshire.

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 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 contact Central Bedfordshire Council's Highway Help Desk, Tel: 0300 300 8049 quoting the Planning Application number. 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.
4. 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, Priory House, Monks Walk, Chicksands, Shefford, SG17 5TQ
5. The applicant is advised that in order to comply with Condition 11 of this permission it will be necessary for the developer of the site to enter into an agreement with Central Bedfordshire Council as Highway Authority under Section 278 of the Highways Act 1980 to ensure the satisfactory completion of the access and associated road improvements. Further details can be obtained from the Development Control Group, Development Management Division, Central Bedfordshire Council, Priory House, Monks Walk, Chicksands, Shefford SG17 5TQ

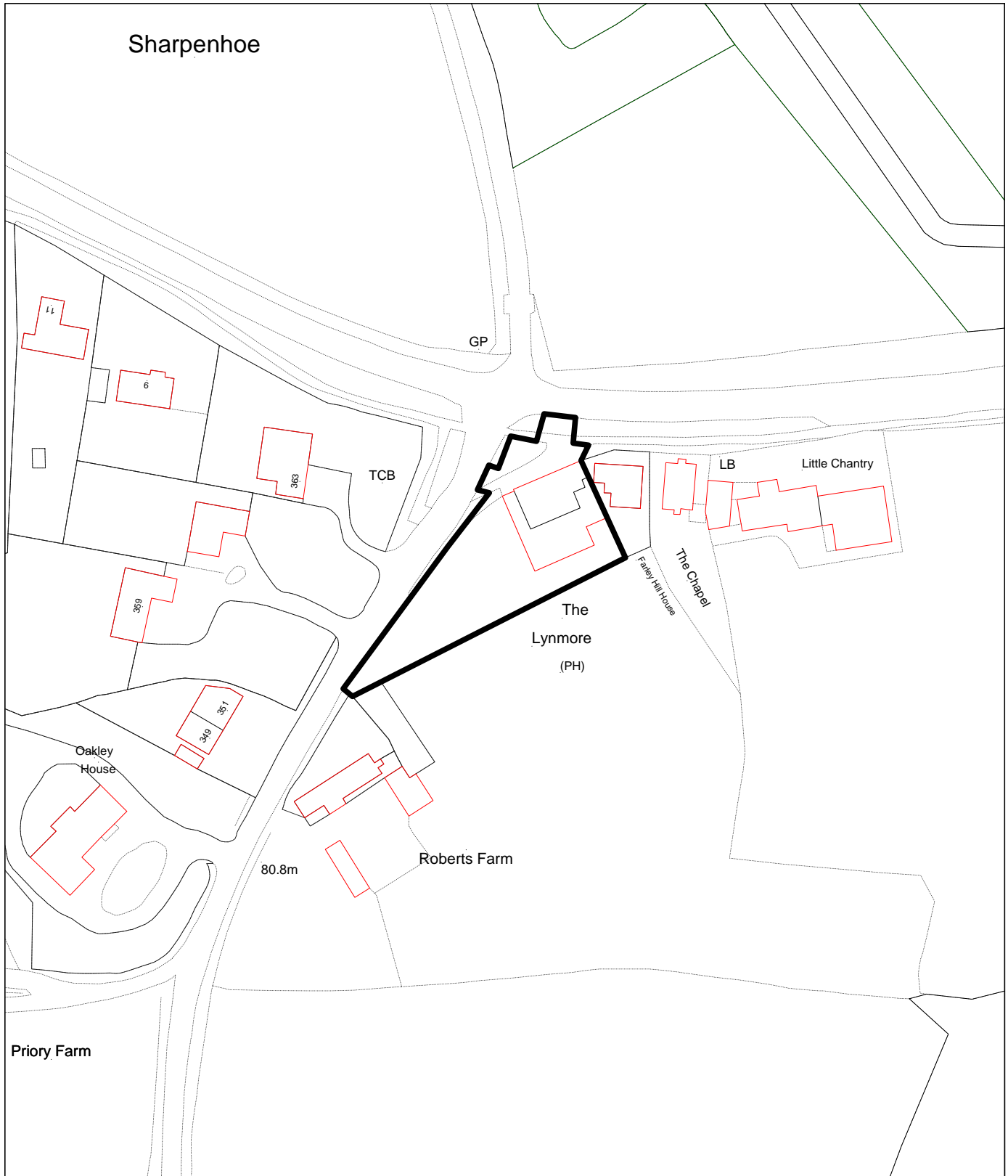
Statement required by the Town and Country Planning (Development Management Procedure) (England) Order 2015 - Part 5, Article 35

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) Order 2015.

DECISION

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	© Crown Copyright. All rights reserved. Central Bedfordshire Council Licence No. 100049029 (2009)	Application No: CB/16/02172/Full
	Date: 27:September:2016	
	Map Sheet No	
Scale: 1:1249	Lynmore House, Sharpenhoe Road, Sharpenhoe, Bedford MK45 4SU	

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Item No. 09

APPLICATION NUMBER	CB/16/02172/FULL
LOCATION	Lynmore House, Sharpenhoe Road, Sharpenhoe, Bedford, MK45 4SU
PROPOSAL	Formation of in-out drive with hardstand and landscaping in front of Lynmore House, including diversion of existing public footpath.
PARISH	Streatley
WARD	Toddington
WARD COUNCILLORS	Cllrs Costin & Nicols
CASE OFFICER	Sarah Fortune
DATE REGISTERED	23 May 2016
EXPIRY DATE	18 July 2016
APPLICANT	Mr Dawkins
AGENT	Michael Hardiman & Associates LLP
REASON FOR COMMITTEE TO DETERMINE	Called in by Councillor Tom Nicols on grounds of public concerns raised over the loss of an area that has been used for general public purposes as an 'amenity area of grass' for many years.
RECOMMENDED DECISION	

Summary of Recommendation.

This application is for the creation of an in and out driveway for the occupants of Lynmore House, and incorporates areas of planting, to give some form of privacy to these occupants whilst at the same time leaving the majority of the grass area for use by the general public. It includes the retention of the public bench. It also involves the relocation of the existing public footpath which runs across the site. Whilst the concerns raised by a number of local residents has been given very careful consideration in this revised application it is felt that a reasonable compromise has been reached both for the occupants of Lynmore House and the wider general public. The changes to the appearance of the land will not have an unduly adverse impact on the general openness of the site. The proposals are in compliance with planning policies in the South Beds Local Plan Review and there are no highway objections provided that conditions are complied with.

Site Location:

The site lies on the south eastern side of the junction of Sharpenhoe Road and Harlington Road and has a frontage to both roads. It supports a detached dwelling known as Lynmore House that was formerly a Public House known as 'The Lynmore'. It is being used as a dwelling house following the grant of planning permission within the last two years and has recently been extended . It lies in the Green Belt and the AONB.

The Application:

This application is in respect of the formation of a new vehicular entrance onto Sharpenhoe Road to create an in - out driveway with hardstand and landscaping in front of Lynmore House as well as the diversion of an existing Public Footpath. (It is not a countryside right of way). This is being enabled by the retention of the existing vehicle crossing on to Harlington Road.

The ownership of the land to the front of the former public house is not known but there are Highway Rights over the land. The application has been advertised by the applicant to allow an opportunity to claim ownership of the land but to date no one has come forward. We are aware that an application has been made to list the area as an Asset of Community Value.

The application has been advertised by the applicant in Beds on Sunday on 20/05/2016 and the planning officer put up a site notice next to the highway near to the site on 2/06/2016.

RELEVANT POLICIES:

National Planning Policy Framework (NPPF) (March 2012)

South Bedfordshire Local Plan Review Policies

BE8 Design Considerations
T10 Parking

Development Strategy

At the meeting of Full Council on 19 November 2015 it was resolved to withdraw the Development Strategy. Preparation of the Central Bedfordshire Local Plan has begun. A substantial volume of evidence gathered over a number of years will help support this document. These technical papers are consistent with the spirit of the NPPF and therefore will remain on our website as material considerations which may inform further development management decisions.

Supplementary Planning Guidance/Other Documents

Central Bedfordshire Design Guide (March 2014):
Supp 7: House Extensions and Alterations

Relevant Planning History: relevant

Application Number	CB/15/00525/FULL
Description	Change of use of Public House/Restaurant to single dwelling, first floor side extension and erection of detached double garage.
Decision	Granted
Decision Date	2015.

