

TO:- Planning Committee

Councillor Michael Lawrence , Councillor Bob Cope , Councillor Penny Allen , Councillor Len Bates B.E.M. , Councillor Barry Bond M.B.E. , Councillor Mike Boyle , Councillor Jo Chapman , Councillor Brian Cox , Councillor Philip Davis , Councillor Mark Evans , Councillor Rita Heseltine , Councillor Diane Holmes , Councillor Kath Perry M.B.E. , Councillor Robert Reade , Councillor Ian Sadler , Councillor Christopher Steel , Councillor Wendy Sutton , Councillor Victoria Wilson

Notice is hereby given that a meeting of the Planning Committee will be held as detailed below for the purpose of transacting the business set out below.

Date: Tuesday, 15 November 2022

Time: 18:30

Venue: Council Chamber Community Hub, Wolverhampton Road, Codsall, South Staffordshire, WV8 1PX



D. Heywood
Chief Executive

A G E N D A

Part I – Public Session

- | | | |
|----------|---|-----------------|
| 1 | Minutes
To confirm the minutes of the Planning Committee meeting on 27 September 2022. | 1 - 4 |
| 2 | Apologies

To receive any apologies for non-attendance. | |
| 3 | Declarations of Interest

To receive any declarations of interest. | |
| 4 | Determination of Planning Applications
Report of Development Management Team Manager | 5 - 92 |
| 5 | Monthly Update Report
Report of the Lead Planning Manager | 93 - 166 |

RECORDING

Please note that this meeting will be recorded.

Any person wishing to speak must confirm their intention to speak in writing to Development Management by 5pm on the Thursday before Planning Committee

- E-mail: SpeakingatPlanningCommittee@sstaffs.gov.uk
- Telephone: (01902 696000)
- Write to: Development Management Team
South Staffordshire Council
Wolverhampton Road
Codsall
WV8 1PX

PUBLIC ACCESS TO AGENDA AND REPORTS

Spare paper copies of committee agenda and reports are no longer available. Therefore should any member of the public wish to view the agenda or report(s) for this meeting, please go to www.sstaffs.gov.uk/council-democracy.

Minutes of the meeting of the **Planning Committee** South Staffordshire Council held in the Council Chamber Community Hub, Wolverhampton Road, Codsall, South Staffordshire, WV8 1PX on Tuesday, 27 September 2022 at 18:30

Present:-

Councillor Len Bates, Councillor Mike Boyle, Councillor Jo Chapman, Councillor Philip Davis, Councillor Rita Heseltine, Councillor Diane Holmes, Councillor Michael Lawrence, Councillor Kath Perry, Councillor Ian Sadler, Councillor Christopher Steel, Councillor Wendy Sutton, Councillor Victoria Wilson

19 **MINUTES**

RESOLVED: - that the minutes of the Planning Committee held on 19 July 2022 be approved and signed by the Chairman.

20 **APOLOGIES**

Apologies were received from Councillors Cox and Reade.

21 **DECLARATIONS OF INTEREST**

There were none.

22 **DETERMINATION OF PLANNING APPLICATIONS**

The Committee received the report of the Development Management Manager, together with information and details received after the agenda was prepared.

22/00044/FUL – FIELD AT (PENN 1) PENSTONE LANE, LOWER PENN – APPLICANT – MR JAMES STONE – PARISH – LOWER PENN

Duncan Howie, agent (Anglo Renewables) spoke in support of the application.

Nigel Cox spoke against the application.

Councillor Kinsey (Ward Member) spoke against the application.

Councillors Allen, Davis and Cope supported the application.

Councillor Bond proposed a motion to refuse the application as it was contrary to EQ4 and GB1.

Councillor Evans seconded the motion.

The motion was defeated.

RESOLVED that the application be APPROVED subject to the conditions set out in the Planning Officer's report.

Councillors Wilson and Davis abstained from voting.

22/00045/FUL – FIELD AT (PENN 2) PENSTONE LANE, LOWER PENN – APPLICANT – MR JAMES STONE – PARISH – LOWER PENN

Duncan Howie, agent (Anglo Renewables) spoke in support of the application.

Peter Merry spoke against the application.

Councillor Kinsey (Ward Member) spoke against the application.

RESOLVED that the application be APPROVED subject to the conditions set out in the Planning Officer's report and to the amendments to Condition 18 as follows:

The site shall be operated in accordance with the technical and safety information within the submitted Outline Battery Safety Management Plan. This shall include approaching Staffordshire Fire and Rescue Service and Severn Trent to develop a Tactical Information Record for Lower Penn Battery Storage Facility 2; which will facilitate Fire and Rescue responders to the site with technical and tactical information about the site and best approaches in the event of a fire event. The Tactical Information Record shall include the avoidance of firefighting products (eg Aqueous Film Forming Foam) containing perfluoroalkyl and perfluoroalkyl substances (PFAS) where possible. This shall be completed prior to the operation of the site.

Councillors Wilson and Davis abstained from voting.

21/01008/FUL – PENDEFORD HALL FARM, PENDEFORD HALL LANE, COVEN WV9 5BD - APPLICANT – MR ROBIN WINWOOD - PARISH – BREWOOD AND COVEN.

Councillors Sutton and Holmes, local members, supported the application.

RESOLVED that the application be APPROVED subject to Unilateral Undertaking for Cannock Chase SAC.

22/00696/FUL – LAND ADJACENT TO STAFFS AND WORCESTER CANAL, STATION ROAD, FOUR ASHES, WV10 7DG – APPLICANT - MR IMRE TOLGYESI - PARISH – BREWOOD AND COVEN

Councillors Sutton and Holmes, local members, supported the application.

RESOLVED that the application be APPROVED subject to the conditions set out in the Planning Officer's report.

4 October 2022

The Committee received the report of the Lead Planning Manager informing the committee on key matters including training; changes that impact on National Policy; any recent appeal decisions; relevant planning enforcement cases (quarterly); and latest data produced by the Ministry of Housing Communities and Local Government.

RESOLVED That the Committee note the update report.

The Meeting ended at: 20:00

CHAIRMAN

SOUTH STAFFORDSHIRE COUNCIL**PLANNING COMMITTEE – 15 NOVEMBER 2022****DETERMINATION OF PLANNING APPLICATIONS****REPORT OF DEVELOPMENT MANAGEMENT TEAM MANAGER****PART A – SUMMARY REPORT****1. SUMMARY OF PROPOSALS**

To determine the planning applications as set out in the attached Appendix.

2. RECOMMENDATIONS

2.1 That the planning applications be determined.

3. SUMMARY IMPACT ASSESSMENT

POLICY/COMMUNITY IMPACT	Do these proposals contribute to specific Council Plan objectives?	
	Yes	The reasons for the recommendation for each application addresses issued pertaining to the Council's Plan.
	Has an Equality Impact Assessment (EqIA) been completed?	
	No	Determination of individual planning applications so not applicable- see below for equalities comment.
SCRUTINY POWERS APPLICABLE	No	
KEY DECISION	No	
TARGET COMPLETION/ DELIVERY DATE	N/A	
FINANCIAL IMPACT	No	Unless otherwise stated in the Appendix, there are no direct financial implications arising from this report.
LEGAL ISSUES	Yes	Town and Country Planning Act 1990 Planning (Listed Buildings and Conservation Areas) Act 1990 Planning (Consequential Provisions) Act 1990 Planning (Hazardous Substances) Act 1990 Planning and Compensation Act 1991 Planning and Compulsory Purchase Act 2004

OTHER IMPACTS, RISKS & OPPORTUNITIES	Yes	Equality and HRA impacts set out below.
IMPACT ON SPECIFIC WARDS	Yes	As set out in Appendix

PART B – ADDITIONAL INFORMATION

4. INFORMATION

All relevant information is contained within the Appendix.

Advice to Applicants and the Public

The recommendations and reports of the Development Management Team Manager contained in this schedule may, on occasions, be changed or updated as a result of any additional information received by the Local Planning Authority between the time of its preparation and the appropriate meeting of the Authority.

Where updates have been received before the Planning Committee's meeting, a written summary of these is published generally by 5pm on the day before the Committee Meeting. Please note that verbal updates may still be made at the meeting itself.

With regard to the individual application reports set out in the Appendix then unless otherwise specifically stated in the individual report the following general statements will apply.

Unless otherwise stated any dimensions quoted in the reports on applications are scaled from the submitted plans or Ordnance Survey maps.

Equality Act Duty

Unless otherwise stated all matters reported are not considered to have any adverse impact on equalities and the public sector equality duty under section 149 of the Equality Act 2010 has been considered. Any impact for an individual application will be addressed as part of the individual officer report on that application.

Human Rights Implications

If an objection has been received to the application then the proposals set out in this report are considered to be compatible with the Human Rights Act 1998.

The recommendation to approve the application aims to secure the proper planning of the area in the public interest. The potential interference with rights under Article 8 and Article 1 of the First Protocol has been considered and the recommendation is considered to strike an appropriate balance between the interests of the applicant and those of the occupants of neighbouring property and is therefore proportionate. The issues arising have been considered in detail

in the report and it is considered that, on balance, the proposals comply with Core Strategy and are appropriate.

If the application is recommended for refusal then the proposals set out in the report are considered to be compatible with the Human Rights Act 1998. The recommendation to refuse accords with the policies of the Core Strategy and the applicant has the right of appeal against this decision.

Consultations Undertaken

The results of consultations with interested parties, organisations, neighbours and Councillors are reported in each report in the Appendix.

CONSULTEES

CH – County Highways
CLBO – Conservation Officer
CPO – County Planning Officer
CPRE – Campaign to Protect Rural England
CPSO – County Property Services Officer
CA – County Archaeologist
CS – Civic Society
EA – Environment Agency
EHGS – Environmental Health Officer
ENGS – Engineer
FC – The Forestry Commission
HA – Highways Agency
LPM – Landscape Planning Manager
HENGs – Engineer
NE – Natural England
PC – Parish Council
OSS – Open Space Society
STW – Severn Trent Water
SWT – Staffordshire Wildlife Trust

5. IMPACT ASSESSMENT – ADDITIONAL INFORMATION

N/A

6. PREVIOUS MINUTES

Details if issue has been previously considered

7. BACKGROUND PAPERS

Background papers used in compiling the schedule of applications consist of:-

- (i) The individual planning application (which may include supplementary information supplied by or on behalf of the applicant) and representations received from persons or bodies consulted upon the application by the Local Planning Authority, and from members of the public and interested bodies, by the time of preparation of the schedule.
- (ii) The Town and Country Planning Act, 1990, as amended and related Acts, Orders and Regulations, the National Planning Policy Framework (NPPF), the Planning Practice Guidance Notes, any Circulars, Ministerial Statements and Policy Guidance published by or on behalf of the Secretary of State for the Department for Communities and Local Government.
- (iii) The Core Strategy for South Staffordshire adopted in December 2012 and Supplementary Planning Documents
- (iv) Relevant decisions of the Secretary of State in relation to planning appeals and relevant decisions of the courts.

These documents are available for inspection by Members or any member of the public and will remain available for a period of up to 4 years from the date of the meeting, during the normal office hours. Requests to see them should be made to our Customer Services Officers on 01902 696000 and arrangements will be made to comply with the request as soon as practicable. The Core Strategy and the individual planning applications can be viewed on our web site www.sstaffs.gov.uk

Report prepared by: Kelly Harris - Lead Planning Manager

App no	Applicant/Address	Parish and Ward Councillors	Recommendation	Page
22/00004/FUL MAJOR	Mr Naz Nathani Former Great Wyrley Community Support Unit 156 Walsall Road Great Wyrley Staffordshire WS6 6NQ	GREAT WYRLEY Cllr Johnson Cllr Lawrence Cllr Perry	APPROVE – Subject to conditions	11-56
22/00309/COU NON MAJOR	Mr T Park Elwell Nurseries Wolverhampton Road Cheslyn Hay Staffordshire WS6 7HX	CHESLYN HAY Cllr Boyle Cllr Hollis	APPROVE – Subject to conditions	57-74
22/00757/FUL NON MAJOR	Mr C Martin Kingswood Centre Barn Lane Kingswood Staffordshire WV7 3AW	PERTON Cllr Davis	APPROVE – Subject to conditions	75-82
22/00800/FUL NON MAJOR	Mr Philip Hammonds Doveleys Farm Sandy Lane Hatherton Staffordshire WS11 1RW	HATHERTON Cllr Benton Cllr Williams	REFUSE	83-92

**22/00004/FUL
MAJOR**

Mr Naz Nathani

**GREAT WYRLEY
Cllr J Johnson, Cllr M Lawrence,
Cllr K Perry**

**Former Great Wyrley Community Support Unit, 156 Walsall Road, Great Wyrley,
Staffordshire, WS6 6NQ**

**Demolition of existing buildings and redevelopment of site to deliver a 90 bedroom
Residential Care Home (C2 Use Class) and 32 Age Limited Apartments (over 55) (C2 Use
Class) with car parking, landscaping and associated infrastructure including alterations to
vehicle access from Walsall Road**

1.1 SITE DESCRIPTION AND PLANNING HISTORY

- 1.1.1 The application site, which extends to 1.1ha, contains two predominantly single storey buildings, which housed the Staffordshire County Council operated, Community Support Centre, which is now closed. The site is located towards the northern edge and within the Development Boundary of the village of Great Wyrley, to the east of Walsall Road, from which it is directly accessed.
- 1.1.2 The existing building, to the site frontage, is a much altered, former Victorian Primary School. The inclusion of large modern windows has greatly altered the primary façade facing onto Walsall Road. To the rear of this frontage building, 1960s two and single storey extensions have been erected, further altering the original appearance of the building. To the rear of the site, a further 1960s pitched roof building, is evident.
- 1.1.3 Surrounding the site there is a mixture of architectural styles and construction eras. Whilst there is a predominance of Victorian buildings to the eastern side of Walsall Road, including, to the south of the site, the Locally Listed Swan Public House, opposite to the site, there are post war semi-detached dwellings. The buildings within this area are in a variety of commercial or residential uses. To the west of the site on Brook Lane, there is a 1960s housing estate, comprising predominantly semi-detached and bungalow accommodation.

1.2 Relevant Planning History

05/00484/COM – Additional parking area to form eight new parking bays – Referred to the County Council

99/01000/FUL – Roller Shutters – Approved – 24/09/1999

85/00730 - Social Services Day Centre – Approved – 22/01/1987

1.3 Pre-application Advice

- 1.3.1 Pre-application discussions took place.

2. APPLICATION DETAILS

2.1 The Proposal

- 2.1.1 The application seeks permission to demolish all of the existing built form within the site and thereafter, erect a part 3 storey, part two and half storey, part two storey and part single storey 'L shaped' building to house a 90 bed care home (Use Class C2) and 32 apartments for those over the age of 55 (Use Class C2). For the care home element of the scheme, all of the bedrooms are to have en-suite rooms. Within the over 55 apartments, there are shown to be 14 one bed and 18 two bedroom units.
- 2.1.2 The residential care element of the scheme will provide en-suite bedroom accommodation and 24 hour personal care to people that are unable to manage daily life at home. Admission to the facility will be defined on the basis of registration with Care Quality Commission, as a provider of regulated care activity, with residents admitted on the basis of requiring personal and/or health care.
- 2.1.3 The Care Home will offer a range of facilities for future residents, which includes a Hairdressing Salon, Gym, Cinema, Lounges, Library and a Bistro, the latter of which is proposed to be open to the general public.
- 2.1.4 **Background**
- 2.1.5 It should be noted that on submission of the scheme, there was some discussion regarding the use class under which the over 55 accommodation should be considered. Essentially, the matter for consideration was whether the over 55 apartments should be considered as part of the wider care facility and therefore under Class Use C2 or as standalone apartments, under Class Use C3. Generally, the latter would be applied, but in this case, given the access to the shared facilities and the applicant's business model, whereby residents can move through the units as their care needs increase, it was considered (following receipt of the Land Use Note) appropriate for all units to be considered as residential institutions (Use Class C2). In terms of the implications of this matter, during the determination process, such has not impacted upon the affordable housing provision, Cannock Chase SAC recreation contributions or other material planning considerations, as discussed below.
- 2.1.6 The application was Screened under Schedule 2 Part 10 (b(i)) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, given it constitutes an urban development infrastructure project, where the area of the development exceeds 1 hectare. It was considered that given the development is not in a sensitive area and does not exceed the relevant threshold, as set out in the Annex to the NPPG (4-057-20140306) that the effects on the environment are unlikely to be significant, when assessed against the criteria identified within Schedule 3. Therefore, an Environmental Impact Assessment, was not required in this instance.

2.2 Agent's Submission

- 2.2.1 The following documents have been submitted as part of the planning application:
- Arboricultural Method Statement
 - Bat Report
 - Coal Mining Risk Assessment
 - Daylight and Sunlight Study
 - Design and Access Statement
 - Flood Risk Assessment
 - Heritage Statement
 - Land Use Note

- Preliminary Ecological Appraisal
- Statement of Community Involvement
- Sustainability Statement
- Technical Parking Note
- Transport Statement
- Travel Plan
- Vacant Building Credit Note

3. POLICY CONTEXT

3.1 National Planning Policy

- National Planning Policy Framework
- National Planning Practice Guidance
- National Model Design Code
- National Policy for Waste
- National Design Guide
- Manual for Streets

3.2 Core Strategy Development Plan Document

- National Policy 1 - The Presumption in Favour of Sustainable Development
- Core Policy 1 - The Spatial Strategy for South Staffordshire
- Core Policy 2 - Protecting and Enhancing the Natural and Historic Environment
- Core Policy 3 - Sustainable Development and Climate Change
- Core Policy 5 - Infrastructure Delivery
- Core Policy 11 - Sustainable Transport
- Core Policy 14 - Open Space, Sport and Recreation
- Core Policy 15 - Children and Young People
- EQ1 - Protecting, Enhancing and Expanding Natural Assets
- EQ2 - Cannock Chase Special Area of Conservation
- EQ3 - Conservation, Preservation and Protection of Heritage Assets
- EQ4 - Protecting and Enhancing the Character and Appearance of the Landscape
- EQ5 - Sustainable Resources and Energy Efficiency
- EQ6 – Renewable Energy
- EQ7 - Water Quality
- EQ8 - Waste
- EQ9 - Protecting Residential Amenity
- EQ11 - Wider Design Considerations
- EQ12 - Landscaping
- EQ13 - Development Contributions
- EV11 - Sustainable Travel
- EV12 - Parking Provision
- H1 - Achieving a Balanced Housing Market
- H2 - Provision of Affordable Housing
- H4 - Delivering Affordable Housing
- CS1 – Designing Out Crime
- Appendix 5: Car Parking Standards
- Appendix 6: Space About Dwellings Standards

3.3 Site Allocations Document

- Policy SAD2: The Housing Allocations

3.4 Local Plan (2018-2038) (Preferred Options) (Emerging)

- DS3 – The Spatial Strategy to 2038
- SA7 - Employment Allocation – West Midlands Interchange

- HC1 – Housing Mix
- HC2 - Housing Density
- HC3 - Affordable Housing
- HC4 - Homes for Older People
- HC5 - Specialist Housing Schemes
- HC9 - Design requirements
- HC10 - Protecting residential amenity
- HC11 - Space about dwellings and internal space standards
- HC12 – Parking Standards
- HC13 - Health and Wellbeing
- HC14 - Health Infrastructure
- HC19 - Wider green infrastructure design principles
- EC1 - Sustainable economic growth
- EC2 - Retention of employment sites
- EC3 - Inclusive Growth
- EC7 - Protecting community services and facilities
- EC10 - Developer Contributions
- EC11 - Sustainable Transport
- NB1 - Protecting, enhancing and expanding natural assets
- NB2 - Biodiversity
- NB3 - Cannock Chase SAC
- NB4 - Landscape Character
- NB5 - Renewable and low carbon energy generation
- NB6 - Energy and water efficiency, energy and heat hierarchies and renewable energy in new development
- NB7 - Managing flood risk, sustainable drainage systems & water quality
- NB9 - Conservation, preservation and protection of historic assets

3.5 Supplementary Planning Documents

- Affordable Housing and Housing Mix
- Cannock Chase SAC
- Design Guide
- Historic Environment and Character Assessment
- Sustainable Design
- Village Design Guide

3.6 Other

- The Town and Country Planning (Pre-commencement Conditions) Regulations 2018
- Environment (Principles and Governance) Act 2018
- Natural Environment and Rural Communities Act (2006)
- The Conservation (Natural Habitats, &c.) Regulations (1994)
- The Conservation of Habitats and Species Regulations (2017)
- Defra Net Gain Consultation Proposals (2018)
- The Wildlife and Countryside Act (as amended) 1981
- The Countryside and Rights of Way (CROW) Act 2000
- The Protection of Badgers Act 1992
- Staffordshire and Stoke on Trent Joint Waste Local Plan
- Providing for Journeys on Foot (2000)
- Water Framework Directive
- Active Design – Planning for Health and Wellbeing through Sport and Activity
- Natural England's approach to advising competent authorities on the assessment of road traffic emission under the Habitats Regulations (2018)
- Recreation to Cannock Chase SAC Report (2012)
- Cannock Chase SAC – Planning Evidence Base Review (2017)

- European Site Conservation Objectives for Cannock Chase SAC (2014)
- Planning for Landscape Change – Staffordshire County Council (2000)
- ‘A Hard Rain’ – Staffordshire County Council’s Corporate Climate Change Strategy (2005)
- Staffordshire County-wide Renewable/Low Carbon Energy Study (2010)
- Climate Change Act (2008)
- Air Quality Management Guidance (2014)
- Guidance for Outdoor Sport and Play: Beyond the Six Acre Standard (England) (2018)
- Cannock Chase Area of Outstanding Natural Beauty (AONB) Partnership Planning - -
- Protocol between Constituent Local Planning Authorities and the Cannock Chase - AONB Joint Committee (2019)
- Black Country and South Staffordshire Strategic Housing Market Assessment (2017)
- Five Year Housing Land Supply Paper (2022)
- Building for a Healthy Life (Homes England)
- South Staffordshire Housing Market Assessment (2021)
- Health Building Note 11-01: Facilities for Primary and Community Care Services
- Longer-Term Balancing Housing Market (2017)

4. CONSULTATION RESPONSES

Councillor Lawrence (received 25/01/2022) – Raises concerns regarding the size of the development, the impact on neighbour amenity, through loss of privacy in particular and also, given the number of visitors the development will attract, parking will be an issue.