Application Number Description	CB/16/00240 Construction of brick piers and oak gates at existing vehicular entrance onto Sharpenhoe Road, the formation of a new vehicular entrance onto Sharpenhoe Road to create an in-out drive with hardstand and landscaping in front of Lynmore House and diversion of existing public footpath.
Decision Decision Date	Withdrawn 04/05/2016

Application Number Description	CB/16/01981 Construction of brick piers and oak gates at existing vehicular entrance onto Sharpenhoe Road. Granted: 5/07/2016.
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Consultees:

Streatley Parish Council	Object: Would increase the risk of accidents with vehicles turning off Harlington Road and onto Sharpenhoe Road so close to the junction. Would like to point out that a police survey was carried out in October last year and confirmed that Harlington had over 42 000 cars using the road on a weekly basis. There is no justification for diverting a footpath in order to accommodate greater access for which there is no pressing need and which will only serve to increase the potential for traffic accidents. There is significant opposition to these plans for other residents of Sharpenhoe who realise the safety issues such plans could cause.
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Highways Officer	No objections subject to conditions and highway Notes
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Tree Officer	No objections
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Rights of Way Officer	No objections
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Ecology Officer	No objections to Stopping up Order for previous similar application.
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Conservation Officer	No objections
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Other Representations:

Neighbours	1. Objects: 43a Harlington Road, Sharpenhoe. Why has the enforcement officer not dealt with the reinstatement of the dropped kerb or the rear conservatory ? The in and out driveway will be dangerous. They do not own the land. Clear demarcation presently exists in the shape of the Public Footpath. They have access via the house to the rear parking area. They do not need to claim and alter the
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public grass to the front where the bench is and then park their vehicles all over the footpath. The open frontage does not need their landscaping.

1. Objects: 45 Harlington Road. Moving the footpath closer to the road will be to the detriment of pedestrian safety. The applicant has not made any attempt to find out who owns the land. Consider it belongs to the people of Sharpenhoe. It is morally wrong for them to take this land. The owners knew this property was a public house so can expect the occasional inquiry. The property no longer looks like a public house. They should put up a sign on the building stating it is no longer a pub. Sharpenhoe is an Area of Outstanding Beauty. We all have people looking through our windows at times. A new in and out driveway is not required to tidy up the area. No need to have parking area near to front door. They can access their rear parking area for their house. Concerns raised by local residential has to been taken into account by the applicants.

1. Objects: 47 Harlington Road: the grass area is public land which was grassed over when the road was straightened out - as indicated on old and new maps of the site. The moving of the bench - it has been used by villagers for many years. The relocation of the footpath will be more dangerous when crossing the roads. If the triangular area is landscaped it may block vision for drivers turning form Sharpenhoe Road onto either Barton Road or Sharpenhoe Road. Access to land owned by the National Trust will be blocked by the proposed gates at the other end of the site. May set a precedent for future developments which block views of the land to the rear of the site which is an AONB.

1. Objects: 57 Harlington Road: The land is not owned by the former Public House but is public footpath and grass verge. Planning notice not seen. Lynmore House has many existing parking spaces. Brick piers and gates would block access to the rear of Roberts farm. The bench should not be moved to a location that is not suitable. Loss of the current footpath would make crossing the road difficult. The whole planning application is out of keeping with the village.

1. Objects: 43a Harlington Road, Sharpenhoe: Outraged by the proposals. Does not appear to have been any public notification of the plans. They appear to be changing land that is surely public land - our village green - what right do you have to allow this to happen? The bench is a major contribution to the charm of the location. The gated drive would be a major problem to all traffic.

1. Objects: Sharpenhoe Farley Hill House: Ownership the land is a major point of annoyance as this is seen as a village green and the centre of the village. It is used for social activities. We consider it to be amenity land as it is in an Area of Outstanding Natural Beauty owned by the Council. Did not see any site notice nor the newspaper advert. It would have been preferable to contact the Parish Council or advertise on village notice board. I would like to claim ownership of the land as have maintained it for many years. It will have a major visual impact to the village which no amount of planting will eradicate. There is already on site parking for 4 vehicles why do they need more? There is no main drainage. There are flooding issues to the front of the site. The existing dropped kerb is the subject of an enforcement notice and this should be enforced to be closed. The construction of the proposed development will lead to major issues at the junction of two very busy roads and put pedestrians at risk for the use of the pathways and crossing the road. We have already had our pub taken away and to take this away will destroy our community. We need somewhere to gather and take in the beautiful surroundings. This will be a blot on our landscape.

Objects: The Chapel: The land does not belong to the property but is public highway, it would have a detrimental effect to the look of the centre of the village, the dropped kerb should have been removed, part of the land is due to be used for works to alleviate flooding, the owners must have been aware when they purchased the property that their boundary ended at the front door, there is more than adequate parking to the rear. Further parking to the front would be excessive, the highways officer advised that this area was not for parking, many long standing members of the village have similar feelings. To allow land grab to the village green areas would open flood gates to anyone claiming our green spaces. Trust that when this has been rejected that outstanding matters for the original granted planning consent can be enforced.

Objects: 359 Sharpenhoe Road: The tarmac footpath to the front was never used for parking of vehicles before the present owners took up residence, it is not hardstanding. Strongly against this area becoming hardstanding or a car park. it is the last remaining open space in Sharpenhoe and is used by walkers and cyclists etc.. for many years being a meeting place. The land should not be commandeered by an individual for their sole use. There is no need to walk along the road to get to the premises as there is a route from their garden to the rear parking area. Barton Road has a speed restriction of 40mph. The PC and residents have campaigned for years to get this reduced as vehicles speed regularly. To move the existing

footpath so close to the road would be dangerous for pedestrians using this footpath. The area is too small and dangerous to have an in and out driveway. The proposals have not been substantially changed from the previous application - they are very similar. There are 8 existing car parking spaces - not four. The site is currently vacant as it is an open area and public footpath. Consider that non residential floor space would be lost as this is common land used by the community and it will deprive them of a facility that has been used for many years.

Object: 33 Harlington Road: In and out driveway will be to the detriment of highway safety. Traffic speeds are high along the road. Driveway is very close to the Sharpenhoe Road. The new footpath is considered unsafe. New path will be unsafe for pedestrians. It will put people at a direct risk of being hit by traffic. How can the land be claimed by the residents. We do not see Beds on Sunday. Did not see the advert placed in the village near the site. If the land can be claimed so easily then this sets a precedent. Who do I contact to claim land that I maintain near to my property?

Objects: 13 Cromwell Road. Want this to be determined by way of a public hearing so that the following points can be addressed and the matter dealt with openly and transparently. Safety concerns as the site is next to a main through route and carries fast moving traffic between the villages of Barton and Harlington. The path to be removed is safe and provides a safer crossing and its removal will mean that the only path available to foot traffic will be the one on the side of the main road which is difficult to cross safely. The in and out driveway will create difficulty to traffic trying to negotiate this junction and it will lead to accidents. The land has always been community land and is a valuable feature of the village. It has a memorial bench upon it. If the council has sold the land it was done without transparency. The villagers of Sharpenhoe do not receive the newspaper in which the advert was placed. My parents want to know how to purchase land outside of their house. Consider the application should be advertised properly. We risk losing our history etc.. if people do not stand up to protect them. Please do not allow a central feature of the village to be destroyed. Needs an application for a change of use.

Determining Issues:

The main considerations of the application are;

1. Principle
2. Affect on the Character and Appearance of the Area and relocation of footpath;.
3. Neighbouring Amenity
4. Highway Considerations
5. Other Considerations

Considerations

1. Background and Principle

- 1.1 The Lynmore was a public house for many years until planning permission was granted in 2013 for its change of use to a dwelling house. That planning permission ref: CB/15/00525 required by way of a planning condition that the existing vehicular access onto Harlington Road be closed. This has not taken place as the applicant wants to create an in and out driveway which is the subject of this application.
- 1.2 Recently a planning application was submitted for the erection of piers and gates to the south western access to the site further to the south under CB/16/00240. That application also included the construction of an in and out driveway, the relocation of the bench and the realignment of the footpath around the roadside boundary. The application was withdrawn as there were a number of objections to the removal of the bench and the loss of the open area of grass to the front of the former pub from general public use to use by the owners of the former public house (now known as Lynmore House) - as a driveway to the front of their house.
- 1.3 More recently planning consent has been granted on 5/07/2016 for the erection of an oak gate and two 2.25m high brick piers to the southern access under ref: CB/16/01981. This access serves a parking area for the house.
- 1.4 The applicant still wishes to create an in and out driveway at the junction of Harlington Road and Sharpenhoe Road and has submitted this revised application which retains the bench in its existing location and incorporates some planting areas.
- 1.5 The owners of Lynmore House have advised that they are proposing the works to the frontage of their property so that a residential appearance and space separation is created between the front wall/windows of Lynmore House and the general public area. Since moving into the property the occupiers have experienced members of the public believing the property is still a public house and knocking the front door and peering through the windows. The proposed alterations to the frontage will provide a clear demarcation between the public realm and private residential space. The works will also tidy up and improve the frontage appearance with landscaping and improved hard surface materials. Also, they advise that the works will provide a closer relationship between car parking spaces and the front door to the house. The existing parking is remote from the dwelling entrance with pedestrian access only via the public road which

is not ideal for a family in a rural location after dark.

- 1.6 The site lies in the built up area of the village of Sharpenhoe and in the Green Belt where there are no objections in principle to carrying out extensions and alterations to properties provided that they are proportional to the size of the development in accordance with planning policies in the South Beds Local Plan Review and the NPPF. In this case various matters need to be given careful attention one being the principle of the change in the use of an area of grass that has been used by the general public for many years, the impact of the change in use, the changes to the driveway and the realignment of the footpath around the highway edge of the site on the amenities of neighbours and highway considerations regarding the acceptability of the new in and out driveway and the access areas to it etc..

2. Affect on the character and appearance of the area and relocation of footpath

- 2.1 This current application is in respect of some alterations to the land directly in front of the property so that land to be used in association with the house creating a more private feeling of residential frontage/garden to the property whilst retaining the bench and the open area of land between the bench and road for general public use. This land is presently covered with grass and has a tarmac footpath running through it. It has been used for many years by the general public for sitting upon the bench and meeting in groups.
- 2.2 The path and some of the grass area are to be removed and replaced with new black paved hard stand area as part of the driveway and new crossover to be created onto Sharpenhoe Road forming an in-out driveway for Lynmore House.
- 2.3 There is to be new planting within the site between the house and the road - between the routes of the two vehicular accesses on the house side of the public bench. The public bench is to be retained in its present location with a grass area between it and the highway with new planting to the immediate rear of the bench. There is to be new planting along the front of the house on either side of the front entrance porch. New planting is also to take place next to the east front boundary of the site near to Farley House. No gates, fences or walls are proposed at the front of Lynmore House.
- 2.4 These changes require that the existing footpath in front of Lynmore house be diverted so that it runs alongside Sharpenhoe Road and is 2m in width. Also, the land to the front of the house presently has Central Bedfordshire highway rights over it. The applicant will be required to extinguish highway rights over that section of land that is required to implement his proposals. A hatched plan has been produced by the highway officer that shows the area that is to be the subject of a Stopping Up Order. A number of relevant consultations have been carried out regarding this and any comments received will be updated to the committee.
- 2.5 It is considered that the proposed changes to the area to the front of the property will not have an unduly adverse impact on the character and appearance of the property itself or the wider street scene. They are in compliance with planning policies in the Core Strategy and the NPPF and will

not have an adverse impact on the openness of the Green Belt. There will still be open areas of grass to the front of the site

- 2.6 A number of concerns have been raised by local residents regarding the loss of what they consider to be community land, a village green and an open area of grass that has been used by local residents to meet and chat and for walkers to rest on the bench for many years. They consider that this area of land should be retained for use by the general public and not in any way enclosed or become part of the 'private area' associated with the Lynmore House. As a result of the strength of feeling about this a nomination has been received to make this area into an AVC - Asset of Community Value. This nomination has to go through a formal procedure and the outcome of the nomination will not be known until after the Planning Committee.
- 2.7 Whilst the comments of the local residents are fully understood and appreciated we are of the view that now the bench is to be retained and the majority of the grassed area in front of Lynmore House is to be retained for public use a compromise has been reached whereby the occupants of the former public house have some limited privacy at the front door of their house and the general public can still use this area of land albeit that it is of slightly reduced size. The new planting that is to be carried out will improve the appearance of this land to the front of the former public house which has a rather unkempt appearance.
- 2.8 There is local concern about the relocation of the footpath - which presently crosses the grass area - the road side boundary of the site. Local residents consider this will be dangerous for users of the path - especially the elderly - as they will be at risk of an accident as a result of the high speeds of traffic going around the junction of Harlington Road with Sharpenhoe Road.
- 2.9 Whilst these concerns are understood the siting of the footpath just inside the edge of the highway is a normal situation for most paths in this country and visibility is very good at this junction for road users and footpath users. The highways officer is not raising any objections.

3. Neighbouring Amenity

- 3.1 The changes to the front of the house will have minimal impact on the amenities of any neighbours as the nearest property is Fairley Hill House to the east which is near to the existing access onto Harlington Road and not near to the proposed new access onto Sharpenhoe Road. There is to be some small amount of new planting near to the shared north west front corner of this neighbouring property's front garden but this planting in itself does not require the benefit of planning permission. It will, however, help screen the works to the front of this the house from the neighbour.
- 3.2 Other neighbours are on the other side of Sharpenhoe Road at some distance from the proposals.

4. Highway Considerations

- 4.1 The highways officer has advised that the creation of the new vehicle crossing will provide for a means for vehicles to enter and leave the frontage of the site in forward gear rather than reversing out onto Harlington Road. It will also comply with the current visibility standards for both the new vehicle access and the forward visibility around the junction for Harlington Road into Sharpenhoe Road.
- 4.2 No gates must be erected along the access points to the frontage of the property, in particular the existing Harlington Road access as this may encourage vehicles to park on that section of the existing vehicle crossing which spans the grass verge and hence cause obstruction to drivers exiting the Sharpenhoe Road junction. The applicant is reminded that the existing vehicle access across the grass verge is there to provide a means of access to the property and is not a parking space.
- 4.3 In order to implement the development the applicant will also require the existing public highway rights to be stopped up over that section of land which, for the avoidance of doubt, it is now shown cross hatched on the applicant drawing's numbered 2015/847/21. If planning permission is granted this can only be implemented once the applicant has applied for and obtained a stopping up order under section 247 of the Town and Country Planning Act 1990. If this is successful and highway rights have been extinguished, the land then reverts back to the original land owner.
- 4.4 The applicant is expected to enter into a Section 278 agreement for the provision of a new 2m footway to the frontage of the site along Sharpenhoe Road in order to maintain a pedestrian link from Harlington Road to Sharpenhoe Road for an approximate distance of 16m. This is shown on drawing numbered 2015/847/20/B annotated as points A and B.
- 4.5 In view of the above the highways officer is not raising any objections and is recommending that conditions be attached to any permission.
- 4.6 Comments raised by local residents about the fact that there is an existing parking area to the house and therefore no need for a further drive and parking area to the front of the house are appreciated but this existing provision and the lack of need for more parking area is not in itself a reason that could be used for refusal of the application.

5. Other Considerations

5.1 Human Rights issues:

There are no relevant issues under the Human Rights Act

5.2 Equality Act 2010:

There are no relevant issues under the Equality Act

- 5.3 With regards to planting, a condition is to be attached to the permission requiring

full details of the planting proposed to the front areas of the house and along the roadside boundary.

- 5.4 Comments have been raised about the flooding that sometimes takes place on land next to/in front of Lynmore House. However, the area is not in the Floodplain and no objections have been received from the drainage authorities.

Recommendation:

That Planning Permission be granted subject to the following:

RECOMMENDED CONDITIONS / REASONS

- 1 The development hereby permitted 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 **No development shall take place until a landscaping scheme to include all hard and soft landscaping and a scheme for landscape maintenance for a period of five years following the implementation of the landscaping scheme have been 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 in accordance with the approved landscape maintenance scheme and any which die or are destroyed during this period shall be replaced during the next planting season.**

**Reason: To ensure an acceptable standard of landscaping.
(Sections 7 & 11, NPPF)**

- 3 No development shall commence until a 2m side footway has been constructed between points A and B as shown on the approved plan number 2015/547/20/B in accordance with details of a scheme to be submitted to and approved by the Local Planning Authority. The applicant will be required to enter into a section 278 agreement of the Highways Act 1980 in order to implement the scheme and any Statutory Undertakers equipment or street furniture shall be resited to provide an unobstructed footway.

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

- 4 The development shall not commence until highway rights have been extinguished across the area of land hatched red on Drawing 2015/847/21, in accordance with a Stopping Up Order to be made by the National

Transport Casework team, Department for Transport, under Section 247 of

the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt.

- 5 No vehicle shall cross the highway until the junction of the proposed vehicular access and the resurfacing of the existing vehicular access with the highway have 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 the 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 which 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 23m in a northerly direction and to the limit of the site frontage in a southerly direction, measured from the centre line of the proposed access along the line of the channel of the public highway. The required vision splays shall, on land in the applicant's control, be kept free of any obstruction.