Councillor Johnson (received 27/06/2022) - No objection this development is needed in our area.

Great Wyrley Parish Council (received 07/07/2022) – Object. The proposal is perceived as overdevelopment of the site. There are also serious concerns regarding the limited size of the sleeping accommodation.

Previous Comment (received 07/02/2022) – Strongly object. The three storey building is out of character with existing properties within the area. The density of the development is excessive.

The scale of the development will attract a significant number of visitors, particularly at the weekend, which will lead to highway safety issues. There is a bus stop immediately outside of the application site, which will also limit the availability of on street parking within the immediate area.

The development will have a detrimental affect on the amenity of the surrounding properties, given that trees are to be felled, which will remove the majority of the existing site’s screening. The three storey nature of the building will also lead to overlooking, thereby having a negative impact on the privacy of surrounding residents.

Finally, raise concerns regarding the size of the living accommodation that is to be provided.

Natural England (received 18/10/2022) – No objection. Notes that the Local Planning Authority (LPA), as Competent Authority under the provisions of the Habitats Regulations, has undertaken an Appropriate Assessment (AA) of the

proposal, in accordance with Regulation 63 of the Regulations. The AA concludes that the proposal will not, subject to appropriate mitigation, result in adverse effects on the integrity of Cannock Chase SAC. Having considered the assessment, Natural England advises that they concur with the assessment's conclusions, providing that all mitigation measures are appropriately secured in any permission given.

Previous Comments (received 14/09/2022) – Agrees with the Competent Authorities conclusion of no Likely Significant Effects (LSE) with reference to the scheme's impact upon the Cannock Extension Canal SAC.

(received 06/07/2022) – Disagrees with the Council's Screening Assessment of HRA. The guidance is clear that over 55's are as likely to use the Cannock Chase SAC for recreation, as the under 55's and that contributions to the SAMMM are still therefore required. There may be reasons why the over 55's in this accommodation would not be likely to use the SAC and there is evidence to demonstrate this. If this is the case for this proposal, then this needs to be made clear in the HRA.

In regard to the Cannock Extension Canal SAC HRA, agrees with the findings, but requests explanation for use of a standardised Zone of Influence (Zoi) of 5km.

(received 22/02/2022) - The application site is within 6.8km of Cannock Chase Special Area of Conservation (SAC). The Council, as Competent Authority, therefore needs to undertake a Habitat Regulations Assessment, to consider the scheme's potential to impact upon this SAC.

Advise that any surface water drainage should be designed both for water quantity and water quality. Refer to Policy EQ7 of the South Staffordshire Adopted Core Strategy, the Staffordshire County Council Sustainable Drainage Systems and the CIRIA SuDS Manual.

Ecology Officer (received 05/07/2022 & 08/02/2022) – The Design and Access Statement refers to the buildings as having been demolished, although the bat survey clearly identified a bat roost in the buildings. If demolition has been carried out, will the applicant confirm that a bat licence was obtained from Natural England, prior to this work having been carried out, in order to avoid an offence being committed. The licence number should be supplied. If demolition has been carried out without a licence, details of the person or company responsible should be supplied.

The mitigation measures for bats are adequate and are recommended to be secured by condition, whilst the landscaping scheme retains existing trees and provides new native species and pollinator planting. Also recommends the addition of bird boxes, to be secured via the use of a condition.

NatureSpace (received 01/07/2022 & 25/03/2022) – No objection. Notes that although the application site falls within a Green Impact Zone for newts, given its characteristics, it is an unsuitable newt habitat and therefore no further assessment is required.

Cannock Chase Chief Commissioning Group (NHS) (received 18/10/2022) - No objection, subject to a contribution of £37,375, towards local health infrastructure.

Previous Comments (received 22/02/2022) – No objection, subject to a contribution of £41,485 towards local health infrastructure.

Conservation Officer (received 17/07/2022) – No objection, following the receipt of revised plans, subject to a condition to require the submission and approval, prior to the commencement of development, of details of all external materials to be used.

Previous Comments (received 01/02/2022) – Objects. The increase in height and massing of the proposed building, compared to that which is to replace, will result in a detrimental impact upon the setting of the neighbouring, locally listed Swan Public House. The existing building is a single unified structure, whilst the proposed structure has been designed to articulate more. However, the level of articulation is not high enough, leading to the appearance of a few large structures. The facade rhythm will therefore either need to be greater, in order to give the feel of a terrace of smaller structures, or amended to be retained as one single elevation, as at present.

The proposal currently therefore causes less than substantial harm to the setting of a locally listed building without providing any heritage related public benefits.

Staffordshire Fire and Rescue Service (received 16/06/2022 & 14/01/2022) – No objection. Offers best practice guidance on reducing the risk of fire.

Staffordshire Police Architectural Liaison Officer (received 04/07/2022 & 25/01/2022) – No objection. Provides guidance on measures to implement within the scheme to help design out crime.

Arboriculture Officer (received 17/10/2022) - The removal of a single parking bay adjacent to T9 will mitigate some of the risk to that tree.

Whilst previous concerns regarding the loss of T3 and the potential impact on T9 remain, commends the improvements made to the tree planting specification within the landscaping scheme.

Recommends the inclusion of conditions, requiring the submission and approval, prior to the commencement of any demolition works, of an Arboriculture Method Statement and Tree Protection Plan, to show how trees within the site will be retained, throughout the course of development.

Previous Comments (received 08/09/2022) – Object. The loss of trees T3 and T9 is unacceptable.

Welcomes the changes made to the landscaping specification for new tree planting and can confirm that this is a significant improvement over the original.

(received 02/08/2022) – Object. None of the concerns previously detailed have been addressed. In fact, the revised layout introduces further incursions into various rpas (in particular for T9), whilst also now resulting in the loss of T3. The recommendations made regarding the landscaping scheme have not been implemented, whilst the planting of 3 Cedrus Atkantica trees, to replace T3 is unacceptable, as there is insufficient space available for these trees to establish.

(received 23/02/2022) - No objection to the principle of the proposed development, but raises a number of concerns regarding the current submission. The scale of development, in relation to the site, is significant and therefore great care is

required in order to facilitate demolition and subsequent construction without causing significant harm to the retained trees.

The arboricultural information does not contain a finalised Tree Protection Plan, nor any detailed Arboricultural / Construction Method Statement.

Has no objection to the loss of G1, G2, G4, G7, T7 or sections of G5. Whilst some of these are listed as Category B specimens, their positions would be a significant or prohibitive constraint to development and none of them are a high enough value to warrant retention.

However, very little consideration has been given to accommodating T3 (Cedar), with the default approach taken to maximising parking numbers and relying on specialist construction methods within the Root Protection Area. Such construction methods are no substitute for minimising RPA incursion in the first instance. Recommends therefore that parking bays 24 and 25 be removed, allowing for the Ambulance and Delivery Bays to be moved further from T3. In addition, parking bay 1, should be removed allowing for the overall length of the associated cul-de-sac to be shortened. The Bin Store should also be positioned further from the tree with the associated hard standing reduced in size. Lastly, the pedestrian walkway leading from the ambulance / delivery bays to the Goods Entrance should be re-positioned tight to the building, in place of what appears to be a strip of landscaping. All of these measures would significantly reduce the incursion into the RPA of T3 and largely remove the need for specialist construction techniques.

The specification for new trees planted as part of the proposed landscaping must be altered to Selected Standard (10-12), Container Grown. The smaller sized stock, combined with the lower mortality rate of container grown over root balled specimens, will ensure a higher quality landscape at maturity.

Finally, recommends the inclusion of conditions, requiring the submission and approval, prior to the commencement of any demolition works of an Arboriculture Method Statement and Tree Protection Plan, to show how trees within the site will be retained, throughout the course of development

Staffordshire County Council Archaeology (received 30/06/2022 & 17/01/2022)– No objection. Notes that the site is adjacent to a locally listed historic public house and as such, there is some potential for the proposals to impact on the setting of this non-designated heritage asset.

Staffordshire County Council Flood Risk (received 22/06/2022 & 04/02/2022) – No objection.

Staffordshire County Council Mineral and Waste (received 04/02/2022) – No objection. Provides recommendations for reducing waste generated through the development process.

Staffordshire County Council Highways (received 12/10/2022) – No objection, subject to conditions requiring the submission and approval, prior to the commencement of development (including demolition) of a Construction Management Plan. The vehicular access shall be completed in accordance with the approved plans, with the existing redundant elements of the access permanently closed, with the access crossing reinstated as footway. Visibility splays for the access shall be kept free from obstruction. Prior to first occupation of the

development, a surface water drainage interceptor shall be installed across the site access. In addition, prior to first use of the site, the access, parking and turning areas shall be provided in a bound porous material, with the parking spaces clearly delineated. Also, prior to first use of the site, the cycle parking facilities shall be provided. Prior to first occupation details of fencing to the site frontage are to be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall be implemented and monitored accordingly and no vehicle greater in length than 10.5 m is to access the site, prior to the submission of a revised swept path analysis.

Previous Comments (received 08/09/2022) – Object. The site access arrangement remain unclear, whilst one the drawings is not to scale, preventing accurate measurements being taken.

(received 19/07/2022) – Object. Seeks further clarification regarding the application's red line boundary, the mini-bus layby design, contradictory information regarding the number of employees to be required for the development and the use of the community facilities. The footway width and disabled parking bays remain of a substandard design, whilst information to demonstrate suitable internal tracking for ambulances remains outstanding. Still await receipt of a car parking accumulation report. The cycle parking facilities now proposed are inappropriately located, whilst the Travel Plan requires improvements to ensure the encouraged use of sustainable modes of transport.

(received 11/02/2022) – Object. Requests further information and clarification given inconsistencies across the submitted drawings and supporting documentation. Seeks further details of accidents at Norton Lane/ A5 junction required as more than 3 occurred in a 5-year period therefore this is a cluster, along with a car parking accumulation exercise to demonstrate the adequacy of the proposed parking provision. Several amendments requested to the submitted scheme, specific to width of footways into the site, the design of the disabled parking bays, the introduction of swept path analysis using a refuse vehicle and ambulance for the internal layout to show the refuse vehicle can safely turn around within the site and the introduction of cycle parking facilities for future site users. Lastly, requests revisions to the submitted Travel Plan, in order to better encourage the use of sustainable transport modes, for future employees at the site.

Staffordshire County Council Education (received 17/06/2022) – No objection. As the apartments will be conditioned for over 55's, they are exempt from education contribution calculations, as per our Staffordshire Education Infrastructure Contributions Policy (SEICP).

Previous Comments (received 24/03/2022) – No objection. There are projected to be a sufficient number of school places, at both primary and secondary phases of education, to mitigate the impact of this development.

Housing Strategy (received 22/09/2022 & 22/07/2022) – Notes the outstanding issue with this proposal relates to the affordable housing requirement. The applicant has submitted a Vacant Building Credit note, requesting such be applied to the development, to reduce the affordable housing provision.

Applying the Vacant Building Credit and allowing for the affordable housing provision to be delivered off-site, given a lack of likely interest in Registered Providers, in accepting apartments within this building, requests a financial

contribution of £674,520, in order for the scheme to be supported from a strategic housing perspective. This is advised to be secured via a Section 106 agreement.

Previous Comments (received 18/02/2022) - The proposed development includes 32 extra care apartments, but with an absence of any affordable housing. Whilst the applicant specifies the use class of the remaining over 55 apartments to be C2, they appear to be designed to function as self-contained units for day-to-day private domestic use. These apartments should be considered as residential dwellings. Therefore Policy H2 of the adopted Core Strategy applies. This policy requires developments of 10 or more units in Great Wyrley, to make an affordable housing contribution. On previously developed land, this requirement is 30% affordable housing provided on site, split 50:50 between social rent and shared ownership.

Based on 32 units, the affordable housing requirement is therefore 10 affordable homes, with 5 for social rent and 5 for shared ownership. As a proposal for specialist housing, the development is not required to provide a proportion of the affordable housing as First Homes, as per the updated PPG. In line with the National Design Guide and Affordable Housing SPD, different tenures should be well integrated within a scheme, and design should be tenure-neutral to ensure that affordable housing is materially indiscernible from market housing. Without the provision of affordable housing within this proposal, the development cannot be supported from a strategic housing perspective.

In terms of the mix of property sizes to be provided for the extra-care element of the scheme, the Council expects a mixture of 1 and 2 bedroom homes to be provided, in order to ensure properties are of a manageable size for the intended occupants, whilst also meeting varying needs. The housing mix is therefore generally supported.

The Council has an adopted policy on internal space in Appendix 6 of the Core Strategy. The 2015 Written Ministerial Statement indicates that existing policies relating to internal space should now be interpreted by reference to the nearest equivalent national standard. Therefore, the Council expects all new developments to meet the nationally described space standards (NDSS). All apartments exceed the minimum requirements of this standard.

Severn Trent Water (received 19/01/2022) – No objection, subject to the inclusion of a condition to secure the submission and approval, prior to the commencement of development, of a suitable foul and surface water drainage scheme. The approved scheme shall thereafter to be implemented, prior to first use of the scheme.

The Coal Authority (received 27/06/2022 & 03/03/2022) – No objection, subject to the use of conditions to require the submission and approval, prior to the commencement of development, of a scheme of intrusive site investigations to establish the risks posed to the development, by past coal mining activity and any remediation works and/or mitigation measures to address land instability arising, from coal mining legacy. In addition, require prior to the first occupation of the development, a signed statement or declaration prepared by a suitably competent person confirms that the site is, or has been made, safe and stable for the approved development, be submitted to the Local Planning Authority for approval in writing.

Previous Comments (received 28/01/2022) – Object. Records indicate that the site has been subject to both recorded and probable shallow coal mining. This could

affect the safety and stability for the redevelopment of this site. Therefore require the submission of Coal Mining Risk Assessment Report.

Cadent Gas (received 25/06/2022) – No objection. Recommends the use of informative to advise the applicant that there are Cadent assets within the area and remind them of their developer obligations.

Environment Agency (received 14/06/2022) – No comment.

Planning Policy – No response received.

Environmental Health – No response received.

Staffordshire Wildlife Trust – No response received.

Badger Conservation Group – No response received.

Western Power – No response received.

A **site notice** was posted on 20/06/2022. A total of 8 comments were made from 7 residents, which can be summarised as follows:

- Landywood Voluntary Centre offer no objection to the proposal, but requests a condition be attached to any positive decision, to ensure continued vehicular access is available to rear of their property, which allows for those with limited mobility to access the centre.

Residential Amenity

- The trees to the edge of the site act as a visual buffer between the two sites currently, protecting amenity and providing a valuable animal habitat. As such, request that they be retained and maintained appropriately into the future, to retain current levels of privacy.
- The height of the building will allow for overlooking of neighbouring properties and also block sunlight.
- The introduction of a lighting scheme for the car park will result in light pollution in this area, impacting upon the amenity of neighbouring residents.
- The increased use of the site will generate noise pollution that will adversely affect residents.
- Traffic noise from the development is a concern, especially during night hours.

Visual Impact

- The 3 storey height of the building along with its appearance is out of character with the scale and architectural form of surrounding built form.

Highway Safety

- The proposal will generate additional traffic movements along the already congested Walsall Road.
- The development will generate less traffic movements than a housing estate and generate employment opportunities for the local area.
- The use of a single point of vehicular access for a large number of vehicles using the site seems a highway safety issue. This is exacerbated by its siting so close to other junctions and various accesses that serve existing property and car parks.
- The car parking facilities available to the development are insufficient to cope with future demand, which will result in parking on surrounding streets and potentially impact on the use of the bus stop and pedestrian crossing located to the site frontage.

5. APPRAISAL

5.1 This application is being referred to Planning Committee, due to the proposal being non-compliant with Policy SAD2: The Housing Allocations of the Strategic Allocations Document.

5.2 Key Issues

- Policy & Principle of Development
- Housing Mix
- Affordable Housing and Vacant Building Credit
- Design and Impact on the Appearance and Setting of Heritage Assets
- Residential Amenity
- Highway Impact, Sustainable Transport and Parking
- Sustainable Built Form
- Water Environment, Flood Risk and Drainage
- Biodiversity and Protected Species
- Impact on Special Areas of Conservation
- Arboriculture Impact and Landscaping
- Health Care
- Other Issues
- Financial Considerations
- Human Rights

5.3 Policy & Principle of Development

5.3.1 Section 38 (6) of the Planning and Compulsory Purchase Act (2004) sets out that the determination of applications must be made, in accordance with the Development Plan, unless material considerations indicate otherwise. The Development Plan for South Staffordshire District comprises the Core Strategy (2012-2028) and the Site Allocations Document (2012-2028). The Council's emerging Local Plan (2018-2038) is working towards consultation at the Regulation 19 stage. As such, whilst it has been the subject of public consultation, it is yet to be examined. Thus, the policies contained therein, carry some, albeit minimal material planning weight.

- 5.3.2 Paragraph 11 of the NPPF advises that housing applications should be considered in the context of the presumption in favour of sustainable development and that housing policies within the Local Plan should only be considered up to date if the Local Planning Authority is able to demonstrate a five year supply of housing.
- 5.3.3 Paragraph 8 of the NPPF provides a definition of sustainable development, identifying that there are three separate dimensions to development, namely its economic, social and environmental roles. These dimensions give rise to the need for the planning system to perform a number of roles:
- an economic role – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right place and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
 - a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and
 - an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

This report will consider how the proposed development fares in terms of these three strands of sustainable development.

- 5.3.4 Paragraph 74 of the NPPF requires that Councils identify and update annually, a supply of specific deliverable sites sufficient to provide five years delivery of housing provision. In addition, a buffer of 5% (moved forward from later in the plan period) should also be supplied, to ensure choice and competition in the market for land, or 10% where the LPA wishes to demonstrate a 5 year supply of sites through an annual position statement, to account for fluctuations in the market during the year. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.
- 5.3.5 The latest five year housing land supply position for South Staffordshire District is contained within the Five Year Housing Land Supply Paper dated March 2021, which states that a supply of 7.12 years can be demonstrated within the District.
- 5.3.6 Given that the Council can demonstrate a 5 year housing supply, it falls for this scheme to be considered, in accordance with paragraphs 12 and 47 of the NPPF, against the Policies contained within the Council's Development Plan, which for this area, is as stated above.
- 5.3.7 Policies H1 and H5 of the adopted Core Strategy confirm that the Council will support proposals for specialist housing, including extra care and residential/nursing homes, in order to meet local need and in particular to support the district's rapidly ageing population. Developments of this kind should be in a sustainable location and considered suitable by virtue of their size and scale in relation to the village

within which it is proposed and the services available therein, along with proximity to public transport links. The re-use of previously developed land should be considered as a priority.