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

- 8 The proposed vehicular access shall be constructed and surfaced in a stable and durable material and provide a means of drainage to prevent surface water run off from discharging on to the highway, in accordance with details to be approved in writing by the Local Planning Authority.

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

- 9 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls or other means of enclosure shall be erected within the curtilage of the property without the grant of further specific planning permission from the Local Planning Authority.

Reason: To control the development in the interests of the rural amenity of the area.

(Section 7, NPPF)

- 10 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers 2015/847/01, 2015/847/21 and 2015/847/20/B

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

INFORMATIVE NOTES TO APPLICANT

- 1. The applicant is advised that the requirements of the New Roads and Street Works Act 1991 will apply to any works undertaken within the limits of the existing public highway. Further details can be obtained from the Highway Engineer, Central Bedfordshire Council, Priory House, Monks Walk, Chicksands, Shefford, Bedfordshire. SG17 5TQ.
- 2. The development shall not begin until highway rights have been extinguished across the area of land shown hatched on the approved drawing number 2015/847/21, in accordance with a Stopping Up Order to be made by the National Transport Casework Team, Department for Transport, under section 247 of the Town and Country Planning Act 1990.
- 3. The applicant is advised that in order to comply with conditions of this permission it will be necessary for the developer of the site to enter into an agreement with Central Bedfordshire Council as Highway Authority under Section 278 of the Highways Act 1980 to ensure the satisfactory completion of the proposed access and associated highway improvements and closure of the existing access. Further details can be obtained from the Development Control Group, Development Management Division, Central Bedfordshire Council, Priory House, Monks Walk, Chick sands, Shefford SG17 5TQ.

Statement required by the Town and Country Planning (Development Management Procedure) (England) Order 2015 - Part 5, Article 35

The Council acted pro-actively through early engagement with the applicant at the pre-application stage and during the application 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) Order 2015.

DECISION

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Central Bedfordshire Council

Development Control Committee

12/10/2016

Update on Maulden Footpath No. 28

Report of Paul Mason - Assistant Director - Highways

Report Author: David Leverington – Rights of Way Team Leader

Purpose of this report

1. This report informs Committee members of the legal and administrative history of Maulden Footpath No. 28. It also provides Members with an update on the most recent involvement of the Secretary of State for Environment, Food and Rural Affairs and the courts in the attempts to extinguish and delete the footpath.
2. The report also provides legal comment and advice on the most recent Secretary of State's decisions and summarises the Opinion sought on the merits of applying to the Magistrates' Court for a stopping up order.

RECOMMENDATIONS

The Committee is asked to:

1. Consider the legal advice given in the report.
2. Determine whether, in light of this advice, the Committee should rescind its 13 February 2013 resolution to apply to the Magistrates' Court under S.116 of the Highways Act 1980 for a court order stopping up Maulden Footpath No. 28.
3. Determine whether no further action should be taken to remove Maulden Footpath No. 28 unless one of the following specific criteria is met:
 - a. That there is a very significant change in the layout out of Maulden Bridleway No. 24 that permits the separation of vehicular and non-vehicular traffic and consequently could allow the consideration of a new application under S.118 of the Highways Act 1980 to extinguish the footpath.
 - b. That there is an application for substantial development that necessitates the extinguishment of Maulden Footpath No. 28 to enable that development to take place. An application to extinguish the footpath under S.257 of the Town and Country Planning Act 1990 could then be considered with the condition

that any extinguishment order be revoked if no development takes place before the consent expires.

c. That new cogent evidence that is significantly different to that already considered is received by the Council as part of a new definitive map modification order application to delete Maulden Footpath No. 28.

Introduction

3. Maulden Footpath No. 28 generally lies along the line of a path maintained by a number of the previous owners between c.1883 and the 1980s. This path was used by many local inhabitants as a cut-through from Clophill Road to Maulden Woods. Public use of the footpath was apparently without challenge apart from when the route was obstructed for a fortnight in c.1956/7 by the then owner, Mr. Cecil Sharp. Despite its popular status, the route was not recognised by the former Bedfordshire County Council as being a public right of way and so was not included in the Definitive Map and Statement when this was originally drafted during the 1950s and 1960s.

The involvement of Mr. Alan Bowers

4. Footpath No. 28 lies almost entirely within the curtilage of No. 123b Clophill Road; which comprises: a house, garden and adjoining donkey paddock (see Appendix 1). The current owner of the land, Mr. Alan Bowers, obstructed the route of the footpath in 1992. This precipitated a claim for the footpath to be formally recorded on the Definitive Map and Statement; which is the Council’s legal record of public rights of way. A definitive map modification order adding the footpath was confirmed in 1997. Mr. Bowers has fought ever since to have the footpath removed from his property. This has resulted in Footpath No. 28 having a long and complicated administrative history. This is outlined in the table below and described in more detail at Appendix 2.

Year	Important event
1992	Mr. Bowers blocked the route of Footpath No. 28. A local resident applies to add Footpath No.28 to the Definitive Map and Statement.
1995-97	Bedfordshire County Council makes a modification order to add Footpath No. 28 to the Definitive Map which was subsequently confirmed following objections by Mr. Bowers in 1997.
1998-99	Mid-Beds District Council makes an extinguishment order

	on behalf of the land owner which was subsequently not confirmed following a public inquiry in 1999.
2000-01	Mid-Beds District Council makes a second extinguishment order on behalf of the land owner which was subsequently not confirmed following a public inquiry in 2001.
2004-06	Bedfordshire County Council makes a diversion order which was subsequently confirmed in 2006 following a public inquiry. Central Bedfordshire Council later makes and confirms an order to vary the diverted route in 2010.
2013	Mr. Bowers' three applications: extinguishment, deletion and Magistrates' Court, are determined by the Development Management Committee.
2013-14	Central Bedfordshire Council makes an extinguishment order on behalf of Mr. Bowers which is subsequently not confirmed following a public inquiry in 2014.
2013-14	Central Bedfordshire Council applies to the Magistrates' Court for a stopping up order on behalf of Mr. Bowers. Following two adjournments the Council withdraws its application.
2013-15	Mr. Bowers appeals unsuccessfully against the Council's refusal to make a modification order to delete the footpath. Following a successful Judicial Review in 2014, his appeal was refused by the Secretary of State for a second time following a public inquiry in 2015.
2015-2016	Mr. Bowers applies to the High Court of Justice for Judicial Review of the Secretary of State's second refusal of his Sch. 14 appeal. His application is refused.

Criminal proceedings

5. In addition to the above administrative events, Mr. Bowers has attended court three times (2000, 2007, 2009) in relation to unlawfully obstructing Footpath No. 28. This has led to two convictions with fines and costs being imposed against him.

Significant events since the February 2013 Committee resolution

6. In June 2014, the Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs to hear the Central Bedfordshire Council (Maulden: Footpath No 28) Public Path Extinguishment Order 2013 determined not to confirm the order following a local public inquiry. This is a material consideration as the Justices hearing an application at the Magistrates' Court for stopping order would give this

significant weight, although they are not necessarily bound by the Inspector's decision.

7. In October 2015, an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs heard the Schedule 14 Appeal against the Council's decision not to make a definitive map modification order to delete Footpath No. 28. The Inspector determined that the appeal should be refused following a non-statutory local public inquiry. Mr Bowers applied in late December 2015 for Judicial Review of the Secretary of State's refusal. His application was refused and he has no further legal avenues of appeal open to him in this matter. Whilst not a material consideration for the Magistrates' Court, the refusal does mean that the Definitive Map and Statement remains conclusive proof at law as to the existence of Maulden Footpath No. 28.