- 5.3.8 Taking each point in turn and assessing against this submission, it is evident that this proposal, given its location within the heart of the community of Great Wyrley, can be considered to be sustainably located and not overly large in the context of the community within which it will sit. There is a bus stop immediately to the fore of the site offering ease of access to surrounding communities, including nearby, Cannock. Finally, the scheme is proposed on Brownfield land.
- 5.3.9 Beyond the above considerations, it is also noted that the site is allocated for residential development, as site 141, within both the adopted Strategic Allocations Document (SAD) and emerging Local Plan Review Preferred Options document. In the former, it is proposed that the site could accommodate a minimum of 25 dwellings and the latter, 31 dwellings, with the key infrastructure requirements for the scheme being *“Any relevant policy requirements including affordable housing, open space, education, health, sports and recreation, energy efficiency, climate change mitigation, flood risk mitigation, highways, sustainable transport, housing mix and green infrastructure, delivered in line with the relevant development plan policy standards”*. The fact that the site is allocated for residential development within these policies ensures that the loss of the existing (albeit closed) community facility from this site (normally considered contrary to the requirements of Policy EV9 of the Core Strategy), has been addressed and does not require further consideration as part of this report.
- 5.3.10 The scheme proposes to deliver 32 later living and care apartments, in addition to 90 care bedrooms, which fall in an alternate Use Class to the dwellings (C2 rather than C3) sought by the above noted policies. Therefore, the proposal does not technically comply with the requirements of these policies. However, it should be noted that, as stated within the Council’s Five Year Housing Supply document *“The most recently published Planning Practice Guidance indicates that, for the purposes of the five year supply, local planning authorities will need to count housing provided for older people, including institutions in C2 use, towards their supply”*. As such, the alteration of this site from residential, to residential institution use, will have no impact upon the Council’s Housing Delivery targets and therefore, in a wider sense, the proposed will have no impact upon and actually provide a boost to, the Council’s housing delivery targets.
- 5.3.11 Beyond the use class matter discussed above, it is also noted that the site allocations specify a minimum of 25 or 31 dwellings, which means that this scheme would deliver an oversupply of 97 or 91 units, against these minimum numbers. This would not in itself, result in a scheme that is non-complaint with this policy. Rather the scheme simply exceeds minimum numbers and subject to compliance with other material considerations, the scheme could still be wholly compliant with the requirements of these policies.
- 5.3.12 The Council’s Strategic Housing Market Assessment (May 2021), which provides part of the evidence base for the emerging Local Plan, identifies that within South Staffordshire *“To meet local demand rates in 2038, the model identifies a requirement for 417 additional units of Sheltered housing for older people/ retirement housing and 150 additional Extracare units/ supported living housing in South Staffordshire over the plan period”*. In addition, it is noted that there *“will be a requirement for 893 additional Registered Care spaces between 2020 and 2038, of*

which 49.7% should be in the affordable sector and 50.3% within a market tenure". Given that this scheme will help to secure accommodation specifically tailored to later living, as well as securing accommodation with on-site care, there is an evidenced need for significant numbers of such accommodation.

- 5.3.13 The later living and care home scheme proposed for this site, given the above considerations, is considered to be compliant with the requirements of the Development Plan and NPPF in this regard.

5.4 Housing Mix

- 5.4.1 Policy H1 of the Core Strategy seeks the delivery of a balanced housing market, through an integrated mix of dwelling types, sizes and tenures based on the latest assessment of local housing need. This reflects the approach in the NPPF, which sets out that Local Planning Authorities should deliver a wide choice of high quality homes, with a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community.
- 5.4.2 The most up to date assessment of local needs is set out in the Longer-Term Balancing Housing Market (LTBHM) report (2017), which requires a housing mix for the North Eastern area, within which Great Wyrley sits, of; 1 bed 20%, 2 bed 31%, 3 bed 23% and 4+ beds 27%.
- 5.4.3 The scheme evidently is not wholly compliant with the fairly balanced housing need identified for the area within the LTBHM, but it will help to deliver smaller scale properties on a sustainable site, thereby ensuring that the larger home need can be met elsewhere within the study area. This conclusion matches that of the Council's Housing Officer who offers support for the scheme's housing mix.
- 5.4.4 It is noted from the comments made by Great Wyrley Parish Council that they have concerns regarding the size of the care unit accommodation being offered to future residents. Appendix 6 of the Core Strategy details the Council's internal; space standard requirements. The 2015 Written Ministerial Statement indicates that existing policies relating to internal space should now be interpreted by reference to the nearest equivalent national standard. Therefore, the Council expects all new developments to meet the nationally described space standards (NDSS). Following assessment of this scheme by the Council's Housing Officer, it has been determined that all of the apartments within the proposal, exceed the minimum requirements of this standard.
- 5.4.5 Given the above assessment, it is considered that the accommodation mix offered within the development is acceptable and helps to meet the needs of the local community, thereby ensuring compliance with the requirements of the Development Plan and NPPF in this regard.

5.5 Affordable Housing and Vacant Building Credit

- 5.5.1 The 90 extra care units proposed within the site are not, in accordance with the Council's guidance on this matter, subject to affordable housing requirements. The 32 age restricted apartments, are designed to function as self-contained units for day-to-day private domestic use. These apartments are therefore considered residential dwellings, subject to requirements of Policy H2 of the adopted Core Strategy. This policy requires developments of 10 or more units in Great Wyrley, to make an affordable housing contribution. On previously developed land, this

requirement is for 30% affordable housing, provided on site, split 50:50 between social rent and shared ownership.

- 5.5.2 Based on 32 units, the affordable housing requirement is therefore 10 affordable homes, with 5 for social rent and 5 for shared ownership. As a proposal for specialist housing, the development is not required to provide a proportion of the affordable housing as First Homes, as per the updated NPPG. In line with the National Design Guide and Affordable Housing and Housing Mix SPD, different tenures should be well integrated within a scheme, and design should be tenure-neutral to ensure that affordable housing is materially indiscernible from market housing.
- 5.5.3 Notwithstanding the above, paragraph 64 of the NPPF states that *“To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount”*. This matter is expanded upon within paragraph 026 of the Planning Obligations National Planning Practice Guidance (NPPG), which states *“where a vacant building is... demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought. Affordable housing contributions may be required for any increase in floorspace”*.
- 5.5.4 Paragraph 027 of the NPPG continues to advise that *“where there is an overall increase in floorspace in the proposed development, the local planning authority should calculate the amount of affordable housing contributions required from the development as set out in their Local Plan. A ‘credit’ should then be applied which is the equivalent of the gross floorspace of any relevant vacant buildings being brought back into use or demolished as part of the scheme and deducted from the overall affordable housing contribution calculation. This will apply in calculating either the number of affordable housing units to be provided within the development or where an equivalent financial contribution is being provided. The existing floorspace of a vacant building should be credited against the floorspace of the new development. For example, where a building with a gross floorspace of 8,000 square metre building is demolished as part of a proposed development with a gross floorspace of 10,000 square metres, any affordable housing contribution should be a fifth of what would normally be sought”*.
- 5.5.5 Finally, paragraph 028 states *“The vacant building credit applies where the building has not been abandoned. The courts have held that, in deciding whether a use has been abandoned, account should be taken of all relevant circumstances, such as:*
- The condition of the property;*
 - The period of non-use;*
 - Whether there is an intervening use; and*
 - Any evidence regarding the owner’s intention.*

Each case is a matter for the collecting authority to judge. The policy is intended to incentivise brownfield development, including the reuse or redevelopment of empty and redundant buildings. In considering how the vacant building credit should apply to a particular development, local planning authorities should have regard to the intention of national policy. In doing so, it may be appropriate for authorities to consider:

- *Whether the building has been made vacant for the sole purposes of re-development; and
Whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development”.*

5.5.6 In this case, there are a number of factors to consider, prior to calculating the net increase in floorspace, across the site. Firstly, compliance with paragraph 028. This is a brownfield site, where it has been determined that in the context of the explanatory paragraph detailed above, the buildings therein, are not abandoned. In addition, the buildings have not been made vacant to facilitate the site’s redevelopment, rather, such has arisen following the County Council’s rationalisation of its social services. There are no extant or recent planning permissions for similar development within this site.

5.5.7 The existing vacant buildings on this site have a gross floorspace of 2,010sq m. The floorspace of the proposed new building is 7,961sq m. There is therefore a net increase in floorspace of 5,941sq m, which equates to 75% of the total proposed floorspace. The affordable housing contribution should therefore be 75% of what would normally be sought. The policy requirement for affordable housing for this development, as discussed above, is for 10 units, and 75% of this full requirement is 7.5, rounded up to 8 dwellings. Having applied the vacant building credit then, the development is required to provide 8 affordable homes.

5.5.8 The applicant requests that the affordable housing requirement be met through a financial contribution in lieu of onsite provision. Given the nature of the scheme and the reduced likelihood of securing a Registered Provider for these units, the Council’s Housing Officer, is willing to accept a financial contribution on this occasion. The required contribution will be calculated in accordance with the formula set out in the adopted Affordable Housing and Housing Mix SPD, as follows:

The total number of affordable dwellings required x average gross internal floorspace of proposed units or 100sqm (whichever is lower) x £1155
i.e. 8 affordable dwellings x 73sqm x £1155 = £674,520

5.5.9 The scheme therefore generates a financial contribution of £674,520 in lieu of onsite affordable housing. This is recommended to be secured via a Section 106 agreement.

5.5.10 It should be noted that Vacant Building Credit (VBC) is a vehicle supplied by the Government in order to encourage development on Brownfield Sites, where usually mitigation costs are high. As such, the applicant is not in any way seeking to reduce inappropriately, the level of affordable housing within the scheme, rather utilising appropriate allowances within national planning policy. Thus, the above noted figures, although lower than the affordable housing levels identified within the authorities affordable housing policies, remains policy compliant in the wider sense. Thus, the development subject to the insertion of an appropriately worded Schedule within the s106 agreement, is considered to comply with the requirements of the Development Plan and NPPF in this regard.

5.6 Design and Impact on the Appearance and Setting of Heritage Assets

5.6.1 Policy EQ4 of the Core Strategy advises that *“the design and location of new development should take account of the characteristics and sensitivity of the*

landscape and its surroundings, and not have a detrimental effect on the immediate environment and on any important medium and long distance views". Core Policy 4 similarity seeks to promote high quality design and respect and enhance local character and distinctiveness of the natural and built environment. Policy EQ11 advises that new development should seek to achieve creative and sustainable designs that consider local character and distinctiveness, whilst having regard to matters of use, movement, form and space. Finally, the Council's Design Guide SPD amplifies the principles set out in Policy EQ11 of the Core Strategy.

5.6.2 The NPPF (Section 12) advises that *"good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities"*. The document continues to state that *"development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design"*.

5.6.3 Paragraph 130 of the NPPF also attaches great importance to the design of the built environment, which should contribute positively to making places better for people. As well as understanding and evaluating an area's defining characteristics, it states that developments should:

- function well and add to the overall quality of the area;
- establish a strong sense of place;
- respond to local character and history, and reflect local surroundings and materials;
- create safe and accessible environments; and
- be visually attractive as a result of good architecture and appropriate landscaping.

5.6.4 The buildings within the site to be demolished are either greatly altered, to a point where any original architectural value has been lost, or are of relatively recent utilitarian construction, with little architectural detailing and therefore their removal is considered to be acceptable from a visual impact viewpoint.

Layout

5.6.5 The layout of the proposed development complements and will integrate with that of the surrounding area. Thus, the development being served by a single point of vehicular access, ensures that the strong continuous building frontage can be formed to Walsall Road, with the building being sufficiently set back from the highway to ensure that it replicates and reinforces the existing building line.

5.6.6 Views into and through the site have been carefully considered to ensure such are appropriately framed and terminated. For instance, moving along the internal access road, views eastwards will be terminated by the main entrance into the over 55 apartments.

Scale

5.6.7 The building varies in height across the site, with elements of single, 2, 2 ½ and 3 storeys. To the site frontage, the most prominent elevation within the street scene, the building has an element of 3 storeys, approximately 6.5 metres to ridge, adjacent to site access, which drops to 2 ½ storeys, approximately 5.4 metres to ridge, for the remainder of the façade. The latter measurement is fairly typical for a two storey dwelling and the additional half storey is formed through the eaves

height being slightly raised compared to a traditional dwelling, combined with the proposed roof form. The overall mass of this part of the building however, will be viewed as being suitable within the wider street scene, albeit, given the low height of the neighbouring locally listed Swan Public House, it will seem somewhat large in comparison (further discussion on this point below).

- 5.6.8 The 3 storey element of the front elevation is atypical of the immediate area, given no other 3 storey structures are in evidence. However, in height terms, the building will be reflective of some of the nearby large Victorian properties, in evidence along Walsall Road and as a consequence, it will not appear unduly prominent within the resultant street scene. The remaining parts of the building set back from Walsall Road, will be nearly wholly screened from public view on Walsall Road, by the street frontage built form, thereby limiting its visual impact in mass terms.

Appearance

- 5.6.9 The proposed street frontage element of the building, has, as discussed above, a varied mixture of roof heights, which aids to break down the mass of the building and provide visual interest. Further breaking down of this façade occurs through the regular spacing of gable projecting elements that are reflective in width terms, to the rhythm provided by the neighbouring Care Takers Shop. This effectively visually breaks the elevation down into 3 properties, in addition to the 3 storey element of the building. The combination of the gables and roof design, whereby a pitched roof reflective neighbouring property is utilised, aids to successfully integrate the building into the character of the area.
- 5.6.10 The windows proposed throughout the site are reflective in terms of their size and spacing to the surrounding built form, whilst a condition is recommended, to ensure such are set back from the outer wall of the building, to provide depth and shadow to these openings. Although exact material details are yet to be offered, the elevation drawings propose a mixture of facing brickwork, render, coloured windows and doors and modern roof tiles, exact details of which are recommended to be secured via the use of a condition. This material palette in principal however, is acceptable and reflective of surrounding built form, further facilitating the successful integration of the proposed development into its environment.
- 5.6.11 The applicant has submitted details of the proposed hard landscaping scheme for the site, including the fencing scheme, which proposes 1.8m high ball topped black railings, to be installed to front of the site, immediately to the rear of the footpath on Walsall Road. A gate will be installed as this boundary treatment progresses alongside the internal access road, whereafter the height of fence drops to 1.2m but remains as railings. Elsewhere within the site, various parcels of the outdoor space are to be separated through the use of further runs of the 1.8m high railings. This traditional fence type is appropriate to the predominantly Victorian character of the immediate street scene, allows for views into the site, offers security, without being overtly prominent within the street scene and is of a high visual quality, which will remain as such throughout the life of the development. To ensure that the fencing scheme remains as approved, preventing the introduction of unacceptable treatments, a condition is proposed, to remove permitted development rights for new boundary structures.
- 5.6.12 Elsewhere within the site, the hard landscaping plan shows the use of Marshalls Saxon slab paving and Marshalls model feature paving, both of which are of sufficiently high quality to compliment the development and area. Timber trellis

fencing, to be utilised adjacent to ground floor bedroom doors and a timber pergola are also shown on the submitted plans, both of which are considered acceptable in the context of the site and wider area.

Impact on the Historic Environment

- 5.6.13 The Swan Public House; which immediately borders this site, to the south; was erected in the early 19th Century, is a locally listed Grade B building and therefore is to be considered to be a non-designated heritage asset (NDHA).
- 5.6.14 Paragraph 203 of the NPPF advises that *“the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset”*.
- 5.6.15 This proposal will not directly affect the NDHA, given the proposed works are to a neighbouring site. There is scope however for the proposal to affect the setting of the Public House, given the proposed built form will near about the pub’s boundary, upon completion.
- 5.6.16 The visual suitability of the scheme, both in the context of its impact upon the NDHA and the wider street scene, in addition to the above considerations, has also been considered by the Council’s Conservation Officer, who, following receipt of amendments to the design of the scheme, advises that subject to the agreement of materials, the development will have a low level ‘less than substantial harm’ impact upon the NDHA. This impact, will have to therefore, in accordance with the requirements of paragraph 203 of the NPPF, be weighed in the planning balance.
- 5.6.17 On the basis of the above assessment, it is considered that the proposal’s impact on the neighbouring non-designated heritage asset is acceptable, given the new development will respect the scale and materials of surrounding development and therefore contribute positively to the street-scene, ensuring compliance with the Development Plan and NPPF, in this regard.

5.7 Residential Amenity

Existing and Future Residents

- 5.7.1 The NPPF core planning principles include the requirement that planning should seek a good standard of amenity for all existing and future occupants of land and buildings. Core Strategy Policy EQ9 requires that all development proposals consider the amenity of nearby residents, particularly with regard to privacy, security, noise and disturbance, pollution, odours and daylight.
- 5.7.2 Appendix 6 of the Core Strategy sets out minimum separation distances between facing habitable room windows, towards flank walls and to private gardens. In addition, guidance is also provided regarding the prevention of loss of light to neighbouring property resulting from new development. Specific to this proposal, the guidance details a minimum requirement of 28 metres over private space between habitable rooms for 3 storey buildings, which drops to 21 metres for single and two storey dwelling and 22 metres for 3 storey development between habitable rooms over public land, including streets. In addition, there should be a distance of

13 metres between a habitable room window and the blank side wall of a neighbouring two or one storey dwelling.

- 5.7.3 In terms of separation distances between residential units, internal to the site, due consideration has been given to such by the applicant, with the sole area within the site where the proposed built form will face another element of the proposed building, being between the two, 2 storey elements of the care home, which are set approximately 23 metres distant from one another.
- 5.7.4 External to the site, it is apparent that the buildings will be well separated, due to existing highway infrastructure, from other residences on Walsall Road, with, for instance, the dwellings immediately opposite, being 25.1 metres distant from the proposed front elevation. Elsewhere, the separation distance from the rear of the two storey element immediately to the rear of 4 Julian Close is 17.7m. However, the sole first floor window within this elevation, serves an internal corridor, rather than a private habitable room and as such, it would be reasonable, given the minor shortfall in distance required by the above noted guidance, to require the use of obscure glazing within this opening, which is recommended to be secured via the use of a condition. Continuing around the site, the distance between the two storey, over 55 flats and the rear of 10 Julian Close is 21 metres. To the rear of the site, the smallest separation distance between the proposed two storey building and neighbouring property, is 20.8 metres. To the northern boundary, the majority of the scheme far exceeds the minimum separation requirement, but 7 Fern Drive, is sited near adjacent to the shared boundaries between the sites and is of concern. The separation distance in this location, between the rear elevation of this dwelling and the 3 storey care home is 27.6 metres. Evidently, this is a minor shortfall on the standards detailed within the guidance. However, it is noted that the above noted guidance allows for *“Exceptions may be considered... where there are intervening features which provide natural screening”*. In this case, there is an existing tree belt, proposed to be retained within the completed scheme, immediately to the rear of the garden of 7 Fern Drive. As such, subject to the retention of the tree belt, recommended to be secured via the use of a condition, the scheme is compliant with the space around dwellings guidance detailed within Appendix 6 of the Core Strategy.
- 5.7.5 Space about Dwellings Standards are also laid out in Appendix 6, which states, specific to this development that *“To ensure that the basic requirements for space, privacy and outlook are satisfactory, particular care will need to be taken with regard to the design of... flats, particularly those designed for special needs (e.g. the elderly) where there will be a communal garden or paved area”*.
- 5.7.6 In terms of this application all of the apartments are to be provided with communal, rather than individual gardens, wherein patio areas are proposed to be formed. Some of the first floor flats will also have access to balcony areas. Overall, the communal gardens are a of a size sufficient to meet the amenity needs of future residents.
- 5.7.7 Finally, the above noted separation distances and the course of the sun ensures that there will be no significant loss of natural sunlight arising from the erection of the new built form within this site, a fact demonstrated through the Daylight and Sunlight Report submitted by the applicant, with this proposal and therefore, the proposal is acceptable in this regard.

- 5.7.8 Section 15 of the NPPF advises that the planning system should contribute to and enhance the natural and local environment, by preventing both new and existing development from contributing to or being put at risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability. These matters are considered individually below:

Contaminated Land & Land Instability

- 5.7.9 Paragraph 183 of the NPPF advises that *“Planning... decisions should ensure that; a site is suitable for its proposed use taking account of ground conditions any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment) arising from that remediation”*. Paragraph 184 goes on to state *“Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner*.
- 5.7.10 The Coal Authority’s information indicates that the application site lies in a ‘Development High Risk Area’, where historic unrecorded underground coal mining activity is likely to have taken place at shallow depth. The applicant has now submitted an appropriate Coal Mining Risk Assessment. The Assessment has been informed by an appropriate range of geological, historical and coal mining information including the results of intrusive ground investigations / drilling and grouting works, undertaken on the adjacent site.
- 5.7.11 The report considers that currently the potential presence of shall recorded and unrecorded workings cannot be discounted and therefore further investigation works are required.
- 5.7.12 Where a desk-based assessment cannot conclude with certainty the extent of the remedial measures required to address the coal mining risks identified at a site, the Coal Authority requires that in order for the site to be made safe and stable, ground stabilisation works should be carried out in the first instance, unless justification can be given why this cannot be undertaken. A foundation solution will only stabilise the building, not the ground beneath / within the site.
- 5.7.13 The ground stabilisation works will need to be designed and undertaken by a suitable qualified and experienced person to ensure that development, as a whole is made safe and stable.
- 5.7.14 Given the above, the conditions requested by the Coal Authority are recommended to be attached to the decision notice, to ensure the stability of the proposed development and amenity of future residents in this regard.

Lighting

- 5.7.15 No Lighting Assessment document has been submitted with this application. Whilst, given the village centre location of the site, this area is fairly well lit at night, a condition requiring the submission and approval by the Local Planning Authority of a lighting scheme, is recommended to ensure that the amenity of existing and future residents is protected.

Noise and Vibration

- 5.7.16 The site is located within a village centre location, adjacent to a public house where potentially noisy activities are undertaken.
- 5.7.17 The pub's opening hours are until 11pm Sunday to Thursday and 12am on Friday and Saturdays. Whilst it is acknowledged that no noise survey has been submitted with the application, given the scale and nature of the pub's use, in conjunction with the surrounding environment, where relatively low levels of noise will be generated, it is considered that no specific noise mitigation measures, beyond those offered by modern building regulation requirements, will be necessary.
- 5.7.18 It is noted that neighbours to site have raised potential noise associated with the development as a concern. The proposed end use will offer no increase in noise compared with the former or allocated use of the site and as such this matter does not require further consideration.

Construction Vibration

- 5.7.19 The nearest sensitive properties to the proposed construction work, will be existing dwellings on Fern Drive and Julian Close. It is possible that vibration, due to the operation of various construction plant, may be above the threshold of complaint. However, these instances will be transient and for limited periods of a day and therefore are not considered to be significant.

Construction Phase Impacts

- 5.7.20 Air quality effects resulting from construction dust are known to be a main source of potential release of Particulate Matter (PM10, PM2.5). Sources include:
- Generation of airborne dusts from exposure and movement of soils and construction materials;
 - Generation of fumes on-site by plant and tools during construction;
 - Increase in vehicle emissions potentially as a result of slow moving vehicles should local congestion ensue; and
 - Re-suspension of dust through vehicle tyres moving over dusty surfaces.
- 5.7.21 To assess these matters, in line with the Institute of Air Quality Management Guidance (2014), as there are a large number of human receptors within 350m of the site boundary, a Construction Management Plan is recommended to be secured via condition, in order to control the impact of emissions during the construction phase.

Operational Phase Impacts

- 5.7.22 The potential impacts arising from the development associated with nitrogen dioxide (NO₂), PM10 and PM2.5 upon existing and future receptors, are, given the comparatively low levels of traffic generation produced by the development (discussed further below in the highway section of this report), likely to be imperceptible, too low for all pollutants.
- 5.7.23 Given the above assessments, it is concluded that the development will not, subject to the identified conditions, have an adverse impact upon the amenity of existing or future residents and is therefore compliant with the requirements of the Development Plan and NPPF in this regard.

5.8 Highway Impact, Sustainable Transport and Parking

- 5.8.1 Paragraph 111 of the NPPF states that development should only be refused on transport grounds where there would be an unacceptable impact on highway safety, or the residual cumulative impacts of development are severe.
- 5.8.2 There is an existing pedestrian and vehicular access to the site taken from the A34 Walsall Road, located in the north-western corner of the application site. This access also serves The Care Takers Shop (Landywood District Voluntary Help Centre) located to the north-west of the application site, which also has an additional site access located further to the north-west. There are an additional three gated pedestrian accesses to the application site from the A34 Walsall Road and what appears to be a historic vehicular gated access, located approximately 17m to the south-east of the shared pedestrian/ vehicle access with The Care Takers Shop.
- 5.8.3 Within the vicinity of the application site, the A34 Walsall Road is an A-class road, subject to a 30mph speed limit. A yellow box speed camera is located directly opposite the site access, recording vehicle speeds travelling north-westbound. Walsall Road is lit, with footway provision on both sides of the carriageway. Approximately mid-way along the site frontage, a signalised pedestrian crossing is provided, which provides connectivity between the application site and a parade of local shops and facilities located on the south-western side of the carriageway.
- 5.8.4 The pedestrian crossing facility also provides a safer pedestrian crossing route between the northbound and southbound bus stops located on the A34 Walsall Road. The southbound bus stop is located immediately to the north-west of the application site, in front of The Care Takers Shop, which provides services to Great Wyrley, Walsall and Birmingham. The northbound bus stop is located opposite the southbound bus stop and provides services to Cannock town centre.
- 5.8.5 The application site is proposed to be accessed via a new bell-mouth junction from Walsall Road, located in approximately the same location as the existing site access, albeit slightly further to the south-east. The site access will have a 5.5m carriageway width, 6m kerb radii and 2m wide footways on both sides of the access. A pedestrian crossing facility in the form of dropped kerbs with tactile paving would provide a crossing point of the site access for pedestrians. The extent of the existing site access made redundant by the proposed site access arrangements would be permanently closed with the access crossing reinstated as footway with full height kerbs.
- 5.8.6 The internal layout of the application site is proposed to remain private, whilst the historical vehicular and additional pedestrian accesses from Walsall Road are to be permanently closed and made good.
- 5.8.7 The suitability of the revised point of access to serve this site has been considered by the Highways Authority, who advise that such is safe for use, subject to the application of three conditions requiring that the development be carried out in accordance with the approved visibility splay details, with nothing exceeding 0.6 metres in height to be placed into this area. The further conditions, as recommended, are to ensure that the access is formed and completed prior to first use of the proposed development and a surface water drainage interceptor is installed across the access to prevent surface water entering the highway. All three conditions are considered to be reasonable, proportionate and necessary and as such, are recommended to be attached to the decision notice.

- 5.8.8 As part of the above noted new access construction, the existing access will be closed in part. In order to ensure the acceptable continuation of the highway network, specifically the pedestrian footpath layout, a condition is recommended requiring the closure of the existing access and its reinstatement as footway with full height kerbs in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. Once more, this condition is considered to be reasonable and necessary and as such, is recommended for inclusion within the decision notice.
- 5.8.9 The concerns of neighbouring residents regarding the suitability of the access and its siting relative to other junctions are noted and will have been duly considered by the Highway Authority. No objection has been offered by this consultee on this matter. Finally, the request from the neighbouring Landywood Voluntary Centre that access to the rear of their property is retained for ease of access of site members, has been addressed through the design of the submission, which ensures such is provided. Given the above assessment, the scheme is considered to comply with the requirements of the Development Plan and NPPF in this regard.
- 5.8.10 In terms of the layout of the internal road network, such has been determined to be acceptable by the Highways Authority, following receipt of tracking plans for both ambulance and refuse vehicles. Thus, it is determined that appropriate forward visibility to all road areas is available, albeit, this is limited currently, as advised by the Highways Authority, to vehicles with a maximum length of 10.5 metres. A vehicle of greater length has not been demonstrated to be able track within the site and therefore a condition to limit the size of vehicle utilising the site is recommended. This is solely likely to impact upon refuse vehicles, as other vehicles would not be of similar length. Given that the site will likely be served by a private refuse operator, the recommended condition, is considered to be reasonable and enforceable and therefore is recommended for use within the decision notice.
- 5.8.11 Thus, given the above considerations, the proposal is considered not to be the cause of highway danger and therefore is consistent with the requirements of the Development Plan and NPPF in this regard.

Off Street Car Parking

- 5.8.12 Appendix 5 of the Core Strategy provides guidance on the Council's off street car parking requirements for new development. As advised by the Highways Authority, the closest development type within this guidance, considered relevant to this proposed, are C2 Hospitals for the care home and C3 Sheltered housing, elderly persons homes for the apartments. Based on these development types and up to 45 members of staff working on-site at any one time, there would be a car parking requirement for 71 spaces.
- 5.8.13 A total of 72 car parking spaces are proposed within the development site, which includes two accessible parking spaces and four electric vehicle charging spaces. A designated space for an ambulance and delivery van are also proposed. A mini-bus layby is proposed in proximity to the site access junction, which offers a shared facility with the adjacent Care Takers Shop.
- 5.8.14 The Highways Authority have considered the above parking need, following the applicant undertaking a car parking accumulation exercise, which utilised trip rates extracted from the TRICS database for the number of total residents expected to

reside at the site along with trips generated by the publicly available Bistro. Such was presented in a Technical Note, which showed that the maximum car parking accumulation expected on-site was 46 spaces occupied between 1pm and 2pm on a weekday. Evidently, such a document, based on parking use on similar sites already in use, is considered much more accurate than the figures extracted from the near matches of the Council's Appendix. The Highways Authority agree with the findings of the Technical note and therefore, it is evident that the parking levels identified within this site are acceptable, subject to conditions to ensure that they are appropriately laid out and retained for their specified use, via the use of a suitably worded condition, as advised by the Highways Authority.

- 5.8.15 The parking bays within the site all comply in terms of scale, being a minimum of 2.4m wide, with a depth of 4.8 metres, with the specifications identified within the above noted Appendix and Manual for Streets Guidance.

Electric Vehicle Changing

- 5.8.16 The abovementioned Appendix does not offer standards for EV parking, albeit Core Strategy Policy EV11 does recommend the incorporation, within new development of *"facilities for charging plug-in and other low emission vehicles"*.
- 5.8.17 The Council's emerging Local Plan Policy HC12 (Parking Standards) includes a requirement for C2 institutional accommodation of 20% of available spaces to be fitted with 7kw (or better) charge points and an additional 20% of available spaces to be provided with power supply to allow for the installation of fast charge sockets in the future. Given the progress of the plan, as discussed above, it does not carry sufficient material planning weight to require the applicant to deliver compliant EV charging provision currently. The fact that the applicant is offering to supply 4 spaces with charging points currently (6%), along with the infrastructure to deliver a further 41 spaces in the future (57%), ensures compliance with the current Development Plan, along with the future proofing of the development. It is recommended that these charging facilities be secured through the use of an appropriately worded condition.

Cycle Parking

- 5.8.18 Appendix 5 also requires that for residential development that 1 secure weatherproof cycle bay be provided, per 1 bedroom flat and 2 spaces for each 2 bedroom flat. There is also a requirement of 1 space per 5 members of staff for the care element of the scheme.
- 5.8.19 For the over 55 accommodation there are proposed to be 14 one flats and 18 two bed flats. For the care home the maximum number of employees on-site at any one time will be 45. As such, the cycle parking demand, as required by the Council's guidance, totals 59 spaces. There are 60 cycle parking spaces shown throughout 4 structures across the site. As such, the number of spaces proposed is acceptable. However, the Highway Authority raise concerns regarding the location of some of the shelters, which are remote from the building and therefore lack natural surveillance. A condition is therefore recommended to require the submission and agreement of revised locations for the shelters (to include details of their appearance), along with details of appropriate changing and shower facilities etc. prior to the first use of the site. Such a condition is considered reasonable and necessary and as such, is recommended to be attached to the decision notice.

Sustainable Transport

- 5.8.20 A review of the trip generation anticipated by the proposed development was presented in the Transport Statement, which was based on trip rates extracted from the TRICS database. The trip rates used were considered acceptable and showed that the proposed development was anticipated to generate 16 two-way vehicular trips in the AM peak hour and 17 two-way vehicular trips in the PM peak hour. An assessment of trips that may have been generated by the previous use of the site as a day centre, was also provided, which showed that the previous use was likely to have generated 32 two-way vehicular trips in the AM peak hour and 31 two-way vehicular trips in the PM peak hour. Therefore, the proposed development is anticipated to result in a net decrease of 16 two-way vehicular trips in the AM peak hour and a net decrease of 14 two-way vehicular trips in the PM peak hour.
- 5.8.21 To ensure that the trips associated with the development are undertaken, as much as possible, via sustainable transport modes, a Travel Plan has been submitted with the application, which has been deemed acceptable by the Highways Authority. The document points out, given the sustainable location of the site, that there are many sustainable transport modes available to future site users, including employees, which includes the two bus stops, located immediately to the fore of the site. To ensure that the requirements of the Travel Plan are realised, a condition is requested, along with a s106 contribution of £10,000, towards the monitoring of the document, both of which are deemed appropriate and are recommended to be secured within the aforementioned legal document and decision notice.
- 5.8.22 The development, subject to the abovementioned conditions and s106 contribution, will offer suitable vehicular and pedestrian access, sufficient car parking to meet the likely future demands of the site, whilst also offering appropriate alternative access to sustainable forms of transport and is therefore, compliant in this regard with the requirements of the Development Plan and the NPPF.

5.9 Sustainable Built Form

- 5.9.1 Paragraph 153 of the NPPF requires that new development should comply with local energy targets. NPPG advises that planning can help to increase the resilience to climate change through the location, mix and design of development. Core Strategy Policy EQ5 sets out the council's requirements in respect of carbon reduction targets and requires that major commercial and residential schemes should achieve respectively, BREEAM Excellent and Code for Sustainable Homes (CfSH) Level 6 from 2016.
- 5.9.2 The government's response to the Environmental Audit Commission report: Code for Sustainable Homes and the Housing standard Review (2014) set out proposals for winding down the use of CfSH, due to it being absorbed into Building Regulation standards. The Deregulations Act (2015) required Local Planning Authorities to not set local targets for sustainable house building standards. As such, the Council is now not currently able to apply standards relating to the CfSH and therefore, no such condition is recommended for these units.

5.10 Water Environment, Flood Risk and Drainage

Flood Risk

- 5.10.1 The Site is shown to be at low risk (Flood Zone 1) and very low risk from fluvial and surface water flooding respectively. The Flood Risk Assessment submitted with this application therefore concludes that the existing Site is at either very low or low risk of flooding from the sources assessed (fluvial, tidal; reservoirs, canals and other artificial sources; surface water, groundwater, and sewers).
- 5.10.2 The proposed development is for a More Vulnerable use and as such, given the low flood risk classification, is deemed appropriate for all uses in accordance with NPPF.

Surface Water Drainage

- 5.10.3 Paragraph 169 of the NPPF requires that major development incorporate sustainable drainage systems unless there is clear evidence that such would be inappropriate. The FRA submitted with the application identifies that the existing surface water flood route through the site is generally shown as low risk (i.e. each year it has a chance of flooding of between 1 in 100 and 1 in 1000). The surface water drainage risk associated with the site post development will be dependent upon the levels of impermeable material created during the development process and the mitigation measures to be installed. The mitigation measures proposed include the use of porous paving, and associated filtration media and the use of rain gardens within the landscaped gardens of the proposed care home.
- 5.10.4 The acceptability of the surface water drainage proposals, in broad terms, have been considered by the Lead Local Flood Authority, who advise that they are suitable for the development. It is therefore advised that the mitigation measures outlined within the FRA be secured via a condition, along with full surface water drainage details.

Foul Drainage

- 5.10.5 Severn Trent Water is the main asset operator for both surface and foul water drainage in the vicinity of the Site.
- 5.10.6 Under the requirements of the Water Industry Act 1991, developers have the right to connect new development to foul water flows within public sewers. Thus, the onus is with Severn Trent to ensure capacity to accommodate this development. They advise therefore that when available full drainage details for the site be submitted to them for their approval. A condition to secure such is therefore recommended.
- 5.10.7 Given the above assessment, subject to the application of conditions, as recommended, the development is considered to comply with the requirements of the Development Plan and NPPF, in this regard.

5.11 Biodiversity and Protected Species

Protected Species

- 5.11.1 The Wildlife and Countryside Act (as amended) 1981 covers the protection of a wide range of protected species and habitats and provides the legislative framework for the designation of Sites of Special Scientific Interest (SSSIs). The Conservation (Natural Habitats, &c.) Regulations 1994 implement two pieces of European law and provide for the designation and protection of 'Special Protection Areas' (SPAs) and 'Special Areas of Conservation' (SACs), together with the designation of 'European

Protected Species’, which include bats and great crested newts. The Countryside and Rights of Way (CROW) Act 2000 compels all government departments to have regard for biodiversity when carrying out their functions. Finally, The Protection of Badgers Act 1992 consolidated existing legislation on the protection of badgers. This legislation is intended to prevent the persecution of badgers. The act protects both individual badgers and their setts.

- 5.11.2 A Preliminary Ecological Appraisal of the site was carried out in 2021. The document assessed the site’s usage by a range of European and nationally protected species. The sole protected species identified as using the site was bats, with, despite the site being located within the Green Zone for potential Great Crested Newt use, as defined by the Council’s District Newt license, there being no evidence of such.
- 5.11.3 Two buildings within the site were considered to have roosting potential (building 1), the former school building to the site’s front and a small outbuilding (building 3) to its rear. These were subject to targeted emergence and return surveys during the period of August 2021.
- 5.11.4 The emergence and return surveys identified that building 1 is being utilised as a non-breeding day roost by 1 Common Pipistrelle. The survey report noted that this building is proposed to be demolished as part of the proposed redevelopment of the site. There is therefore scope for disturbance, damage and destruction of a bat roost as part of the proposal.
- 5.11.5 The results of these surveys has informed the baseline starting position regarding protected species and habitats within the site. The Council’s Ecology Consultee has considered these reports and considers them to be sound.
- 5.11.6 The LPA is therefore in a position to demonstrate compliance with regulation 9(3) of the Habitat Regs. 1994 (as amended 2017), which places a duty on the planning authority when considering an application for planning permission, to have regard to its effects on European protected species.
- 5.11.7 Given the proposal will impact upon protected species and their habitat, a Natural England license will be required, prior to undertaking any demolition works, while it is also necessary to ensure that appropriate replacement roosting provision and compensation is provided. The mitigation and compensation scheme proposed by the applicant, relates to construction phase lighting being controlled by a Construction Environmental Management Plan (CEMP) or similar. The CEMP will include restrictions on working hours and security lighting, which will have to be minimised in extent, and directed downward and away from boundary features. During the operational phase, uncontrolled artificial lighting could dissuade bats from occupying compensatory roosting features through direct illumination of access points or through severing commuting routes between compensatory roosts and off-site foraging areas. In order to avoid and mitigate for this impact, a sensitive lighting strategy will be designed (recommended to be secured via a condition), whilst during the construction works, 2 bat boxes will be attached to trees to be retained to the site’s periphery and a further habitat bat box built into the fabric of the south eastern elevation of the care home.
- 5.11.8 Whilst the Council’s Ecologist is satisfied that appropriate replacement provision can be provided, nonetheless it is necessary, as competent authority, to ensure that three tests are satisfied, namely:

- a) that there is no satisfactory alternative;
- b) the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range; and,
- c) the action authorised preserved public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment.

5.11.9 It is considered that if redevelopment of the site did not occur then, over time, the building may degrade and result in the potential loss of the bat roost, as the building requires extensive repair to bring them back into viable use. With appropriate compensation as proposed, it is considered that the development would not undermine the favourable conservation status of the Common Pipistrelle bat population. Finally, it is considered that there are overriding social benefits of redeveloping the site for residential care purposes. The LPA are therefore of the view that the tests have been satisfied.

5.11.10 The PEA did note that the site was being utilised by a number of bird species. To address any harm to the various species arising as a consequence of the development, the Council's Ecology consultee has recommended that 1 group of 3 number swift boxes and 2 house sparrow terraces be formed on or integrated into north or east facing brickwork of the new buildings. Such is an appropriate form of mitigation, with exact details recommended to be secured via the use of a condition.

Biodiversity

5.11.11 To comply with the guidance contained within Paragraphs 9, 108 and 118 of the NPPF and the Council's biodiversity duty as defined under section 40 of the NERC Act 2006, new development must demonstrate that it will not result in the loss of any biodiversity value of the site.

5.11.12 Due to the Local Planning Authorities obligation to "*reflect and where appropriate promote relevant internal obligations and statutory requirements*" (Paragraph 2 of NPPF) and the requirement, under paragraph 174 of the NPPF, for planning decisions to minimise impacts on and provide net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures (along with emerging advice within the Draft Environment (Principles and Governance) Bill 2018); the applicant must display a net gain to biodiversity value, through development, as per the requirements of the EU Biodiversity Strategy 2020. Furthermore, Paragraph 180 of the NPPF, requires that "*opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity*".

5.11.13 In this case, the Preliminary Ecological Appraisal submitted with the application, includes a Biodiversity Metric, which details the value of existing habitats within the site and those to be created upon completion of the development. The Metric details that the scheme will deliver, through the landscaping scheme, recommended to be secured by condition, as part of the scheme, an uplift of 0.02 Units, an increase of 0.67%. Thus, the scheme complies with the requirements of the NPPF in this regard.

Impact on Special Areas of Conservation

- 5.11.14 Paragraph 182 of the NPPF advises that *“The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site”.*

Recreation

- 5.11.15 The agreed strategy for the Cannock Chase SAC is set out in Policy EQ2 of the Core Strategy, which requires that before development is permitted, it must be demonstrated that in itself, or in combination with other development, it will not have an adverse effect, whether direct or indirect, upon the integrity of the Cannock Chase SAC, having regard to avoidance or mitigation measures. In particular, dwellings within a 15km radius of any boundary of Cannock Chase SAC, will be deemed to have an adverse impact on the SAC, unless or until satisfactory avoidance and/or mitigation measures have been secured. The agreed upon mitigation measures to enable residential development within the Zone of Influence (Zol), are detailed within the Strategic Access Management and Monitoring Measures (SAMMMs) document.
- 5.11.16 Under the provisions of the Conservation of Habitats and Species Regulations 2017, the Local Planning Authority as the Competent Authority, must have further consideration, beyond the above planning policy matters, to the impact of this development, in this case, due to the relative proximity, on the Cannock Chase SAC (the site is located approximately 6.7 miles from the boundaries of this site). Therefore, in accordance with Regulation 63 of the aforementioned Regulations, the Local Planning Authority has undertaken an Appropriate Assessment (AA), which concludes that a financial contribution towards mitigation of the Cannock Chase SAC (for recreational impact) will be required for the 32 over 55 apartments (32 x £290.58 = £9,298.56, plus associated £100 administration fee). The care home element of the development, given the nature of future occupants (which must be restricted to what has been applied for in order to comply with this legislation, via condition, for the life of the development), is not considered to result in a negative recreation impact (either alone or in-combination with other plans) to the SAC. This was based on advice contained within the Cannock Chase FAQ document, which advises *“Class C2 deals with care homes for the elderly (65+) and is generally acknowledged as catering for residents with appreciably less ability than the average to make use of recreation opportunities at a site like the Cannock chase SAC / Country Park. Such developments will generally tend to provide on-site, tailored outdoor space for their residents as an integral part of the development scheme. As a result where Use Class C2 is demonstrated no developer contribution is required”.* No mitigation or further action is therefore required in care facility element of the proposal.
- 5.11.17 Natural England are a statutory consultee on the AA stage of the Habitats Regulations process and have therefore been duly consulted. Natural England have concurred with the LPA's AA. On this basis, it is concluded that the LPA have met its requirements as the Competent Authority, as required by the Regulations and therefore the proposal will comply with the requirements of the Development Plan and the NPPF in this regard.