Legal and Policy Considerations

8. 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 public 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 therein.
9. The former County Council, as the Surveying Authority for the Definitive Map, had a statutory duty under Section 53(2) of the 1981 Act to modify the Definitive Map and Statement to record Footpath No. 28 as evidence was discovered (through the original claim for a public footpath) which showed that a public right of way subsisted.
10. Upon confirmation of the County Council for Bedfordshire (Definitive Map and Statement for Bedfordshire)(Maulden: Footpath No. 28) Modification Order 1995 in 1997, the Definitive Map and Statement became conclusive proof at law that a public right of way on foot exists through the curtilage of No. 123b Clophill Road.
11. The former County Council, and now Central Bedfordshire Council, as the Highway Authority, has a duty under Section 130 of the Highways Act 1980 (*"the 1980 Act"*) to assert and protect the rights of the public to use and enjoy any highway within their area. This has resulted in the land owner being prosecuted three times for obstruction of the public right of way (see Appendix 2).
12. Since Footpath No. 28 was added to the Definitive Map and Statement in 1997, the land owner has applied on several occasions (1997, 2000, 2004, 2008) to have the footpath either extinguished or deleted. The decisions of the various Inspectors appointed by various Secretaries of State in 1999, 2001, 2014 and 2015 (see Appendix 3A-H) have confirmed that:
 - There is no evidence to show that Footpath No. 28 is incorrectly recorded on the Definitive Map and Statement

- The footpath is needed for public use
 - The nearby bridleway does not provide a suitable alternative to the footpath.
13. The Council failed in its most recent attempt to extinguish Footpath No. 28. The Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs did not confirm the 2013 public path extinguishment order following a public inquiry in June 2014.
 14. The legislative tests for an extinguishment under Section 118 of the 1980 Act is "*not needed for public use*". This is a more lenient test than that required to be met for a successful application to the Magistrates' Court under Section 116 of the 1980 Act. An applicant would have to satisfy the Justices that the highway is "*unnecessary*". In both types of application (Section 118 and 116) there is also an expediency test as to whether the highway should be extinguished.
 15. Once the Inspector's decision on the 2013 public path extinguishment order became known in July 2014, the Council sought Counsel's legal Opinion on the prospects of success of the (then) adjourned application to the Magistrates' Court; which was due to be heard at a three-day hearing in September 2014.
 16. Counsel's detailed Opinion was received in mid-August and can be summarised as follows:
 - A. The Justices have to consider what highway function is performed by Footpath No. 28 and then to consider whether that highway function is unnecessary. Even if the Justices decide that Footpath No. 28 is unnecessary, they could nevertheless consider that it was not expedient to stop up the footpath.
 - B. The Justices can only consider factors affecting the public use of the route. Any benefit or disbenefit of the path to the landowner, Mr. Bowers, are not a consideration with regard to whether the footpath is unnecessary for public use.
 - C. Unless the evidential position changed significantly since the unconfirmed public path extinguishment order, the stopping up application under Section 116 is unlikely to be successful. There is clear evidence (from an electronic counter) that the footpath has been used and the refusal of the 2013 public path extinguishment order took into consideration the likely ameliorating effects of the pedestrian refuges now constructed on the nearby Bridleway No. 24.

Indeed, following the most recent (October 2015) decision of the Inspector appointed to hear the recent Schedule 14 Appeal, it can only be surmised that the evidential position has hardened as there is now no doubt about the legal existence of the footpath.
 - D. Accordingly, the only prospect of success of such an application would rest in persuading the Justices to depart from the findings of the three Inspectors who found that that the footpath was needed

for public use and that it was not expedient to extinguish the footpath. Counsel estimated the likelihood of success on this basis to be around 20%. However, such a favourable decision risks being legally flawed and thus itself subject to Judicial Review. Consequently the overall prospects of success maybe lower than 20%.

- E. The Council would have difficulty arguing that, in pursuit of the application, it had acted reasonably and on grounds that were reasonably sound given the three Inspector's decisions. Consequently, the Council would be open to an award of costs against it if it was unsuccessful in its application. Contributory risk factors to an award of costs against it include:
- i. The making of an application against the recommendations of its Officers
 - ii. The existence of a very recent Inspector's decision not to confirm a public path extinguishment order for the footpath
 - iii. The fact the application does not meet any of the Council's own applications Policy criteria for making an application to the Magistrates' Court (see Appendix 4).

17. There is guidance in case law to support points (A) and (B) above; specifically *Ramblers Association v Kent (1990) 60 P&CR 464*, in which Woolf LJ. stated:

*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. It is for this reason that I drew attention to the somewhat different language in section 118.*

*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. (emphasis added)

18. The previous Chief Legal & Democratic Services Officer and Monitoring Officer for the Council (Melanie Clay) incorporated Counsel's Opinion into the legal advice she gave to the Chairman of the Development Management Committee on 13 August 2014. The advice indicated that there had been a significant change in circumstances since the February 2013 Committee resolution to make an application to the Magistrates' Court; specifically the Inspector's decision not to confirm the 2013 public path extinguishment order. In order to allow the Committee to properly consider the issues, the Chief Legal & Democratic Services Officer and Monitoring Officer exercised the constitutional power to adjourn the imminent Magistrates' Court hearing. Following the refusal of the Magistrates' Court to adjourn the hearing for the period requested, the Council had no choice other than to withdraw the application with leave to re-apply to the court at a later date.
19. Counsel's Opinion on the issue is unequivocal in that the Council is unlikely to be successful should the Committee resolve to make a re-application to the Magistrates' Court to stop up Footpath No. 28. The decisions of three Inspectors and comments of a District Judge have shown that there is no legislative leeway which would permit the Council to act reasonably in making a fourth public path extinguishment order. To do so would place the Council at risk of both Judicial Review and a Local Government Ombudsman ("LGO") ruling against its decision to do so. Furthermore, any re-application would place the Council at serious risk of a substantial award of costs against it and would also damage its reputation as a local authority.
20. The recent decision of the Inspector hearing the Schedule 14 Appeal made it clear that the evidence supplied was neither new nor cogent and fell far short of displacing the presumption that the Definitive Map is correct (see Appendix 3G). Consequently, whilst anybody could re-apply to delete Footpath No. 28, they would have to supply new and cogent evidence that is relevant to the relevant period of public use of 1936-56. Any application which did not supply such evidence could not reasonably be considered by the Council, as the Surveying Authority for the Definitive Map and Statement.

The administrative burden of Footpath No. 28 on the Council

21. Council Officers have spent many hours corresponding with Mr. Bowers' on his various applications and also dealing with the various aspects of the numerous orders, including preparation of cases for the Secretary of State and attending the several public inquiries.
22. Mr. Bowers has also submitted a significant number of complaints, both to the Chief Executives of the former County Council and to the successor Central Bedfordshire Council as well as the LGO (1996,

1999, 2000, 2006, 2013, 2014) and the Information Commissioner’s Office (“ICO”) (2014). Four other complaints by three other people were also submitted to the LGO between 2001-03. Neither the LGO nor ICO have found any fault with the activities of either Council during their dealings with Footpath No. 28 during the last 20 years. This view is reinforced by the comments of Lang J. in *R.(oao Alan Bowers) v Secretary of State for Environment, Food and Rural Affairs and Central Bedfordshire Council HCJ (QBD) 2016 [CO/6548/2015]*.

23. A significant number of Freedom of Information Act and Subject Access Requests have also been made in relation to the footpath.

The financial burden of Footpath No. 28 on the Council

24. Since 2011 Central Bedfordshire Council has undertaken a variety of administrative tasks in relation to Footpath No. 28 – nearly all at the request of the owner of the land affected by the footpath. To date, Mr. Bowers has not been asked to pay for any Council expenditure even though the Council has had the opportunity to seek reimbursement for use of its discretionary functions. The following table provides a conservative approximate breakdown of where Council costs have been accrued.

Cost area	Approximate cost (since 2011)	Amount that could be recharged to the owner/applicant
Modification order application and Sch. 14 Appeal	£25,900	None as statutory duty
Public Path Extinguishment Order	£13,200	Capped at £2000
Magistrates’ Court application	£8,550	£8,550
Advertising of orders	£1,150	£356
Complaints from Mr. Bowers	Over £2700	None as internal function
All information requests	Over £3,700	None as statutory function
Management and legal resource	Estimated at over £6000	None as internal function
Legal advice (excludes advocacy and pre-inquiry work which is included above)	£1,350	None

Approximate Total	Over £62,550	£10,906
Total charged to Mr. Bowers		£0

25. It should be noted that the Council wrote to Mr. Bowers in May 2013 to inform him that he would not be required to contribute to the costs of his applications.

Options for consideration

26. Should the Committee conclude that Counsel's Opinion is compelling enough for it to rescind its resolution of 13 February 2013 (Minute DM/12/330), Mr. Bowers will have exhausted all the legislative avenues currently open to him to have Footpath No. 28 removed from his property.
27. However, to avoid an allegation of the Council acting unreasonably in not performing its statutory or discretionary functions, Mr. Bowers, or another member of the public, should be entitled to apply for the relevant order to remove or alter the footpath if there has been a significant change in circumstances caused by, for example:
- A. A planning application for significant development at 123b Clophill Road which would affect the legal line of Maulden Footpath No. 28
 - B. Substantial improvement/widening of Maulden Bridleway No. 24 to separate non-vehicular and vehicular traffic, or
 - C. The discovery of cogent new evidence not previously considered by the Council which overturns the presumption that the Definitive Map and Statement is correct.
28. It should be noted that leave to re-apply in the abovementioned circumstances does not bind the Council to either approve such an application or to make or confirm an order to stop up or delete the footpath.