Nutrient Neutrality

5.11.18 The application site is also located approximately 2.8km from the Cannock Chase Extension Canal SAC. This SAC has no designated Zol. The Government's advice as set out in the 'Habitats regulations assessments: protecting a European site' is that when checking whether a proposal could impact upon a protected site is *"You only need to carry out an HRA if the proposal might affect a European site. The effect of your proposal may depend on its location. It could be:*

- *on the site*
- *near the site*
- *some distance away, for example by causing air, water or noise pollution or affecting a feeding area used by one of the site's designated species".*

The advice continues to advise that *"You can check if there's an impact risk zone (IRZ) around a protected site. This will help you assess if a proposal might affect a site".* IRZ's are detailed on DEFRA's Magic Map dataset. It is acknowledged that IRZs within this dataset are specifically for Sites of Special Scientific Interest (SSSI), albeit they do include occasional data specific SACs etc, so they are a useful guide, but not absolute. However, given Government advice on this matter, as quoted above, they are a useful way to determine an initial Zol, for which to undertake an assessment within, to consider a proposed development's impact upon a protected site. Beyond this broad-brush approach however, there is a more detailed consideration of Source, Pathway and Receptor for which regard must be had.

5.11.19 The IRZ datasets show a general area of approximately 5km around the identified sites within which the impact of a development upon the protected site should be considered. Evidently this site falls within that assumed area and therefore Screening of the development's impact upon this SAC is required.

5.11.20 The Cannock Extension Canal SAC is protected, as it is an example of anthropogenic, lowland habitat supporting floating water-plantain (*Luronium natans*) at the eastern limit of the plant's natural distribution in England. A very large population of the species occurs in the Canal, which has a diverse aquatic flora and rich dragonfly fauna, indicative of good water quality. The low volume of boat traffic on this terminal branch of the Wyrley and Essington Canal has allowed open-water plants, including floating water-plantain, to flourish, while depressing the growth of emergent flora. The site and the protected flora within it are susceptible to changes in pH levels, which will have an adverse impact upon the site's reason for designation.

5.11.21 The application proposes the redevelopment of a Brownfield site through the erection 122 later living care bedrooms / apartments with on-site care provision. Drainage from the scheme will utilise existing facilities, which are routed away from the SAC. The development therefore is not considered to result in a negative impact (either alone or in-combination with other plans) to this SAC. Therefore, no mitigation or further action is required in this regard.

5.11.22 Whilst Natural England are not a statutory consultee on the AA Screening Process, given such is for the Competent Authority to complete, in isolation, they have, in this case provided comment on the suitability of the Council's conclusions, advising that they agree with this assessment.

5.12 Arboriculture Impact and Landscaping

5.12.1 Paragraph 175 of the NPPF advises that permission should be refused for development resulting in the loss of aged or veteran trees, unless the benefits of the development outweigh the harm. Strategic Objective 3 and 4 of the Core Strategy

seek to protect, conserve and enhance the District's natural environment, whilst Policy EQ4 states that *"The intrinsic rural character and local distinctiveness of the South Staffordshire landscape should be maintained and where possible enhanced. Trees, veteran trees, woodland, ancient woodland and hedgerows should be protected from damage and retained, unless it can be demonstrated that removal is necessary and appropriate mitigation can be achieved"*.

- 5.12.2 The Arboricultural Impact Assessment submitted with this application, identifies that there are 20 individual trees, 7 groups and 3 hedgerows on or adjacent to the site. None of the trees are protected by either a formal protection order or by virtue of their siting within a Conservation area. Furthermore, neither through the site's allocation within the SAD or the emerging Local Plan, are the trees identified to be a constraint to development.
- 5.12.3 As part of the redevelopment works, it is proposed that there will be an overall loss of 2 individual Category B trees (T3 and T7), 1 Category B tree group (G7) and 3 category C tree groups (G1, G2 and G4). Two further Category B tree groups are also identified for partial losses, noted as G3 and G5 on the submitted plans.
- 5.12.4 Under the British Standards, Category B trees are defined as 'Trees of moderate quality with an estimated remaining life expectancy of at least 20 years' and C, as 'Unremarkable trees of very limited merit or such impaired condition that they do not qualify in higher categories'.
- 5.12.5 It is noted that neighbours to the site on Julian Close have commented upon the importance of the tree group located within the site, to the rear of their gardens, at offering screening between these dwellings and proposed development. As discussed above, the separation distances between the built form is compliant with the Council's standards and as such, there is no specific privacy requirement to secure their retention, but such does offer valuable habitat and is of some visual importance to the street scene. This group of trees is shown as G2 and G3 on the submitted plans. G2, which are a collection of Category C Common Cherry trees, run from the rear of 4 to 6 Julian Close. These trees are to be felled, albeit, with the retention of T2 (Category B, Common Ash), which sits to the rear of 4 Julian Close. G3, a collection of Maple, Sycamore, Alder, Silver Birch and others, Category B trees which runs from 7 to 12 Julian Close are largely to be retained, with only minor works necessary.
- 5.12.6 The Council's Arborist has considered the acceptability of the tree loss associated with the development and advises that such, including the loss of G2 is acceptable. The sole tree felling concerns noted are regarding the loss of T3 (Atlas Cedar) from the site and the potential impact on T9 (Common Beech) (to address this concern the applicant has now removed from the proposal, a car parking space, which formerly was to be located within the root protection area of this tree). The loss of T3, whilst unfortunate, cannot be prevented, in order for the scheme to be delivered and therefore, subject to a condition to require the submission and approval, prior to the commencement of any demolition works, of an Arboriculture Method Statement and Tree Protection Plan, to show how other trees within the site will be retained, throughout the course of development, the development's impact upon existing trees can be considered to be acceptable.
- 5.12.7 Following the submission of a number of revisions, the proposed landscaping scheme, which is now commended by the Council's Arborist and includes the planting of 28 replacement trees, is considered to be acceptable. A condition is

therefore recommended to secure the planting of this scheme, along with its maintenance thereafter for a period of 5 years. Such will also, as discussed above, secure the uplift in Biodiversity Units within the site.

- 5.12.8 Subject to the conditions as detailed above the development will have an acceptable arboriculture impact upon the site and as such will comply with the relevant requirements of the Development Plan and NPPF in this regard.

5.13 Health Care

- 5.13.1 Section 8 of the NPPF 'Promoting healthy and safe communities' makes clear that policies and decisions associated with development should aim to achieve healthy, inclusive and safe places. Paragraph 93 b requires that policies and decisions should *"take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community."*

- 5.13.2 Policy EQ13 of the Core Strategy advises that contributions will be sought, where necessary, to secure *"the provision and improvement of community facilities such as... health facilities"*.

- 5.13.3 Local research undertaken by the NHS has previously shown that the extra resources required by care home residents are quite stark, with patients in such settings requiring 35 x more visits from a GP than an average patient. Care home residents were also dramatically overrepresented in unscheduled admissions to an acute setting, therefore greatly increasing ambulance conveyance and had a lack of continuity in care planning.

- 5.13.4 To address the impact of the scheme (solely the Care facility) therefore, on local health provision, a sum of £37,375 is requested by the CCG, which is derived from the Department for Health guidance 'Health Building Note 11-01: Facilities for Primary and Community Care Services', which provides best practice guidance on the delivery of new healthcare buildings and adaptation and extension of existing facilities. It is applicable to a range of building types including GP premises, Health centres, Primary care centres and Urgent care centres. The sum, to be directly relatable to this application, will be directed to the relevant Primary Care Network (Cannock Villages) and invested in a manner, which supports the ongoing commitment to deliver further workforce in support of services such as 'Enhanced Health in Care Homes'.

- 5.13.5 The payment of the identified sum has been discussed with the applicant, who confirms their acceptance of this payment, which is recommended to be secured via the proposed s106 agreement.

5.14 Other Issues

- 5.14.1 Under the provisions of Policy EQ13 of the Core Strategy, major new developments are required to make provisions for social/community facilities, which must be commensurate to the scale and nature of the proposals. Such provision can be by way of direct on-site provision and/or by a contribution made for the provision of facilities elsewhere.

- 5.14.2 Staffordshire County Council Education have commented upon this application and advised that there is scope within the existing school framework to accommodate any uplift in number of attendees arising as a consequence of the development.

Subsequent to this initial comment, following further clarification regarding future occupants of the site, it was acknowledged that the scheme would not, given the make-up of the site's future residents, impact upon the availability of school places within the area.

- 5.14.3 The consultation responses received from the Police Architectural Liaison Officer, Fire Safety Officer, Staffordshire County Council Minerals and Waste Team and Cadent Gas are noted and the details contained therein are proposed to be passed to the applicant through the use of appropriately worded informatives.
- 5.14.4 The Town and Country Planning (Pre-commencement Conditions) Regulations 2018 requires Local Planning Authorities to agree with the applicant, the text of any pre-commencement conditions, prior to the determination of any application. To that end, the pre-commencement conditions have been agreed in discussion with the applicants' agent.

6. Financial Considerations

- 6.1 The development would give rise to several economic benefits. For example, the development would lead to the creation of new direct (70 staff members of which 35 would be full-time staff and 35 would be part-time staff) and indirect jobs, through supply chain benefits and new expenditure introduced to the local economy. In addition, the development will deliver direct construction jobs, including supply chain related benefits and relevant deductions.
- 6.2 It should also be noted that the development will generate New Homes Bonus, Council Tax and Business Rates.

7. Human Rights

- 7.1 The proposals set out in the report are considered to be compatible with the Human Rights Act 1998. The proposals may interfere with an individual's rights under Article 8 of Schedule 1 to the Human Rights Act, which provides that everyone has the right to respect for their private and family life, home and correspondence. Interference with this right can only be justified if it is in accordance with the law and is necessary in a democratic society. The potential interference here has been fully considered within the report in having regard to the representations received and, on balance, is justified and proportionate in relation to the provisions of the policies of the development plan and national planning policy.

8. Conclusion

- 8.1 The NPPF states that there are three dimensions to sustainable development, namely economic, social and environmental and that these should be considered collectively and weighed in the balance when assessing the suitability of development proposals. With reference to this scheme, economically the proposal will provide direct and indirect employment opportunities, through creating a development opportunity, which includes employment generating uses and whose future residents would support existing and proposed facilities within the area. Socially, suitable conditions can secure the reasonable amenity of existing and future residents within and adjacent to the site.
- 8.2 Environmentally, the site occupies a prominent position on Walsall Road, adjacent to the locally listed Swan Public House. It has been determined that the scheme,

through its scale and massing, will cause less than substantial harm to the setting of the Public House. The harm derived however is balanced through the public benefits derived from the scheme and therefore, on balance it has been determined that the heritage impact of the scheme is acceptable.

- 8.3 It is considered that adequate, high quality amenity space can be provided on site, to meet the needs of future residents. The number of units and mix proposed, will provide a suitable density of development to integrate into the character of the area, whilst also helping to meet the housing needs of the District. The lack of affordable housing provision within the application site, has been suitability evidenced and off-site payment to address such, is proposed to be secured via the s106 agreement.
- 8.4 With regard to transport and highway matters, adequate information and detail has been included within the supporting information to demonstrate that sustainable travel choices can be integrated within the development. Acceptable details have been provided with regard to the vehicular access point to ensure that the development can be safely and appropriately accessed, without undue harm to either the character or appearance of the area, existing or future residents or highway and pedestrian safety. Furthermore, it has been demonstrated that the development will have an acceptable impact upon the Local Highway Network, whilst the use of sustainable transportation methods will be promoted through the Travel Plan, which will be monitored via a reasonable financial sum secured through the Section 106 agreement.
- 8.5 Subject to suitable conditions, there will be no adverse impact on protected or priority species, whilst a positive biodiversity impact will be created within the site. The recreational impact of the development upon the Cannock Chase SAC can be addressed via the s106 agreement, with payment made to secure appropriate mitigation. With regard to drainage and flood risk, it is considered that adequate mitigation would be provided and that, subject to appropriate conditions, no material harm will be caused. Finally, the concerns and comments raised by the Council's Arboriculture Officer have been assessed and the scheme amended to address such.
- 8.6 Given the above assessment and the positive weight attributable to the delivery of residential institution led development, through the NPPF, it is recommended that this application is in conformity with the Development Plan as a whole and no other material considerations are sufficient to outweigh the acceptability of this development, so as to warrant the refusal of the application. Therefore, the recommendation, subject to the signing of a s106 legal agreement, is one of approval.

9. RECOMMENDATION:

(1) Subject to the owners/applicants first entering into a Section 106 agreement under the Town and Country Planning Act (as amended), to secure contributions/planning obligations towards:-

1. Contribution towards Health Care Infrastructure of £37,375;
2. Contribution towards Cannock Chase SAC mitigation measures (SAMMMs) of £9,298.56 plus a £100 legal administration fee;
3. Off-site affordable Housing Sum of £674,520; and
4. Framework Travel Plan Monitoring Fee of £10,000.

Approve subject to the following conditions:

(2) If the S106 is not signed/completed by the 15 May 2023 or the expiration of any further agreed extension of time, then powers be delegated to officers to refuse planning permission based on the unacceptability of the development without the required contributions and undertakings as outlined in the report.

CONDITIONS

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.
2. The development shall be carried out in accordance with the approved drawings:

Site Plan – AP21018-L09 Revision H (received 28/09/2022)

Proposed Site Access Layout with Visibility Splays – T21526 001 C (received 14/06/2022)

Proposed Ground Floor Plan - AP21018-L06 C (received 14/06/2022)

Proposed First Floor Plan – AP21018-L07 C (received 14/06/2022)

Proposed Second Floor Plan – AP21018-L08 C (received 14/06/2022)

Hard and Soft Landscaping Plan – 2109MAC-GW-1 Revision E (dated 20/09/2022)

Hard and Soft Landscaping Plan – 2109MAC-GW-1 Revision E (dated 20/09/2022)

CONDITIONS to be complied with PRIOR to the commencement of development hereby approved:

3. Prior to the commencement of development excluding demolition and groundworks, full details of the following shall be submitted to and approved in writing by the Local Planning Authority:

- (i) External brickwork; and
- (ii) Exterior Roof materials.

The development shall thereafter be undertaken in accordance with the approved details and thereafter be retained for the life of the development.

4. Prior to the commencement of development, excluding demolition and groundworks, full details, shall be submitted to and approved in writing by the Local Planning authority of;
 - a) a scheme of intrusive site investigations has been carried out on site to establish the risks posed to the development by past coal mining activity, and;
 - b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

5. Prior to the commencement of development, a Construction Management Plan shall be submitted to, and approved in writing by the Local Planning Authority. The Management Plan shall:

- i) Specify details of the site compound, including arrangements for the parking of site operatives and visitors;
- ii) Specify details of the construction access;
- iii) Specify the delivery and construction working times;
- iv) Specify the types of vehicles to be used;
- v) Specify the location, type and hours of use of any artificial lighting;
- vi) Specify noise, air quality and dust control;
- vii) Details the management and routing of construction traffic;
- viii) Provide for the parking of vehicles of site operatives and visitors and wheel washing facilities;
- ix) Provide for the loading and unloading of plant and materials;
- x) Provide for the storage of plant and materials used in constructing the development; and
- xi) Provide satisfactory arrangements for the control of surface water during the construction period, prior to the formation of the approved SUDs.

The development shall thereafter be carried out in accordance with the approved details, which shall be adhered to throughout the construction period.

- 6. Prior to the commencement of development, excluding demolition and groundworks, full details of a scheme of foul and surface water drainage, shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall thereafter be provided before the first use of the development.
- 7. Prior to the commencement of development, protective fencing and other protective measures to safeguard existing trees and/or hedgerows on the site, shall be provided in accordance with the details shown within the approved Arboricultural Method Statement (ref. Wharton 220525 1260 AMS V2) and to British Standard 5837: 2012 and retained for the duration of construction (including any demolition and / or site clearance works). No fires, excavation, change in levels, storage of materials, vehicles or plant, cement or cement mixing, discharge of liquids, site facilities or passage of vehicles, plant or pedestrians, shall occur within the protected areas. The approved scheme shall be kept in place until all parts of the development have been completed, and all equipment; machinery and surplus materials have been removed. Any trees that are damaged or lost during a two year period, starting from the date of commencement, due to a failure of required tree protection measures shall be replaced in the following planting season. The species, size, nursery stock type and location of such replacements, shall be first submitted to and approved in writing by the Local Planning Authority.
- 8. Prior to the commencement of development, full details of the erection and operation of any proposed external lighting, including full details of the means of illumination and design of the lighting systems, shall be submitted to and approved in writing by the Local Planning Authority. The means of external lighting shall thereafter be implemented and installed, prior to the first occupation of the building, in accordance with the approved details and shall not thereafter be amended or altered without the prior written approval on application to the Local Planning Authority.

CONDITIONS to be complied with PRIOR to the first occupation of the units:

- 9. Prior to the first occupation of the development hereby approved, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably

competent person confirming that the site is, or has been made, safe and stable for the approved development, shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

10. Prior to the first occupation of the development hereby approved, the bat boxes as specified in Table 5 of the Bat Roost Characterisation and Mitigation Report (Wharton, August 2021) shall be installed and thereafter shall be retained for the life of the development.
11. Prior to the first occupation of the development hereby approved, details of the type and location of biodiversity enhancement measures including 1 group of 3 number swift boxes and 2 number house sparrow terraces on or integrated into north or east facing brickwork of the new buildings, shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be incorporated into the scheme and be fully constructed prior to the first occupation of the buildings and thereafter be retained for the life of the development.
12. Prior to first occupation of the development hereby approved, the parking, servicing and turning areas as shown on approved plan, reference AP21018-L09 H, shall be provided in a bound material and be sustainably drained, with the individual bays clearly delineated. The Active Electric Vehicle Charging Points and passive infrastructure, shall be installed, prior to 90% occupation of the site, to serve the identified parking spaces and thereafter, the parking, EV Charging, servicing turning areas shall be retained for their designated purposes, for the life of the development.
13. Prior to the first occupation of the development hereby approved, the new vehicular access to serve the development, from the A34 Walsall Road, shall be completed within the limits of the public highway, in accordance with approved plan, reference T21526 001 C. The visibility splays shall be kept free of all obstructions to visibility, with nothing placed or allowed to remain forward of the visibility splays, over a height of 0.6m above the adjacent carriageway level. The access and visibility splays are thereafter to be retained for the life of the development.
14. Prior to the first occupation of the development hereby approved, a surface water drainage interceptor shall be installed across the access, immediately to the rear of the public highway, which shall thereafter to be retained for the life of the development.
15. Prior to the first occupation of the development hereby approved, the existing and historical vehicular accesses made redundant as a consequence of the development hereby permitted, shall be permanently closed, with the access crossings reinstated as footway with full height kerbs in accordance with details, which shall have first have been submitted to and approved in writing by the Local Planning Authority.
16. Notwithstanding the submitted details, prior to the first occupation of the development hereby approved, full details of safe, secure and weatherproof cycle parking facilities for staff and visitors (providing a minimum of 59 spaces), and shower/ locker/ changing facilities for staff, shall first have been submitted to and approved in writing by the Local Planning Authority. The cycle parking and shower/ locker/ changing facilities shall be constructed in accordance with the approved

details, prior to the first occupation of the site and thereafter shall be retained for the life of the development.

17. Prior to the first occupation of the development hereby approved, details of boundary treatments along the site frontage on the A34 Walsall Road shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments so approved shall thereafter be erected prior to the first occupation of the site and thereafter be retained for the life of the development.

All other CONDITIONS to be complied with:

18. The Travel Plan shall be implemented in accordance with the timetable set out in the approved document dated 29/09/2022. Reports demonstrating progress in promoting sustainable transport measures shall be submitted annually on each anniversary of the date of the planning permission to the Local Planning Authority for approval for a period of five years from first occupation of the development.
19. No vehicle larger than 10.5m in length shall be permitted to access the site, unless a revised swept path analysis demonstrating that the larger vehicle can safely access and egress the site, has first been submitted to and approved in writing by the Local Planning Authority.
20. The approved landscape and planting scheme shown on plans reference 2109MAC-GW-1 Revision E and 2109MAC-GW-1 Revision E, shall be implemented within eight months of the first occupation of the new build elements of the scheme.
21. Any tree, hedge or shrub planted as part of the approved landscape and planting scheme (or replacement tree/hedge) on the site, which dies or is lost through any cause during a period of 5 years from the date of first planting, shall be replaced in the next planting season with others of the same or similar size and species.
22. The development hereby approved shall be carried out in strict accordance with the working practices and timetables identified within the Bat Roost Characterisation and Mitigation Report produced by Wharton (reference 210803 1260 RC V1).
23. The boundary treatments, gates and hard landscaping, as shown on approved plans 2109MAC-GW-1 Revision E and 2109MAC-GW-1 Revision E, shall be erected prior to the first occupation of the building and thereafter shall be retained for the life of the development.
24. The first floor corridor window, located within the southern elevation of the Care home part of the building, sited adjacent to room F-10, shall be obscure glazed (to a minimum of level 3) and non-opening to a minimum of 1.7 metres above the floor of the room in which the window is installed and shall thereafter be maintained as such for the life of the development.
25. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any subsequent re-enactment thereof, no fences, walls or other means of enclosure shall be erected within the site, other than those approved by this planning permission, without the prior written permission, on application to the Local Planning Authority.
26. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, unless specifically agreed pursuant

to other conditions of this permission, no external lighting shall be provided within the application site, without the prior permission on application by the Local Planning Authority.

27. The occupancy of the development hereby approved, shall be as a Class C2: residential institution (with occupants over the age of 55 solely restricted within the 32 age limited Apartments and in the case of the 90 bed Care Home, occupancy shall be in accordance with the Residential Care Home Occupancy Note dated September 2022, as shown on approved plans AP21018-L06 C, AP21018-L07 C and AP21018-L08 C), for the lifetime of the development.

Reasons

1. The reason for the imposition of these time limits is to comply with the requirements of Section 91 of the Town and Country Planning Act 1990.
2. For the avoidance of doubt and in accordance with the applicant's stated intentions, in order to meet the requirements of Policy EQ11 and Core Policy 4 of the Local Plan Strategy and the National Planning Practice Guidance.
3. To safeguard the character and appearance of the development, surrounding area and neighbouring non-designated heritage asset, in accordance with the requirements of Core Policy 2 and Policies EQ3 and EQ11 of the Core Strategy, the Design Guide, Sustainable Design, Village Design Guide and Historic Environment and Character Assessment Supplementary Planning Documents and the National Planning Policy Framework.
4. To ensure the protection of Controlled Water Receptors, to ensure remedial works where required are completed to a satisfactory standard to safeguard future residential amenity, in accordance with the requirements of Core Policy 2 and Policies EQ9 and EQ11 of the Core Strategy, the Sustainable Design Supplementary Planning Document, the National Planning Policy Framework and Water Framework Directive.
5. In the interests of highway safety, to ensure the free flow of traffic on the local highway network, to reduce the risk of surface water flooding, to safeguard protected species and their habitat and to protect the amenity of existing and future residents, in accordance with the requirements of Core Policy 2 and Policies EQ1, EQ9, EQ11 and EV11 of the Core Strategy, the Sustainable Design Supplementary Planning Documents and the National Planning Policy Framework.
6. To ensure the provision of satisfactory means of drainage to serve the development, to reduce the risk of creating or exacerbating flooding problems and to minimise the risk of pollution and to ensure that sustainability and environmental objectives are met, in accordance with provisions of Core Policies 3 and 4 of the Core Strategy and the National Planning Policy Framework.
7. To ensure the high quality form and appearance of the development, protect the amenity of neighbouring residents and to protect the natural habitat, in accordance with the requirements of Core Policies 2 and 3 and Policies EQ1, EQ9, EQ11 and EQ12 of the Core Strategy, the Design Guide and Sustainable Design Supplementary Planning Documents, the National Model Design Code and the National Planning Policy Framework.

8. To ensure the satisfactory appearance of the development, to minimise any impact upon the adjacent non-designated heritage asset, to safeguard protected species and their habitat and to safeguard the amenity of existing and future residents, in accordance with the requirements of Core Policy 2 and Policies EQ1, EQ9 and EQ11 of the Core Strategy, the Sustainable Design Supplementary Planning Documents and the National Planning Policy Framework.
9. To ensure the protection of Controlled Water Receptors, to ensure remedial works where required are completed to a satisfactory standard and to safeguard future residential amenity, in accordance with the requirements of Core Policy 2 and Policies EQ9 and EQ11 of the Core Strategy, the Sustainable Design Supplementary Planning Document, the National Planning Policy Framework and Water Framework Directive.
10. In order mitigate the development's impact upon European Protected Species and their habitat, in accordance with the requirements of Policies EQ1 and EQ11 of the Core Strategy, the Sustainable Design Supplementary Planning Document and the National Planning Policy Framework.
11. In order to deliver biodiversity enhancements as part of the development, in accordance with the requirements of Core Policy 2 and Policies EQ1 and EQ11 of the Core Strategy, the Sustainable Design Supplementary Planning Document and the National Planning Policy Framework.
12. In the interests of highway safety, to promote more sustainable modes of transportation, to ensure the delivery of sustainable drainage and to protect the amenity of existing and future residents, in accordance with the requirements of Core Policy 2 and Policies EQ1, EQ9, EQ11 and EV11 of the Core Strategy, the Sustainable Design Supplementary Planning Document and the National Planning Policy Framework.
13. In the interests of highway safety and to protect the amenity of existing and future residents, in accordance with the requirements of Core Policy 2 and Policies EQ9, EQ11 and EV11 of the Core Strategy, the Sustainable Design Supplementary Planning Document and the National Planning Policy Framework.
14. In the interests of highway safety and to protect the amenity of existing and future residents, in accordance with the requirements of Core Policy 2 and Policies EQ9, EQ11 and EV11 of the Core Strategy, the Sustainable Design Supplementary Planning Document and the National Planning Policy Framework.
15. In the interests of highway safety and to protect the amenity of existing and future residents, in accordance with the requirements of Core Policy 2 and Policies EQ9, EQ11 and EV11 of the Core Strategy, the Sustainable Design Supplementary Planning Document and the National Planning Policy Framework.
16. To promote the use of sustainable modes of transportation in accordance with the requirements of Core Policy 2 and Policies EQ11 and EV11 of the Core Strategy, the Sustainable Design Supplementary Planning Document and the National Planning Policy Framework.
17. In the interests of highway safety, to protect the character and appearance of the site and surrounding area and neighbouring non-designated heritage asset, in accordance with the requirements of Core Policies 2 and 3 and Policies EQ3, EQ11

and EV9 of the Core Strategy, the Design Guide, Sustainable Design, Village Design Guide and Historic Environment and Character Assessment Supplementary Planning Documents and the National Planning Policy Framework.

18. To promote the use of sustainable modes of transportation in accordance with the requirements of Core Policy 2 and Policies EQ11 and EV11 of the Core Strategy, the Sustainable Design Supplementary Planning Document and the National Planning Policy Framework.
19. In the interests of highway safety, in accordance with the requirements of Core Policy 2 and Policies EQ11 and EV11 of the Core Strategy, the Sustainable Design Supplementary Planning Document and the National Planning Policy Framework.
20. To ensure that the approved landscaping scheme is implemented in a speedy and diligent way, to protect natural habitat and deliver biodiversity net gain within the scheme, in accordance with the requirements of Core Policy 2 and Policies EQ1, EQ3 and EQ11 of the Core Strategy, the Design Guide and Sustainable Design Supplementary Planning Documents, the National Model Design and the National Planning Policy Framework.
21. To ensure that any initial plant losses to the approved landscaping scheme are overcome, to protect natural habitat and delivery Biodiversity net gain within the scheme, in accordance with the requirements of Core Policy 2 and Policies EQ1, EQ3 and EQ11 of the Core Strategy, the Design Guide and Sustainable Design Supplementary Planning Documents, the National Model Design and the National Planning Policy Framework.
22. In order mitigate the development's impact upon European Protected Species and their habitat, in accordance with the requirements of Policies EQ1 and EQ11 of the Core Strategy, the Sustainable Design Supplementary Planning Document and the National Planning Policy Framework.
23. To safeguard the appearance of the development, the setting of adjacent non-designated heritage asset and to protect the amenity of future residents, in accordance with Core Policy 2 and Policies EQ1, EQ9 and EQ11 of the Core Strategy, the Sustainable Design Historic Environment and Character Assessment Supplementary Planning Documents and the National Planning Policy Framework.
24. To safeguard the privacy of neighbouring residents in accordance with Policy EQ9 of the Core Strategy and the National Planning Policy Framework.
25. To safeguard the character and appearance of the development, surrounding area and neighbouring non-designated heritage asset, in accordance with the requirements of Core Policy 2 and Policies EQ3 and EQ11 of the Core Strategy, the Design Guide, Sustainable Design, Village Design Guide and Historic Environment and Character Assessment Supplementary Planning Documents and the National Planning Policy Framework.
26. To safeguard the character and appearance of the development, surrounding area and neighbouring non-designated heritage asset and to protect on-site habitats, in accordance with the requirements of Core Policy 2 and Policies EQ1, EQ3 and EQ11 of the Core Strategy, the Design Guide, Sustainable Design, Village Design Guide and Historic Environment and Character Assessment Supplementary Planning Documents and the National Planning Policy Framework.

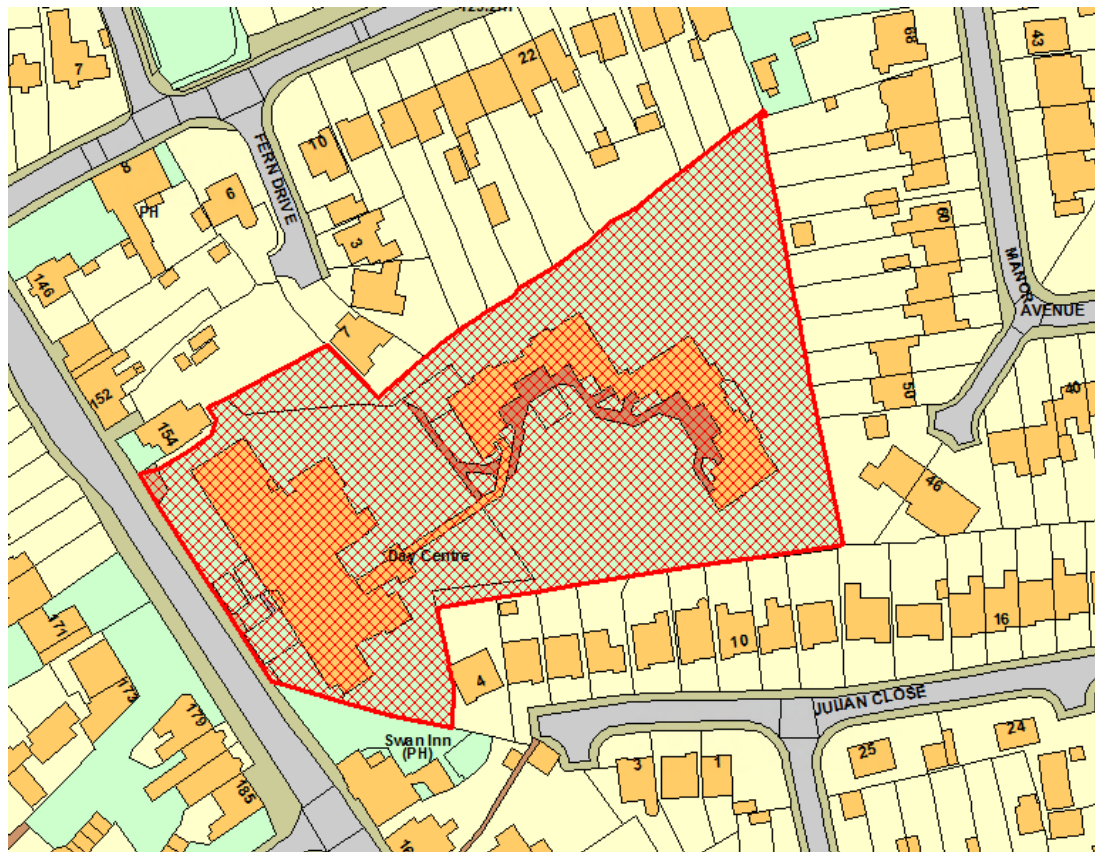
27. To define the permission, given alternate infrastructure contributions would have been secured for residential development and to ensure the delivery of an appropriate level of mitigation to address recreational impact to the Cannock Chase SAC, in accordance with the requirements of Policies EQ2, EQ13 and H2 of the Core Strategy and the National Planning Policy Framework.

INFORMATIVES

1. The applicant's attention is drawn to The Town and County Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2017, which requires that any written request for compliance of a planning condition(s) shall be accompanied by a fee of £34 for a householder application or £116 for any other application including reserved matters. Although the Council will endeavour to deal with such applications in a timely manner, it should be noted that legislation allows a period of up to 8 weeks for the Local Planning Authority to discharge conditions and therefore this timescale should be borne in mind when programming development.
2. Proactive Statement - In dealing with the application, the Local Planning Authority has approached decision making in a positive and creative way, seeking to approve sustainable development where possible, in accordance with paragraph 38 of the National Planning Policy Framework, 2021.
3. The applicant is advised to note and act upon as necessary the comments of the Police Architectural Liaison Officer dated 04/07/2022. Where there is any conflict between these comments and the terms of the planning permission, the latter takes precedence.
4. The applicants' attention is drawn to the comments from the Staffordshire Fire and Rescue Service dated 16/06/2022.
5. The applicants' attention is drawn to the comments from the Staffordshire County Council Minerals and Waste Team dated 04/02/2022.
6. Cadent Gas Ltd own and operate the gas infrastructure within the area of your development. There may be a legal interest (easements and other rights) in the land that restrict activity in proximity to Cadent assets in private land. The applicant must ensure that the proposed works do not infringe on legal rights of access and or restrictive covenants that exist. If buildings or structures are proposed directly above the apparatus the development may only take place following diversion of the apparatus. The applicant should apply online to have apparatus diverted in advance of any works, by visiting cadentgas.com/diversions. Prior to carrying out works, including the construction of access points, please register on www.linesearchbeforeudig.co.uk to submit details of the planned works for review, ensuring requirements are adhered to.
7. The proposed site access and off-site highway works shall require a Highway Works Agreement with Staffordshire County Council. The applicant is requested to contact Staffordshire County Council to secure the Agreement. The link below is to the Highway Works Information Pack including an application form. Please complete and send to the address indicated on the application form or email to highway.agreements@staffordshire.gov.uk. The applicant is advised to begin this process well in advance of any works taking place to meet any potential timescales.

<https://www.staffordshire.gov.uk/Highways/highwayscontrol/HighwaysWorkAgreements.aspx>.

8. Staffordshire County Council as Highway Authority would not formally adopt the proposed development; however, the development will require approval under Section 7 of the Staffordshire Act 1983. The applicant is requested to contact Staffordshire County Council to ensure that approvals and agreements are secured before commencement of works. It will, therefore, be necessary for maintenance/management arrangements for the access road and internal layout to be submitted to the Highway Authority with a view to securing an exemption under Section 219 of the Highways Act 1980. Although the road layout will not be to adoptable standards, the roadways within the site will still need to be constructed to be 'fit for purpose'.



Former Great Wyrley Community Support Unit, 156 Walsall Road, Great Wyrley,
Staffordshire, WS6 6NQ

**22/00309/COU
NON MAJOR**

Mr T Park

**CHESLYN HAY
Cllr M Boyle,
Cllr S Hollis**

Elwell Nurseries Wolverhampton Road Cheslyn Hay Staffordshire WS6 7HX

Change of use from garden centre/nursery to B8 storage uses including open storage

1. SITE DESCRIPTION AND PLANNING HISTORY

1.1 Site description

1.1.1 Elwell Nurseries is the site of a garden nursery business located off Wolverhampton Road to the west of Cheslyn Hay and within the West Midlands Green Belt. The site extends to approximately 0.7ha and includes a bungalow near the front, and a range of other buildings, structures and polytunnels located to the side and to the rear, as well as an expanse of hardstanding. The site is bounded on four sides by a combination of mature hedgerows, walls and fences, and benefits from two vehicular access points directly off Wolverhampton Road.

1.1.2 The adjoining site to the north 'Chase View Farm' contains a field, a range of commercial buildings and polytunnels, and a bungalow. A small part of the north boundary also borders the grounds of Cheslyn Hay Sport and Community High School. There are residential properties to the south, including 'Standek Farm', which immediately flanks the application site, and beyond that, a range of commercial/industrial buildings at 'Ivy House Farm', which include B1 and B2 industrial and B8 storage uses. The rear boundary backs onto an open field (to the northwest). There is a large allotment garden on the opposite side of Wolverhampton Road (to the southeast).

1.2 Planning history

None.

2. APPLICATION DETAILS

2.1 Pre-application advice.

Not applicable.

2.2 Relevant background information

2.2.1 The applicant, Datom Utilities Ltd, are a family run company based in Great Wyrley that provides connections to utility services such as replacing existing electricity cable and lighting as well as providing new connections for development schemes.

2.2.2 Datom Utilities Ltd, along with other separate components of the Datom business (Datom Civil Engineering, Datom Electrical Services and D-Mix Concrete Ltd), were all previously based on a site at Landywood Farm House in Great Wyrley, which was recently refused planning permission for 'Retention of storage facility and change of use to B8' (20/00288/COU). The application was refused on the grounds of the resulting harm to the Green Belt, to an adjacent Listed Building, to residential amenity, and due to the proposal representing an unsustainable form of development.

2.3 The proposal

2.3.1 Permission is sought for the change of use of the Elwell Nurseries site from a garden centre/nursery to B8 storage uses including open storage. The proposal would enable Datum Utilities to base their administrative services and to store the company's own vehicles, building materials and equipment, partly through the re-use of existing buildings on site and partly by the provision of outside storage areas.

2.3.2 A number of existing buildings, structures and sheds located beside and behind the existing bungalow, would be used for the storage of equipment, materials, tools and machinery, including ten 'mini diggers'. The existing bungalow itself would be re-used for a reception and administration office.

2.3.3 The applicant has confirmed that other operations of the Datum business including 'D-Mix Concrete Ltd' has already been relocated and there will be no concrete mixing or batching at the Elwell Nurseries site nor any industrial processes undertaken.

2.3.4 Three existing polytunnels located towards the rear of the site would all be removed under the proposal (1,200 sq.m), and the remaining hardstanding (1,500 sq.m) would be used mainly for the storage of the company's own vehicles (700 sq.m), which the applicant has confirmed includes six HGV's and two pick-up trucks that would be stored on site when they are not in use and overnight. The remaining area would be used as a vehicle manoeuvring area (550 sq.m) and for outside storage of building materials and plant (230 sq.m).

2.3.5 This application originally proposed the erection of 4 no. concrete panel storage bays for the outside storage of aggregates. To address the LPA's concerns over the potential impact on residential amenity (i.e due to potential noise and disturbance and generation of dust from loading/unloading,), the proposed aggregates storage bays have been removed from the application and the applicant has confirmed that there would be no external bulk storage of aggregates on the site. The application also clarifies that the company's larger vehicles/HGVs including grab/hook loaders will not be loading or utilised from the site.

2.3.6 The proposed development would utilise the two existing access points off Wolverhampton Road. The northern access would be used for HGVs, and the southern access would be used for cars and vans. HGV movements would operate under a left turn in and right turn out arrangement, to avoid HGV movements through Cheslyn Hay village. Existing entrance gates to both access points would be set-back further from the highway carriageway to improve the existing access arrangements.

2.3.7 The proposal has also been amended to restrict the movements of all commercial vehicles along a resurfaced access road at the northern end of the site, away from the existing residential properties located on the south side.

2.3.8 An existing hardstanding area located further to the south, described as 'existing car park' (750 sq.m) would be used by staff and visitors only, which would include between 10 - 15 cars/vans, which will not be stored or remain on site overnight. An existing access road at the southern end of the site would serve the proposed staff/visitor car park.

2.3.9 The personnel employed by Datum Utilities include quantity surveyors, electricians, engineers and jointers as well as the office administration, with the majority carrying out tasks off site for the majority of working hours.