Reasons for Potential Decisions

29. Counsel's Opinion provides compelling advice that a re-application to the Magistrates' Court for a stopping up order under Section 116 of the 1980 Act is likely to fail and lead to costs being awarded against the Council. Counsel's Opinion is based on the fact that in 2014 the Inspector hearing the more lenient 2013 public path extinguishment order determined that the order should not be confirmed.
30. In order to avoid acting unreasonably, the Council must still make available legitimate avenues of application – although, given the recent decisions of various Inspectors, the criteria that any application must meet are strictly defined.

Council Priorities

31. This proposal meets the following Council priorities:
 - A. Creating safer communities – by providing a public right of way with a safe crossing point on Clophill Road that is a vehicle-free link to Maulden Woods
 - B. Promoting healthier lifestyles by encouraging use of the countryside by providing easy access to the countryside from local residential developments
 - C. Value for money – by stopping an application to the Magistrates' Court which has been identified as unlikely to succeed and which has a high risk of attracting an award of significant costs against the Council.

Legal Implications

32. Counsel's Opinion indicates that the Council is unlikely to succeed in an application to the Magistrates' Court for an order stopping up Maulden Footpath No. 28. This is due to the stricter test of Section 116 of the 1980 Act in which Justices have to be satisfied that a highway is unnecessary. The Justices will have, as a non-binding material consideration, the 2014 Inspector's decision not to confirm the 2013 Maulden Footpath No. 28 public path extinguishment order; which was based on a more lenient test under Section 118 of the 1980 Act.
33. Counsel has estimated the likelihood of success to be around 20% if the Justices are persuaded to depart from the Inspector's 2014 decision. Such a favourable outcome could, Counsel advises, leave the Justices' decision open to challenge. The overall chance of success may therefore be lower than 20%.
34. The pursuit of an application to the Magistrates' Court in the light of Counsel's Opinion, the Senior Definitive Map Officer's advice, published Council policy on such applications (see Appendix 4), and the decision of the various Inspectors could be perceived as the Council acting unreasonably. As such, there is the potential for the Committee's decision to either be Judicially Reviewed or to be the subject of a LGO ruling.

Financial Implications

35. The Council wrote to Mr. Bowers in May 2013 exempting him from the requirement to pay the Council's administrative and advertising costs for his two applications which to-date total approximately £10,900. These costs have consequently been borne by the Rights of Way Team's budget.
36. If the Council re-applies to the Magistrates' Court without passing on any associated legal costs to the applicant, then it is likely that court fees, legal fees and administrative and advertising costs of the new

application would total in excess of £7000. Should the Council be unsuccessful in its application, it could also have an award of costs made against it by the objectors who are legally represented. An award for costs could exceed £6000. There is no specific allocation in the current Rights of Way Team budget to pay for these costs which combined could exceed £13,000. Consequently, funding the application would either result in other Rights of Way projects being cut back or the application and associated legal costs being paid for out of a wider Highways Service budget over the current and 2017/18 financial year revenue budgets.

Equalities Implications

37. 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 making of an extinguishment order would potentially improve the privacy and security of Mr. Bowers, these improvements must be weighed against the loss of a public right which has been confirmed to exist by the Inspector's 2015 decision and which is legally recorded on the Definitive Map and Statement.
38. 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.
39. The decision by the Development Management Committee to revoke its previous 13 February 2013 decision and for the Council not to apply 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 the footpath.

Community Safety Implications:

40. The Council has a statutory duty under the Crime and Disorder Act 1998 to consider the community safety implications that may result from the recommendations set out in the report. The report proposes that the current decision to seek the stopping up of Maulden Footpath No. 28 be rescinded. It would thus 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. The Council's Senior Traffic and Safety Engineer has appraised both the route of the footpath and bridleway and their junctions with Clophill

Road and a considers both to have similar low levels of risk. Neither route poses a significant threat to the safety or security of users or adjacent land owners and the author is not aware of the Police recording any incidents on either path.

Risk Implications

41. The results of the most recent public inquiry decisions have confirmed that Maulden Footpath No. 28 should not be extinguished and that the footpath is correctly recorded on the Definitive Map and Statement. Counsel's Opinion is very clear that an application to the Magistrates' Court is unlikely to succeed. Consequently any re-application to the Magistrates' Court is likely to seriously prejudice the reputation of Central Bedfordshire Council as the Highway Authority and would expose it to significant financial risks as well as to a potential Judicial Review or LGO ruling.

Conclusion and next Steps

42. The 2014 decision of the Inspector appointed to hear the 2013 public path extinguishment order has made it very difficult for the Council to now successfully re-apply to the Magistrates' Court for a stopping order for Maulden Footpath No. 28. To do so is likely to prejudice the reputation of the Council and to expose it to significant legal and financial risks.
43. Mr. Bowers has exhausted his legal avenues for having Footpath No. 28 removed from his property. The Council should therefore consider the matter closed unless there are significant changes in circumstance which would permit an application for an order to extinguish or delete the footpath; such changes are detailed in the Recommendations.

Appendices:

Appendix 1 - Plan of Maulden Footpath No. 28

Appendix 2 - Detailed timeline of the administrative history of Maulden Footpath No. 28

Appendix 3 - The extracted reasons and conclusions sections for each Inspector's decision report (This is available as a supplement due to its length)

Appendix 4 - Applications Policy: Part 7 – Applications to the Magistrates' Court

Background Papers

None

Reports Previously Considered:

Committee: Development Management Committee - 13 February 2013

Agenda item: The consideration of an application to delete Maulden Footpath No. 28 under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981

Recommendations: 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.

DM/12/328 Resolution: That the Committee refuse the application by Mr A 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 had been discovered which demonstrated on the balance of probability that a valid non-intention to dedicate existed during the period 1936 – 1956.

Outcome: M. Bowers' application was refused. Mr. Bowers' subsequent Schedule 14 Appeal was refused following a public inquiry in September 2015. His later appeal for Judicial Review was also refused.

Committee: Development Management Committee - 13 February 2013

Agenda item: The consideration of an application to extinguish Maulden Footpath No. 28 under Section 118 of the Highways Act 1980

Recommendations: 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.

DM/12/329 Resolution:

- a. To approve the application of Mr. Bowers to make a public path order under Section 118 of the Highways Act 1980 to extinguish Maulden Footpath No. 28 on the ground that the footpath is no longer needed.
- b. To require the applicant Mr A Bowers to pay the costs associated with the carrying out of works to provide pedestrian refuges on the nearby Maulden Bridleway No. 24 to accommodate increased levels of pedestrian traffic.

Outcome: The 2013 public path extinguishment order was not confirmed following a public inquiry in June 2014.

Committee: Development Management Committee - 13 February 2013

Agenda item: 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

Recommendations: 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.

DM/12/330 Resolution: To approve the application by Mr. 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 on the grounds that:

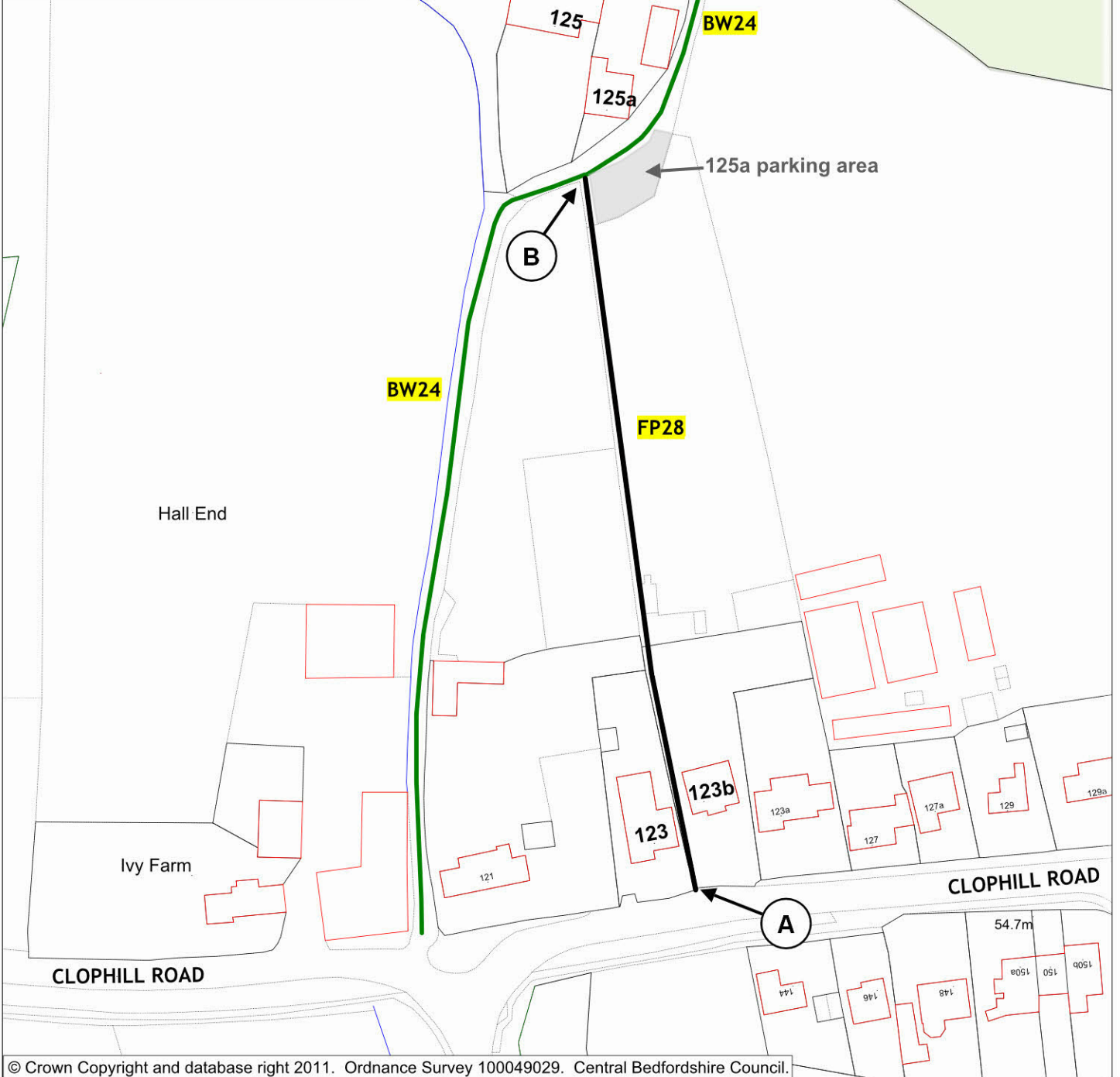
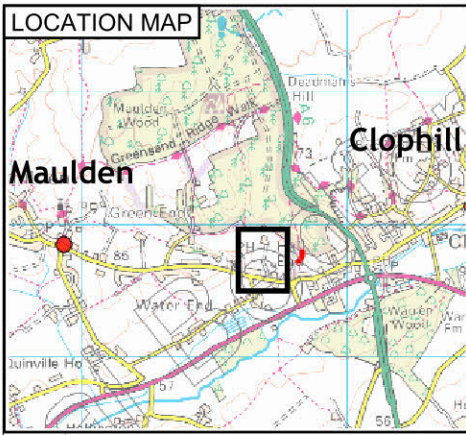
- a. The application meets the criteria in the Council's Rights of Way Applications Policy for making an application to the Magistrates' Court
- b. Bridleway No. 24 nearby is close enough to be used as an alternative route by those members of the public currently using the footpath
- c. As the bridleway has not undergone significant improvements 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, the applicant Mr A Bowers will be required

to pay the costs associated with the carrying out of works to provide pedestrian refuges on the alternative route to accommodate increased levels of pedestrian traffic.

Outcome: The application was withdrawn following legal advice to do so with a view to re-consulting the Development Management Committee at a future date.

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APPENDIX 1



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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
A **B**

Unaffected public bridleway



Scale: 1:1250
 21 March 2013

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Timeline of Events for Maulden Footpath No. 28

1. In December 1989 Mr. Alan Bowers purchased a plot of land on the northern side of Clophill Road, Maulden. In June 1992 he fenced off the land and locked the access gate.
2. In October 1992 Mrs. Hilda Izzard, Mr. Bowers' neighbour and the niece of the pre-1946 owner of the land in question, applied to the former County Council for a modification order to add a public footpath to the Definitive Map based on historic public use of the route.
3. In October 1993 Mr. Bowers bought a plot of land adjacent to Clophill Road which subsequently became 123b Clophill Road.

1995 Modification Order

4. In September 1995 the former County Council made a modification order to add a footpath 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 original 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.
5. The 1995 modification order was confirmed in August 1997 – by which time Mr. Bowers had almost finished building his new house. Some of Mr. Bowers' new house obstructed the recorded legal line of Footpath No. 28. The detailed conclusions of the Inspector appointed by the Secretary of State for the Environment are shown at Appendix 3A. These showed that there had been sufficient use by the public during two distinct periods: 1936-56 and 1972-92, to enable the former County Council to deem that a public right of way on foot had been dedicated along the route of Footpath No. 28.

1998 Extinguishment Order

6. Mr. Bowers consequently applied to the former Mid-Beds District Council for a diversion of Footpath No. 28 under the Town and Country Planning Act 1990 ("the 1990 Act") onto the adjacent Bridleway No. 24. This was refused by the District Council in February 1996, primarily as the outcome of the 1995 modification order was still unknown. In November 1997 Mr. Bowers applied to the District Council for the extinguishment of Footpath No. 28 under the 1990 Act. The District Council made an extinguishment order in March 1998 which received a number of objections, including from the former County Council's Rights of Way Officer for Maulden. Following a public inquiry, the Inspector appointed by the Secretary of State for the Environment, Transport and the Regions determined in May 1999 that the order should not be confirmed. The detailed conclusions of the Inspector are shown at Appendix 3B and showed that: the order would result in the retention of a valueless dead end path; the footpath as a link between Clophill Road and Maulden Woods was important; and that Bridleway No. 24 was not a suitable alternative due to its level of private vehicular use.

First prosecution of Mr. Bowers

7. In January 2000 the former County Council successfully prosecuted Mr. Bowers for wilful obstruction of Footpath No. 28 by the construction of wing-walls to the side of his front gates.

2000 Extinguishment Order

8. In June 2000 Mr. Bowers applied again to Mid-Beds District Council, this time for a public path extinguishment order under Section 118 of the Highways Act 1980. An extinguishment order was made by the District Council in September 2000 which received several objections. Following another public inquiry, the Inspector appointed by the Secretary of State for the Environment, Transport and the Regions determined in August 2001 that the order should not be confirmed. The detailed conclusions of the Inspector are shown at Appendix 3C and showed that the Inspector considered that the footpath would be used to a significant extent if not extinguished.

2004 Diversion Order

9. As Footpath No. 28 was still obstructed by Mr. Bowers' house, No. 123b Clophill Road, the former County Council took it upon itself to make a public path diversion order under Section 119 of the Highways Act 1980 to take the footpath out of the house and to place it along the western property boundary. The order was made in July 2004 and was objected to by Mr. Bowers and 160 others using a proforma letter.
10. In September 2004 Mr. Bowers applied to the former County Council to have Footpath No. 28 extinguished under both Sections 116 and 118 of the Highways Act 1980. The former County Council refused to process these applications until the active 2004 diversion order had been determined by the Secretary of State.
11. The Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs confirmed the 2004 diversion order in June 2006. The detailed conclusions of the Inspector are shown at Appendix 3D and showed that the Inspector considered that it was expedient to confirm the order in the interest of Mr. Bowers.
12. Following the demolition of a brick storage building adjacent to Clophill Road, Central Bedfordshire Council made an order in 2010 to vary the route of the diverted footpath so that it followed a straight line alongside Mr. Bowers' western property boundary. The variation order was confirmed as an unopposed order.

Second court appearance of Mr. Bowers

13. In November 2007 the former County Council prosecuted Mr. Bowers in the Magistrates' Court for not opening up the diverted line of Footpath No. 28. This resulted in a court order for removal of the obstructions being issued.
14. In October 2008 Mr. Bowers' agent applied on his behalf for a definitive map modification order to delete the footpath on the ground that it was recorded in error. Neither the agent nor Mr. Bowers submitted any evidence to support the

application until March 2009 shortly before Mr. Bowers' next court appearance.