2.3.10 The proposed operating hours are 7am - 5.30pm - Monday to Friday.

2.4 Agent's submission

- Planning Statement
- Transport Note
- Transport Routing Proposal

3. POLICY CONTEXT

3.1 Within the West Midlands Green Belt.

3.2 Core Strategy

Core Policy 1: The Spatial Strategy
Policy GB1: Development in the Green Belt
Core Policy 2: Protecting and Enhancing the Natural and Historic Environment
Policy EQ4: Protecting and Enhancing the Character and Appearance of the Landscape
Core Policy 3: Sustainable Development and Climate Change
Policy EQ9: Protecting Residential Amenity
Policy EQ10: Hazardous and Environmentally Sensitive Development
Core Policy 4: Promoting High Quality Design
Policy EQ11: Wider Design Considerations
Core Policy 7: Employment and Economic Development
Core Policy 9: Rural Diversification
Policy EV5: Rural Employment
Core Policy 11: Sustainable Transport
Policy EV12: Parking Provision
Appendix 5: Car parking standards

3.3 Adopted local guidance (Supplementary Planning Documents (SPDs))

Sustainable Development SPD [2018]
Green Belt and Open Countryside SPD [2014]

3.4 National Planning Policy Framework [2021]

To be read as a whole but particular regard to:
Chapter 6: Building a strong, competitive economy
Chapter 12: Achieving well-designed places
Chapter 13: Protecting Green Belt land

3.5 National Planning Policy Guidance

3.5.1 Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

3.5.2 The law makes a clear distinction between the question of whether something is a material consideration and the weight which it is to be given. Whether a particular consideration is material will depend on the circumstances of the case and is ultimately a decision for the courts. Provided regard is had to all material considerations, it is for the decision maker to decide what weight is to be given to the material considerations in each case, and (subject to the test of reasonableness) the courts will not get involved in the question of weight.

4. CONSULTATION RESPONSES

Ward Councillors

Councillor Mike Boyle. A Planning Committee call-in request was submitted on the following grounds (received 16/10/22):-

-Conflicts with Core Policy EQ9 Protecting Residential Amenity e. g. the impact this development may have on acoustic conditions, air quality, light pollution, privacy, security, noise and disturbance.

-Conflicts with Core Policy EQ10 Protecting the health, safety, and amenity of the public and the general environment.

Cheslyn Hay Parish Council

-(Latest comments received 19/10/22): Conflicts with Core Policy EQ9 (protecting residential amenity) and EQ10 (protecting the health, safety and amenity of the public and the general environment).

-(Additional comments received 12/10/22): The Parish Council has nothing further to add to the original comments sent for this application.

-(Additional comments received 24/06/22): Cheslyn Hay Parish Council wish to object to planning application 22/00309/COU (Amended Plans) - Change of use from garden centre/nursery to B8 storage uses including open storage, on the following grounds:-

Green Belt Site

This site is within the Green Belt and the commercial storage and boundary treatment would fail to preserve the openness of the Green Belt and conflict with one of the purposes of including land within it, contrary to Policy GB1 as adopted by South Staffordshire Council in their Core Strategy.

Environmental Impact

As well as local residents the Parish Council's Allotments Site, two schools and a Leisure Centre are in close proximity of the proposed site and the dust and particles from the materials used will have a negative environmental impact on all concerned and will restrict the types of outside activities that residents will be able to carry out. Any smell or fumes will also impact on residents closest to the proposed site, contrary to Policy EQ10 of the Council's Core Strategy.

Highway Safety

This is already a busy road which is narrow and not suitable for the delivery of aggregates and materials. The increased volume of HGV traffic in this area and access will be an issue as this road is often congested at school and work peak times. There is already an issue with HGV's ignoring the weight restrictions on Wolverhampton Road and this would be exacerbated by the new development. The Wolverhampton Road would be affected by road safety issues in terms of vehicular access, parking, turning and loading for all road users and residents alike.

Residential Amenity

The development will be out of character within the existing area and long-term noise and disturbance will affect local residents and businesses alike. Loss of outlook and overlooking will be an issue for those residents closest to the development.

Noise and disturbance will have a detrimental effect on the living conditions of occupants, contrary to Policy EQ9 of the Council's Core Strategy.

Access to Public Footpath No. 2

The applicant has not considered the effect on public footpath no. 2 which runs within the proposed site, the public must be able to access these paths and for them to be kept in good repair so they can be accessed safely at all times, this is contrary to Policy EV11 (footpaths) of the Council's Core Strategy.

There have been 21 letters of objections from residents in Cheslyn Hay and 23 comments from residents adjacent to the existing site in Great Wyrley and Cheslyn Hay Parish Council suggest a site visit to be carried out, during peak times, for Officers to assess the objections listed above.

-(Original comments received 01/06/22): Cheslyn Hay Parish Council object to planning application 22/00309/COU, change of use from garden centre/nursery to B8 storage uses including open storage, on the following grounds:-

Environmental Impact - As well as local residents the Parish Council's allotments site, two schools and the local Leisure Centre are within the proximity of the proposed site and the dust and particles from the materials used will have a negative environmental impact on all concerned and will restrict the type of outside activities that residents will be able to carry out. Any smell or fumes will also impact on residents closest to the proposed site.

Highway Safety - This is already a busy road which is narrow and not suitable for the delivery of aggregates and materials. Any increase to the HGV traffic in this area will lead to access issues and this road is often congested at school and work peak times. There is already an issue with HGV's ignoring the weight restrictions on Wolverhampton Road and this would be exacerbated by the new development. The Wolverhampton Road would be affected by road safety issues in terms of vehicular access, parking, turning and loading for all road users and residents alike.

Residential Amenity - The development will be out of character within the existing area and long-term noise and disturbance will affect local residents and businesses alike. Loss of outlook and overlooking will be an issue for those residents closest to the development.

Access to Public Footpaths - The applicant has not considered the effect on public footpath no. 2 which runs within the proposed site, the public must be able to access these paths and for them to be kept in good repair so they can be accessed safely at all times.

Cheslyn Hay Parish Council suggest a site visit to be carried out, during peak times, in order for officers to assess the objections listed above.

Environmental Health Officer

-(Latest comments received 12/10/22): The Environmental Health Officer had no further objections or comments on the application as amended.

-(Original comments received 02/08/22): I recommend refusal of this application due to the likely harm to amenity from noise and dust from the activities of the proposal due to the close proximity to residential amenity. This is supported by the fact that I have received numerous complaints from local residents nearby their alternate site carrying out the same activities.

Tree Officer (expired 26/05/22): No comments received.

County Highways

*-(Latest comments received 11/10/22):
Recommendation Summary: Acceptance*

Site Visit Conducted on: 23-Sep-2022

Personal Injury Collisions

Current records show that there were not any Personal Injury Collision (PIC) on Wolverhampton Road either side of the proposal for the previous five years.

Background

Wolverhampton Road is classified road (Road No. B4156) with a speed limit of 30mph past the site. The road has grass verge on development site and footway on opposites side of the carriageway. The road is lit.

Description of Proposal

AMENDED INFORMATION RECEIVED. Change of use from garden centre/nursery to B8 storage uses including open storage.

The development proposal seeks planning permission for the change of use of the application site from a Garden Centre/Nursery to B8 storage uses. This permission is sought in order to enable the relocation of Datom Utilities from existing premises at Landywood Farm.

Comment on Information submitted

The proposed development will utilise the existing access arrangements from Wolverhampton Road. Further information has been received and it shows amendments to the access arrangements in so far to move the existing gates further away from the highway carriageway and having one access to be used for HGV movements only with a left in and right out arrangement to avoid going through the village.

The proposed use will replace a previous one of similar vehicular movements. The acceptance of this proposed development is on the understanding that the site is used for storage use only and no other activities as per the additional information submitted in the Statement.

Recommendations

I have no objection (on Highway grounds) to the proposed development.

Note to Planning Office

The route for large vehicles will be along the southern section of Wolverhampton Road, avoiding the village of Cheslyn Hay and the nearby Primary School on Saredon Road. This will result in a Left Turn In and Right turn Out arrangement for large vehicles visiting the site. A sign advising HGVs to Turn Right only shall be provided within the site.

Coal Authority (received 23/05/22): *The submission to which this consultation relates falls on our exemptions list, you are therefore advised to consult the Coal Authority guidance (provided to all LPAs on 18/12/2020) on this issue and to include the necessary notes/advice on any consent granted.*

County Rights of Way Officer

-(Latest additional informal comments received 19/07/22): *If the applicants aren't using that area (the northwest corner) of the site, then no need for a plan. If they are using it (the northwest corner of the site) at all, I'd suggest a plan to ensure they are aware of the line of the path, and for it to be kept clear.*

-(Additional comments received 13/07/22): *The 'Additional Statement', 'Noise' section states that: 'This area is also screened from the PROW that runs along the northern site boundary by an established hedgerow that will be maintained by the Applicant'*

Public Footpath No. 2 Cheslyn Hay Parish does run along the northern boundary. However, Public Footpath No. 2(a) Cheslyn Hay also runs through the north west corner of the grassed area adjacent to the poly tunnels.

It is advised that the applicant submit a plan showing the legal lines of the footpath/s, as shown on the Definitive Map of Rights of Way in Staffordshire, along with the site proposals. For further information, please refer to our Definitive Map webpage.

-(Additional comments received 16/06/22): I have no further comments to add regarding this consultation. Previous comments still apply.

-(Original comments received 12/05/22, in summary): The application documents don't recognise the existence of Public Footpath No.2 Cheslyn Hay Parish which runs within the proposed development site (through the north western corner). Public Footpath No.2 (a) Cheslyn Hay Parish also runs just outside the north western boundary of the site.

Ramblers' Association

-(Latest comments received 25/07/22): Thank you for your letter of 13th July 2022 and amended plans. I write to inform you that Public Right of Way No. 2 of Cheslyn Hay Parish passes close to the north side of the development site. This footpath must not be obstructed by any change in the development plans. The Ramblers' Association has no objections to the change of use or amended plans.

Neighbours (received May - September): 60 objections received from 32 contributors.

The issues raised are summarised below:

- Noise and disturbance at unsociable hours*
- Air pollution (from dust and smoke)*
- Burning materials on site*
- Impact on wildlife*
- Concrete production/dust causing health problems, contamination of local allotment crops*
- Health and well-being of local residents/schools put at risk*
- Impact on residential amenity*
- Increased volume of traffic/congestion*
- Wolverhampton Road has a 7.5 tonne weight restriction that will be exceeded by HGVs (road not suitable)*
- Poor access for HGVs*
- Excess mud, dirt and dust transmitted onto the road*
- Highway safety hazard for children walking to and from school*
- Highway safety risk*
- HGVs causing damage to highways/footpaths*
- Dust bad for environment*
- Destruction of Green Belt land*
- Proposal not suitable for residential area*
- Proposal would be a terrible eyesore for local residents*
- Damage to crops and flowers*
- Adverse impact on physical and mental health well-being*
- HGVs and trailers with heavy plant and machinery will prove a danger to life*
- Business will attract thieves to the area*
- Property devaluation*
- HGVs will cause structural damage to neighbour's boundary wall*
- Cement entering local drainage, causing flooding issues, contaminating water*

-Lack of communication and notification to the surrounding properties of this application by the LPA

-To separate and discriminate the people of the village is in direct contravention of the European Convention on Human Rights.

A Site Notice expired on 02/06/22.

Following publication of the application an objection has also been received from the Rt Hon Sir Gavin Williamson MP.

5. APPRAISAL

5.1 This application has been called-in to Planning Committee by Councillor Mike Boyle for the following reasons:

-Conflicts with Core Policy EQ9 Protecting Residential Amenity e. g. the impact this development may have on acoustic conditions, air quality, light pollution, privacy, security, noise and disturbance.

-Conflicts with Core Policy EQ10 Protecting the health, safety, and amenity of the public and the general environment.

5.2 The key issues are:

- Principle of development
 - Re-use of existing buildings
 - External storage and car parking
- Very special circumstances
- Impact on the openness of the Green Belt
- Impact on visual amenity
- Impact on residential amenity
- Highways/access
- Consultee comments
- Neighbour comments

5.3 Principle of development

5.3.1 Paragraph 84 of the NPPF states that planning decisions should enable the sustainable growth and expansion of all types of businesses in rural areas, both through the conversion of existing buildings and well-designed new buildings.

5.3.2 Core Policy 7 of the Core Strategy advocates that outside the main/local/small service villages, proposals for small scale employment development and the sustainable diversification of the rural economy (including the conversion and re-use of suitable redundant buildings for employment use) will be supported where they are consistent with Policy EV5, which provides general support for rural diversification.

5.3.3 The application site is located within the Green Belt where there is a presumption against inappropriate development. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

Re-use of existing buildings

5.3.4 Paragraphs 149 and 150 identify the types of developments which are not considered inappropriate within the Green Belt, one of which is the re-use of buildings, providing they are of permanent and substantial construction. There are a number of buildings of site that do meet this requirement of being permanent and substantial, namely buildings 1, 6, 7, 8, 9 and 10. They are of steel frame timber clad substantial construction and have been located on site for a number of years

5.3.5 However, this proposal also includes buildings and structures which are not of a substantial construction for instance buildings 2, 3 and 5, along with some plastic coated and steel framed polytunnels which would not be considered of “substantial construction” for the purposes of fully engaging part d) of paragraph 150 of the NPPF. This element of the proposal therefore constitutes inappropriate development in the Green Belt, and in-line with the NPPF, very special circumstances will need to be demonstrated.

External storage and car parking

5.3.5 A further exception to inappropriate development detailed in the NPPF is a material change of use of land, provided that the proposed development preserves the openness of the Green Belt and the purposes of including land within it. Policy GB1 of the Core Strategy also allows for the re-use of a building in the Green Belt and changes of use of land, again, providing that the proposed use would not harm its openness or the fulfilment of its purpose.

5.3.6 There is an existing hardstanding / car park that would at one time have been used by visitors and staff to the site that is proposed to be utilised for staff and visitor parking (15 cars/vans) again here. The parking would remain transitional in nature and there would be little if any change of use of this area of the site and it would therefore preserve the openness of the Green Belt in this instance.

5.3.7 Eight of the company's own larger vehicles (six HGVs and two pick-up trucks) would be stored overnight towards the rear of the site, and an area for outside storage of building materials would be located behind the existing building numbered "6" on the proposed site plan. The proposed external storage areas would largely be contained within the footprint of the three large polytunnels that are to be removed, and by covering roughly 75% of the existing polytunnel footprint (the remaining 25% used for vehicles manoeuvring), the external storage areas. The existing polytunnels were used for the growing of plants to be sold by the site owners and would be considered to serve a horticultural use. In accordance with the Town and Country Planning Act, horticulture is considered as agricultural and as such, cannot be traded off for an alternative use. The external storage element of the proposal is also considered to be inappropriate development.

5.4 Impact on the openness of the Green Belt

5.4.1 Paragraph 137 of the NPPF states that, 'The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence'.

5.4.2 There has been much dispute in recent years in case law in defining openness. A defining case in R (Timmins & Anr.) v Gedling BC & Anr. helps to define whether the visual impact of a development could be taken in account in considering 'openness'. It was held that 'openness' is characterised by the lack of buildings but not by buildings that are un-

obtrusive or screened in some way. It was also held that 'openness' and 'visual impact are different concepts', although they could 'relate to each other'.

5.4.3 The NPPG has been updated (July 2019) with guidance on factors taken into account when considering the potential impact of development on the openness of the Green Belt. These include, but are not limited to:

- openness is capable of having both spatial and visual aspects - in other words, the visual impact of the proposal may be relevant, as could its volume;
- the duration of the development, and its remediability - taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and
- the degree of activity likely to be generated, such as traffic generation.

5.4.4 R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) (2020) states The concept of "openness" in para 90 of the NPPF seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: "to prevent urban sprawl by keeping land permanently open ...". Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development. Paragraph 90 shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of openness. A large quarry may not be visually attractive while it lasts, but the minerals can only be extracted where they are found, and the impact is temporary and subject to restoration. Further, as a barrier to urban sprawl a quarry may be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land."

5.4.5 Although not the only consideration here, a good starting point when considering impact on openness is the existing built form on site. The site historically was used to grow plants, but the owners also lived and sold the produce here. It is not free from development and there are a number of existing buildings some of which are considered to be of permanent and of substantial construction along with a large expanse of car parking that would have been utilised by customers, staff and delivery vehicles. Visually, as the buildings are to be utilised for storage without the need for much external alterations or extensions and the car park will continue to be used in the same manner, the external storage element of the change of use is to be located on the site of redundant polytunnels and directly behind an expanse of built form. The applicants have specified the type of plant and machinery that will be stored here and are willing for this to be conditioned. The heights of the materials will also be conditioned. Any visual impact on the Green Belt from the proposed change of use is likely to be limited.

5.4.6 Whilst it is noted that the permission will be permanent, the change of use of the non substantial buildings along with the external storage area will easily be reversed due to the nature of the activities taking place and the works involved to make this happen.

5.4.7 Turning to the vehicle movements from the proposed change of use, this is to be restricted to staff along with a small number of visitors. Whilst it will give rise to an increase above that of the existing authorised use of the site, this increase would not be so great to cause any material harm to openness in my opinion.

5.4.8 For the above reasons, it is considered that the proposal would cause no material harm on the openness of the Green Belt. The use of suitably worded conditions to restrict the location of all external storage areas, as well as the height of the building materials behind building "6", can be attached to any permission granted to define the permission and to safeguard the future openness of the Green Belt.

5.5 Very special circumstances

5.5.1 Paragraph 148 of the NPPF states that Local Planning Authorities should ensure that substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

5.5.2 Core Policy 7 of the South Staffordshire Core Strategy (CS) states that, amongst other things, outside the Main Service Villages, Local Service Villages, and Small Service Villages, proposals for small-scale employment development and the sustainable diversification of the rural economy, will be supported where they are consistent with Core Policy 9 and do not conflict with other local planning policies. Outside village development boundaries, Core Policy 9 states that the Council will adopt the approach set out in Core Policy 7 for the redevelopment, modernisation and expansion of businesses. It also confirms that proposals relating to the sustainable re-use of rural buildings for appropriate uses which support the rural economy will be supported.

5.5.3 National Policy seeks to build a strong, competitive economy, with planning decisions helping to create the conditions which businesses can invest, expand and adapt. Paragraph 80 of the NPPF states that significant weight should be placed on the need to support economic growth and productivity, taking into account the business needs and wider opportunities for development. Paragraph 83 also seeks to support a prosperous rural economy by enabling the sustainable growth and expansion of all types of business in rural areas through, amongst other things, the conversion of existing buildings.

5.5.4 The relocation of the business to this site would allow for the company to remain local and to retain existing employees and secure future employment as well as other benefits to the local economy. Any harm to the Green Belt has been found to be limited and there is no conflict with the purposes of including land within it. The limited harm can be mitigated with suitably worded and enforceable planning conditions.

5.5.5 As such, it is considered that there are very special circumstances to clearly outweigh the potential harm to the Green Belt by reason of inappropriateness.

5.6 Impact on visual amenity

5.6.1 Policy EQ11 of the Core Strategy requires that new development "respect local character and distinctiveness, including that of the surrounding development and landscape [...]"

5.6.2 The proposed change of use involves no extensions or alterations to the existing buildings. The external storage areas would be located behind and in-line with a series of existing buildings to be retained. Given the location of the external storage areas, the proposed change of use would not be considered materially harmful to the character of this part of Wolverhampton Road or the visual amenity of the surrounding area.

5.6.3 The height of the outside storage area for building materials can be restricted to the height of existing building "6" in order to safeguard the visual amenity of the area (as well as

the openness of the Green Belt). The proposed use would adjoin an existing commercial site to the south (Ivy House Farm) and in this context, the proposed use would cause no harm to the immediate character of the area. There would be no resulting conflict with Policy EQ11.

5.7 Impact on residential amenity

5.7.1 Policy EQ9 of the Core Strategy states that all development proposals should take account the amenity of any nearby residents, particularly with regards to privacy, security, noise and disturbance, pollution, odours and daylight.

5.7.2 This application has received numerous objections from the local residents. One of the principal concerns of the proposed change of use relates to the production of concrete on site, which was associated with the applicant's former site in Great Wyrley. However, the applicant has confirmed that another component of the Datum business which produces concrete has been relocated elsewhere and that no concrete mixing or batching would occur on the current application site, nor would any other industrial processes be undertaken, which would otherwise fall outside of the B8 storage use proposed.

5.7.3 To address the LPA's concern over residential amenity, the provision of aggregate storage bays and bulk storage of aggregates have been omitted from the application, and it has also been clarified that the company's larger vehicles including grab/hook loaders will not be loading or utilised from the site. As such, the proposed use for B8 storage raises no health concerns either to local residents, to local schools, to allotment produce or wildlife, as concrete production or bulk storage of aggregates are not included. The exclusion of any concrete production, bulk aggregate storage or any on site burning can be controlled by attaching a suitably worded condition to any consent granted.

5.7.4 The neighbour's concerns regarding noise and disturbance have been carefully considered, particularly given that the south boundary of the site has one immediate adjoining neighbour (Standek Farm). However, the southern site access off Wolverhampton Road and access road which flanks the boundary to Standek Farm is existing and would be used to access to the staff parking area only (cars and vans). The proposals indicate that the company's larger commercial vehicles / HGVs would use the northern access off Wolverhampton Road and a resurfaced access road on the opposite side of the site from this neighbour's perspective. It is therefore considered that there would be no material harm by virtue of noise and disturbance arising from the use of the southern access/road for staff vehicles. The noise and disturbance arising from the activities associated with the proposed storage uses would also not be considered so harmful to the living conditions of the occupiers of Standek Farm or any other nearby dwelling to the extent that would warrant a refusal of the application. This is with particular regard given to the proposed operating hours being limited to between 7am - 5.30pm - Monday to Friday.