Third court appearance of Mr. Bowers

15. Central Bedfordshire Council, as the successor authority, prosecuted Mr. Bowers in the Magistrates' Court in April 2009 for non-compliance with the 2007 court order and won its case. Mr. Bowers was compelled to open up the legal line of the footpath.
16. In his summing up at the 30 April 2009 Magistrates' Court, Smith D.J. stated (as recorded verbatim by the former Council's Head of Archives and Countryside Access):

*The County (and District) Councils' Members and Officers had 'sympathised with Mr. Bowers' predicament and sought compromise', 'exercised discretion' and 'looked at options to help'. The Council as a corporate body had 'acted in good faith' and was consistently 'sympathetic' but, **in the context of the legal and technical advice and the Inspectors' decisions, an extinguishment 'would not happen'. Mr. Bowers had no grounds to act to compel the Council as it was clear that the Order could not succeed in law (there was 'no prospect of success') and it was 'unreasonable' to expect the Council to back an 'extinguishment'**. (emphasis added)*

The 2013 Development Management Committee

17. Mr. Bowers' applications for:
 - A. A modification order to delete the footpath (S.53 Wildlife and Countryside Act 1981),
 - B. A public path extinguishment order (S.118 Highways Act 1980) and
 - C. An application to the Magistrates' Court for a stopping up order (S.116 Highways Act 1980)

were heard by the Council's Development Management Committee ("the Committee") in February 2013. The Senior Definitive Map Officer's recommendations were that all three applications be refused as they either did not meet the legislative tests of the relevant Acts or were contrary to Council policy.

18. The February 2013 sitting of the Committee resolved the following:
 - A. That Mr. Bowers' application to delete the footpath under Section 53 of the Wildlife and Countryside Act 1981 should be refused as there was no new substantive and cogent evidence had been discovered which demonstrated that a valid non-intention to dedicate existed during the period 1936-56
 - B. That a public path extinguishment order should be made under Section 118 of the Highways Act 1980 on the grounds that the footpath is no longer needed.

- C. That an application to the Magistrates' Court under Section 116 of the 1980 Act ought to be made for a stopping up order on the grounds that:
- The application meets the Council's policy.
 - Bridleway No. 24 is close enough to be used as an alternative route

The approved Minutes of the Committee are shown at Appendix 3E.

Modern timeline – Application and appeal to delete Footpath No. 28

19. In April 2013 Mr. Bowers appealed under Schedule 14 of the 1981 Act to the Secretary of State for Environment, Food and Rural Affairs against the Committee's refusal to make a modification order to delete Footpath No. 28. This transferred jurisdiction of the application from Central Bedfordshire Council as the Surveying Authority to the Secretary of State.
20. In September 2013 an Inspector appointed by the Secretary of State refused Mr. Bowers appeal on the grounds that the evidence discovered (i.e. submitted by Mr. Bowers) "*...was not of such substance as to displace the presumption that the Definitive Map and Statement are correct...*" and "*...that there is no cogent [compelling] evidence of the occurrence of an error when the [footpath] was originally added to the Definitive Map...*" The detailed reasons of the Inspector are shown at Appendix 3F.
21. Mr. Bowers applied for Judicial Review of the Secretary of State's refusal. This coincided with Defra changing its policy on not allowing new evidence that had not previously been considered by the Surveying Authority to be submitted as part of an appeal. In April 2014 Defra agreed to a High Court order quashing the Secretary of State's refusal on the ground that the Secretary of State had refused to consider evidence not previously considered by the Committee. No comment was made by the Court on either the veracity of Mr. Bowers' evidence or whether the Definitive Map and Statement was correct or not.
22. Mr. Bowers requested that his Schedule 14 appeal be heard publicly by an Inspector at a non-statutory inquiry. This was originally scheduled for January 2015 but this did not take place until 15-16 September 2015 due to lack of an Inspector. Mr. Bowers did not supply any new evidence that related to the use of the footpath by the public during the relevant periods (1936-56 and 1972-92). At the public inquiry the Inspector would not allow Mr. Bowers to air his views on alleged Council and Officer corruption or to discuss Council procedures and the decisions that took place after the original 1995 modification order had been made as these were not relevant to the purpose of the inquiry. The Inspector concluded that "*...the new evidence [submitted by Mr. Bowers] considered together with all the existing relevant evidence, is not cogent and falls far short of displacing the presumption that the Definitive Map is correct in depicting Footpath No. 28...*" Mr. Bowers' appeal was therefore refused; the detailed reasons of the Inspector are shown at Appendix 3G.
23. Mr. Bowers applied to the High Court of Justice on 22 December 2015 to have the Secretary of State's refusal decision judicially reviewed. On

21 January 2016 Lang J. refused the application on two procedural grounds and on the merit of the case, stating:

...the Claimant has failed to establish any error of law on the part of the Inspector in reaching his decision. The Claimant plainly disagrees with the Inspector's conclusions on the evidence, but this is not a sufficient basis to quash a decision. The grounds upon procedural irregularities, bias, bad faith, and a failure to have regard to the evidence are unarguable in my view...
(see Appendix 3J)

24. Mr. Bowers did not apply to have Lang J.'s refusal of his application reconsidered in open court (an "oral renewal") by the stipulated deadline and the case was closed. However, following a further appeal by Mr. Bowers on the ground that his solicitor was never served with the original refusal notice, Lang J. granted an extension to the deadline for oral renewal. Lang J. also confirmed that, whilst the reasons for failing on procedural grounds were incorrect and could be disregarded, Mr. Bowers' application still failed on the merits reason (see Appendix 3J). Mr. Bowers did not apply for an oral renewal by the new 26 May deadline and the case was again closed.

Modern timeline – 2013 public path extinguishment order

25. Central Bedfordshire Council made an order under Section 118 of the Highways Act 1980 to extinguish Footpath No. 28 in May 2013. This received a small number of objections. The order was forwarded to the Planning Inspectorate in October 2013 and was subsequently heard by an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs in June 2014. The Inspector concluded that, whilst the arguments for and against the order were finely balanced, it was not expedient to confirm the extinguishment order. The Inspector noted that:
- Public use was regular and at levels that were not insignificant but there was no local demand for the route to be retained
 - The footpath does not facilitate crime or present significant security issues.
 - The current access to Clophill Road is not unsafe and no traffic issues have been identified.
 - Whilst the bridleway is narrow and passing points are lacking on its northern half there is nothing to indicate that private vehicular use currently causes a problem. Overall however, there are disadvantages to the bridleway being used as the alternative route to Footpath No. 28.

The detailed reasons of the Inspector are shown at Appendix 3H.

Modern timeline – 2013 application to the Magistrates' Court

26. Central Bedfordshire Council applied to the Magistrates' Court for a stopping up order under Section 116 of the Highways Act 1980 in July 2013. The case management hearing set a later date of January 2014 for the substantive hearing to determine the application. However, at that hearing the Council requested the main hearing be adjourned until September 2014 so that the results of the impending June 2014 public inquiry into the public path extinguishment order for the footpath would be known and acted upon.

27. In August 2014 the Council requested a further adjournment to the Magistrates' Court hearing. This was so that the Development Management Committee could reconsider the Magistrates' Court application in light of significant developments relating to the non-confirmation of the public path extinguishment order and the receipt of Counsel's Opinion detailing the risks of proceeding with the Magistrates' Court application. However, the Court refused to consider a further adjournment and so the Council withdrew the application with leave to re-submit it at a later date.

Extract from Central Bedfordshire Council's Applications Policy: Public Path Orders, Definitive Map Modification Orders, and Town & Country Planning Act 1990 Orders

7. Applications to the Magistrate's Court

- 7.1. Section 116 of the Highways Act 1980 allows the Council, as Highway Authority, to apply to the Magistrates' Court for an order extinguishing any road, byway open to all traffic ("BOAT"), bridleway or footpath if it is considered unnecessary. An application for a court order under Section 116 may also seek to divert any highway onto a nearer or more commodious route. Section 116 is the only mechanism the Council has to divert or extinguish public mechanically-propelled vehicular rights and so must be used if a road or BOAT, is involved. Section 116 allows for lesser rights (e.g. pedestrian or equestrian/cycle) to be retained if required.
- 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' Court¹, the application will be treated as a request for an order under Sections 26, 118, and 119 of the 1980 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 1980 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 1980 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 1980 Act. The Council will **not** make an

¹ Section 117 of the 1980 Act allows members of the public to request that the Council take a case to the Magistrates' Court.

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.
- 7.8. The application **must** also receive written consent from:
- All affected and adjoining land owners and occupiers;
 - Anybody with a legal interest² 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 1980 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.**

² Including any mortgage company or bank and those parties with sporting or other rights.

Council-generated applications

- 7.13. The Council may apply to the Magistrates' Court directly for an order concerning any public right of way where it considers that a Council-generated proposal meets one or more of the criteria detailed in Section 7.6 above and either:
- The use of alternative powers under the Highways Act 1980 is not suitable; or
 - An order using these powers has already been made and subsequently not confirmed by either the order making authority or the Secretary of State for the Environment, Food and Rural Affairs.
- 7.14. A Council-generated application to the Magistrates' Court must be consented to by all the affected owners and occupiers and any other party with a legal interest over the land and the local town or parish council or meeting. Consent must be given in writing.
- 7.15. A Council-generated application will only be approved by the Rights of Way Team Leader after 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.
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