5.7.5 The neighbour's other comments regarding the shorter opening hours and limited HGV operation of the existing garden nursery are noted, however whilst it is recognised that the proposed change of use has the potential to be more intensive than the use of the former garden nursery, that intensification could in theory occur in association with the established use as a garden nursery. Opening hours will be limited to sociable hours between Monday - Friday and the company's own HGVs will not be loading or utilised from the site, which will limit any impact on residential amenity. The applicant has advised that typically, deliveries will be made via transit vans and the existing service access to the front of the site will be utilised to avoid disruption to neighbouring properties.

5.7.6 Although the Environmental Health Officer (EHO) originally recommended a refusal of this application due to likely harm to amenity from noise and dust from the activities of the

proposal and the close proximity to residential amenity, the amended proposal has overcome these concerns, and the EHO has no further objections or comments on the application.

5.8 Highways/Parking

5.8.1 Paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

5.8.2 The proposed development would utilise the two existing access points off Wolverhampton Road, which is subject of a 30mph speed limit past the site. The northern access would be used for HGVs, and the southern access would be used for staff cars and vans. HGV movements would operate under a left turn in and right turn out arrangement, to avoid HGV movements through the village. Existing entrance gates to both access points would be set-back further from the highway carriageway to improve the existing access arrangements.

5.8.3 County Highways have been consulted and have no objections on highway grounds to the proposal (as amended), noting that, the proposed use will replace a previous one of similar vehicle movements.

5.8.4 The neighbour's comments regarding volume of traffic and highway safety are noted, however in the absence of any objections from County Highways, a refusal of the application on these grounds would be unwarranted.

5.8.5 All HGVs will enter or leave the site from the southern section of Wolverhampton Road to avoid the village of Cheslyn Hay and local schools on Saredon Road. Although the southern section of Wolverhampton Road does have a 7.5 tonne weight restriction, the road signs specifying this restriction (just north of the access to the Champions Wood Quarry), do state "Except for access", which does not conflict with the proposed HGV movements to the application site. County Highways have advised that any infringement of the 7.5 tonne weight restriction would otherwise be enforced by the Police.

5.9 Consultee comments

5.9.1 The majority of the Parish Council's comments have been addressed in the main body of this report. The proposal would not be considered detrimental to the outlook conditions of any neighbouring properties and the proposal raises no overlooking concerns as the proposed use is commercial. No public right of way passes through the application site (as amended). Given this, the County Rights of Way Officer has advised that the route of the public footpath does not need to be identified on the plans.

5.10 Neighbour comments

5.10.1 The neighbour's comments regarding impacts on the Green Belt, residential amenity and visual amenity have all been addressed earlier in this report. In response to the neighbour's other comments:-

- There's no indication that the proposed use would attract thieves to the area.
- Property devaluation is not a material planning consideration.
- Any potential damage to a neighbour's boundary wall would be civil matter which falls outside of planning control.

-The implications of cement entering local drainage, causing flooding issue or contaminating water supplies, is not relevant to the application, since the storage or production of cement is not included.

-The LPA has met the minimum statutory requirements for consulting neighbours/public either by sending a direct letter to relevant neighbours or by posting a site notice.

-As the proposal involves the re-use of existing buildings and the removal of polytunnels, an ecology survey and assessment of the site is considered unwarranted. The applicant can be reminded by an Informative, that birds, bats and other animals are protected under separate legislation, and it is an offence to deliberately disturb any protected species or their habitats should any be found on site.

-The comments about Human Rights is not considered relevant to this application.

6. CONCLUSIONS

6.1 Although an element of this proposal would constitute inappropriate development in the Green Belt, there are very special circumstances which clearly outweigh the potential harm to the Green Belt.

6.2 The proposed change of use of the garden nursery to B8 storage including open storage would not be considered materially harmful to the openness of the Green Belt or its purposes, and there are no residential amenity concerns or parking or highway safety concerns to warrant a refusal of the application. As such, I recommend the approval of this application, subject to conditions.

7. RECOMMENDATION - APPROVE Subject to Conditions

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.

2. The development shall be carried out in accordance with the following approved plans and documents:-

2784-01 Rev H 'Site Plan / Location Plan' (amended plan received 01/10/22)
'Transport Routeing Proposal' document (received 04/10/22)

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any other subsequent equivalent order, the existing buildings and external storage areas identified on the approved drawing No. 2784-01 Rev H (amended plan received 01/10/22) shall only be used for the storage of the vehicles, tools, building materials and equipment as described in the application documents and for no other purposes falling within Class B8 - 'Storage and distribution' of the schedule to the Town and Country Planning (Use Classes) Order 1987 or any other subsequent equivalent order, unless otherwise agreed in writing by the Local Planning Authority.

4. No work shall be carried out, and no materials shall be delivered to, or despatched from, the premises/site, other than between the hours of 07:00 to 17:30 on Mondays to Fridays. No such operations shall take place at any time on Saturdays, Sundays and Bank Holidays, unless otherwise agreed in writing by the Local Planning Authority.

5. The open storage area for Heavy Goods Vehicles (HGVs) hereby approved is restricted to the 'vehicle/plant parking' area hatched in green on the approved drawing No. 2784-01 Rev H (amended plan received 01/10/22) only.

6. The external storage area for building materials hereby approved is restricted to the 'Storage building materials' area hatched red on the approved drawing No. 2784-01 Rev H (amended plan received 01/10/22) only and the height of the building materials shall not exceed the height of the building numbered "6" on the same plan.
7. The development shall be carried out strictly in accordance with the 'Transport Routing Proposal' document (received 04/10/22) in association with drawing No. 2784-01 Rev H (amended plan received 01/10/22), which shall include the following restrictions to vehicle movements to and from the site:-

-HGV access/egress from the northernmost site access only under a left turn in and right turn out arrangement to restrict the route of HGVs along the southern section of Wolverhampton Road.
-Car and van access/egress from the southernmost site access only.

The approved transport routing proposals shall be maintained as such for the lifetime of the development.
8. Before the development is first brought into use, a sign advertising all HGVs to Turn Right out of the site, shall be provided within the site in accordance with the approved Transport Routing Proposal document received on 04/10/22.
9. No Heavy Goods Vehicles (HGVs) shall use the southern access road within the site.
10. This permission relates to the change of use of the existing residential bungalow on site as a reception and administration office associated with the storage and distribution activities on the site only and for no other purpose.
11. There shall be no concrete mixing/preparation, no bulk storage of aggregates, and no open burning of materials within the application site.
12. No buildings, storage containers or racking system, polytunnels, caravans, shelters or other ancillary building or structures, temporary or otherwise, shall be sited on the land without the prior approval of the Local Planning Authority.
13. The permission hereby granted does not grant or imply consent for the installation of any means of lighting on the site or the existing buildings. Any lighting of the existing buildings, road/access ways or parking areas shall be submitted to the Local Planning Authority for approval in writing before installation.

Reasons

1. The reason for the imposition of these time limits is to comply with the requirements of Section 91 of the Town and Country Planning Act 1990.
2. In order to define the permission and to avoid doubt.
3. In order to define the permission and to avoid doubt.
4. To ensure that the use of the premises does not detract from the reasonable enjoyment of surrounding residential properties in accordance with policy EQ9 of the adopted Core Strategy.

5. In order to define the permission and to avoid doubt.
6. In order to define the permission and to avoid doubt, and because the site is within the Green Belt within which, in accordance with the planning policies in the adopted Core Strategy, there is a presumption against inappropriate development
7. To safeguard the amenity of the area in accordance with policy EQ11 of the adopted Core Strategy.
8. To safeguard the amenity of the area in accordance with policy EQ11 of the adopted Core Strategy.
9. To ensure that the use of the premises does not detract from the reasonable enjoyment of surrounding residential properties in accordance with policy EQ9 of the adopted Core Strategy.
10. In order to define the permission and to avoid doubt.
11. To safeguard the amenity of the area in accordance with policy EQ11 of the adopted Core Strategy.
12. The site is within the Green Belt within which, in accordance with the planning policies in the adopted Core Strategy, there is a presumption against inappropriate development
13. To safeguard the amenity of the area in accordance with policy EQ11 of the adopted Core Strategy.

Proactive Statement - In dealing with the planning application the Local Planning Authority has worked in a positive and proactive manner by agreeing amendments to the application and in accordance with paragraph 38 of the National Planning Policy Framework 2021.

INFORMATIVE

Protected species

Birds, Bats and other animals are protected under the Wildlife & Countryside Act 1981 and subsequent legislation and it is an offence to deliberately or recklessly disturb protected species or damage their nests, roosts or habitats.

Buildings/structures, trees and hedges should therefore be inspected before any works commence and if the presence of any protected species is suspected advice must be sought from Natural England on 01743 282000 (or Bat Line 0845 1300228). Further advice on bats is also available from The Bat Conservation trust (020 7627 2629).



Elwell Nurseries Wolverhampton Road Cheslyn Hay Staffordshire WS6 7HX

**22/00757/FUL
NON MAJOR**

Mr C Martin

**PERTON
Cllr P Davis**

Kingswood Centre Barn Lane Kingswood Staffordshire WV7 3AW

Part-retrospective changes to adventure equipment facilities

1. SITE DESCRIPTION AND PLANNING HISTORY

1.1 Site Description

1.1.1 Kingswood Centre is an outdoor education centre comprised of accommodation buildings and outdoor activities, including a low ropes obstacle course, caving system, aeroball activity and quad track, accessed from Barn Lane to the east, which leads to Holyhead Road (A464). Whilst the entirety of the site is approximately 2.9 hectares, the area of the current application is a smaller area on the north side of Barn Lane, before it turns north and terminates in an overgrown two-track.

1.2 Relevant Planning History

2007 Outdoor childrens obstacle course, Approved subject to conditions [07/00146/FUL]

2002 Attachment of zip wire and support post to freestanding climbing/abseiling tower, Permitted [02/00392/FUL]

2001 Retention of freestanding climbing/abseiling tower, Permitted [01/00617/FUL]

2000 Retention of hardstanding to the quad track, Approved subject to conditions [00/01196/FUL]

2000 Certificate of lawfulness for formation of hardstanding for quad bike tracks, Refused [00/0055/LUE]

1999 Illumination of quad tracks, Refused [99/01100/FUL]

1999 Erection of six flag poles, Approved [99/00578/ADV]

1997 Retention of existing climbing wall, aeroball equipment and two shelters, Approved subject to conditions [97/00475/FUL]

1997 Excavations and construction of caving system, Approved subject to conditions [97/00237]

1996 Toilet block extensions, Approved subject to conditions [96/00766]

1995 Portcabins, Refused [95/00379]

1.3 Pre-Application Advice

1.3.1 No formal pre-application advice was sought, but the application is retrospective as it is submitted in response to a Planning Enforcement case.

2. APPLICATION DETAILS

2.1 The Proposal

2.1.1 The cover letter provided with the application states that the existing climbing tower at Kingswood Centre needed to be replaced. Due to the unsuitability of the existing tower and to avoid a disruption to the facilities, Kingswood built two new towers, comprising a zip line/abseil tower and a landing platform tower.

2.1.2 The western tower is 12m in height, with the take-off platform situated at approximately 10m. There are two zip wires travelling north-east, perpendicular with Barn Lane. The landing platform is approximately 4m in height. The side of the towers are naturally-coloured timber cladding with galvanised steel handrails. The take-off tower is topped by a mono-pitched roof with box profile sheet roofing. Each tower has a footprint measuring 3.5m by 3.5m.

2.1.3 The application also details the removal of two redundant towers (a zip line tower and climbing tower) which are no longer required following the installation of the new zip line take-off and landing towers.

2.2 Agent's Submission

2.2.1 A covering letter and photographs of the equipment to be removed have been provided with the application (both received 4/8/22).

2.3 Amended plans

2.3.1 The full extent of the proposed development was indicated correctly on the plan titled 3284-01-01 Application Boundary (received 4/8/22).

3. POLICY CONTEXT

3.1 Within the West Midlands Green Belt.

3.2 Core Strategy

Core Policy 1 - The Spatial Strategy for South Staffordshire

Policy GB1: Development in the Green Belt

Core Policy 2 - Protecting and Enhancing the Natural and Historic Environment

Policy EQ9: Protecting Residential Amenity

Core Policy 4: Promoting High Quality Design

Policy EQ11: Wider Design Considerations

3.3 Adopted local guidance

South Staffordshire Design Guide [2018]

Green Belt and Open Countryside SPD [2014]

Sustainable Development SPD [2018]

3.4 National Planning Policy Framework

Part 12: Achieving Well-Designed Spaces

Part 13 Protecting Green Belt Land

4. CONSULTATION RESPONSES

4.1 Comments received

No comments from Ward Councillor (expired 2/9/22)

Perton Parish Council (received 2/9/22) No objections

Neighbour 1 (received 1/9/22): I wish to object to the application on the grounds below:

- 1.1 The towers are too high, The platform is level with our bedroom window, and this allows overlooking into our property, house and garden.
- 1.2 This is an issue raised in an earlier application (01/00617/FUL) by a previous owner of our property and others.
- 1.3 The covering letter from the Applicant states:
 - a) "The development is small scale in nature." I have to raise the question can a structure 14m in height and in use seven days a week be described as "small scale"? The application states that the upgrade of the towers is to enhance the usage of the site.
 - b) "The application site is well screened from residential properties by existing vegetation." The site is actually screened by largely deciduous vegetation, meaning that for a large part of the year there is no visual or screening from noise whatsoever.
- 2.1 Unacceptable noise levels. There are other further new developments on the site which have moved the events nearer to our property. These are not shown on the plans.
- 2.2 This has led to an increased level of noise which has become totally unacceptable, has an adverse effect on the enjoyment of our property and led us to leave home to avoid the noise. A normal level of noise during the day on a daily basis may be considered acceptable but we don't think noise of Zip Wires running and Instructors shouting commands until 8:30/900 PM and regularly every weekend is acceptable.
- 2.3 We noted noise levels on Saturday 27/9 from 10:30 until 17:30. On Sunday from 19:30 to 23:00. Monday 29/9 from 20:30 low level.
- 2.4 We have made a formal complaint to Environmental Health regarding noise and have kept a log of events.
- 3.1 May I request that time restrictions are introduced to restrict the usage of the Centre to more reasonable times?
In view of the anomalies and errors on the plans presented with the application may I request that a site meeting is arranged by the LPA so that interested parties may get a current view of the situation at Kingswood Centre. A Tower requested for demolition appears to be newly erected! There are new developments not included on the Plans.

In conclusion.

The objection to the Retrospective Planning Application is based on:

- 1) The tower is too high and allows a degree of overlooking into our property, particularly through a bedroom window and into the garden.
- 2) The noise level on a daily basis, seven days a week and into the evenings, to the extent that we are unable to have windows open, use the garden and need to alter our lifestyle to cope with the noise level is not something we should have to endure.

Environmental Health (received 21/10/22) Environmental Health have received complaints from neighbours regarding noise associated with the use of the zip line. Our investigations have demonstrated that noise from shouting and chanting whilst the zip line is in use can be clearly heard at a neighbouring property. As a result, in order to minimise the detrimental effect on amenity of neighbouring residential properties I recommend the following condition to restrict the hours of use of the zip line:

- The zip line shall only be used between the hours of 9:00am - 8.00pm Monday to Friday; 9:00am - 5:00pm Saturdays and 10:00am - 04:00pm Sundays and bank holidays.

Site notice: not applicable

5. APPRAISAL

5.1 This application was called into committee by Cllr Davis per the request of the objecting neighbours at The Old Church House.

5.2 Key Issues

- Principle of the development in the Green Belt/impact on the openness of the Green Belt
- Impact on neighbouring amenity
- Representations

5.3 Principle of the development/Impact on the openness of the Green Belt

5.3.1 The site is within the Green Belt, where under local policy GB1 the construction of new buildings other than for agricultural or forestry purposes is generally considered to represent inappropriate development. The supporting text to policy GB1 states that development within the Green Belt will normally be permitted where it is acceptable "within the terms of national planning policy". It therefore follows that for any development to be acceptable any proposal must comply with the provisions of the NPPF.

5.3.2 Paragraph 149 of the NPPF lists a number of exceptions to inappropriate development, part b) appropriate small-scale facilities for outdoor sport or recreation, nature conservation, cemeteries and for other uses of land which preserve the openness of the Green Belt and which do not conflict with its purposes; and part d) Limited infilling, alteration or replacement of an existing building where the extension(s) or alterations are not disproportionate to the size of the original building, and in the case of a replacement building the new building is not materially larger than the building it replaces.

5.3.3 The NPPF offers a definition of previously developed land in the glossary stating: Land which is or was occupied by permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure.

5.3.4 Paragraph 137 of the NPPF goes on to state that, 'The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence'.

5.3.5 The application retrospectively proposes removing the two existing zip line/abseil towers and replacing them just to the north with two zip line/abseil towers. Whilst the towers are at a longer distance from each other (75m versus 60m), and thus the connecting cables are slightly longer, I find that the proposed fits the definition provided within the

NPPF for an exception to inappropriate development, as outdoor sport or recreation that preserves the openness of the Green Belt and does not conflict with its purposes. However, it would be a condition of any approval that the existing zip line/abseil towers, located just to the south of those recently constructed, be removed within three months of any approval. After completing a site visit, it does appear that the older landing tower has already been removed.

5.3.6 The proposal is therefore considered acceptable provided the new development does not have a greater impact on the openness of the Green Belt and is compliant with Core Strategy Policy GB1 and the NPPF.

5.4 Impact on neighbouring amenity

5.4.1 In accordance with Core Strategy Policy EQ9, all development proposals should take into account the amenity of any nearby residents, particularly with regard to privacy, security, noise and disturbance, pollution, odours and daylight.

5.4.2 Given the existence of two zip lining/abseil towers at Kingswood Centre just to the south of those that have been recently constructed, as well as the fact that the replacement towers are not materially larger or taller than the previous towers, I do not have concerns about the general amenity of surrounding neighbours being affected. However, it would be a condition of any approval that no additional lighting be installed.

5.4.3 The neighbouring property that has commented on the application also made a complaint to the Council's Environmental Health Division, citing the noise levels generated by the users of Kingswood Centre as a nuisance. Environmental Health subsequently installed noise monitoring equipment at the neighbouring property for a period of time. Upon reviewing the results of the noise monitoring, Environmental Health have responded with the comment provided within the Representations section of this report, which also recommends placing a restriction of the hours of operation of the zip wire. I have reviewed this proposed restriction with the LPA's Solicitor, who has advised that said restriction does pass the required Planning tests and restricting use of the zip wire to certain times would be enforceable by the employees of Kingswood Centre. As such, the recommended condition has been added below.

5.4.4 It is therefore considered that the proposals would raise no undue concerns in respect of neighbour amenity, so long as the operation of the zip wire is restricted to the hours suggested by Environmental Health. As such the development complies with Policies EQ9 and Appendix 6 of the Core Strategy.

5.5 Representations

5.5.1 A neighbour objection was received on 1/9/22 which focused on the location of the Zip Line overlooking the dwelling to the northeast, The Old Church House. The objection also noted that there are several anomalies/mistakes on the plans submitted and focused heavily on the noise generated at Kingswood Centre. Each of these concerns will be considered in turn.

5.5.2 Regarding the location of the Zip Line overlooking The Old Church House (according to the occupant of the dwelling) - I conducted a site visit on 1/9/22 and found there to be no overlooking of The Old Church House by the newly constructed Zip Line landing platform. Said platform is located approximately 75m to the south of The Old Church House and is

separated by an overgrown track with dense shrubbery and trees on either side. What I believe the applicants think they can see from their bedroom window is a smaller play area/low ropes course that has been constructed at the northeast corner of the Kingswood Centre property, which is approximately 35m to the west of the dwelling. In September, I could barely see the top of the timber play area/low ropes course through the trees, but it is feasible that when the trees are bare the structure may be more visible. However, at a distance of 35m from The Old Church House, which exceeds all requirements for distance between facing windows within the Core Strategy, it is my opinion that the amenity of the occupants of The Old Church House is not materially impacted by this play area/low ropes course. To clarify though, that structure is not being considered within this application and according to the applicant, a low ropes course has been in that location for approximately 18 years.

5.5.3 I did inform the objecting neighbours of my site visit and my belief that a structure 75m to the south would not overlook their bedroom window. Their Ward Councillor also visited the objecting neighbour and agreed with my contention that overlooking is not a concern. However, the neighbours do still believe that when the trees are bare, there is overlooking of their property from the Zip Line landing platform.

5.5.4 Regarding the notation that there are several anomalies/mistakes on the plans submitted, notably that one of the newly erected Zip Line towers is noted for demolition, after visiting the property I do not find this to be accurate. In my interpretation, the plans do accurately reflect the location of the former Zip Line towers, as well as those newly constructed.

5.5.5 There are areas within the eastern side of the Kingswood Centre property that are seemingly utilised for outdoor activities, which are not noted on the plans submitted. For instance, there are clusters of stumps to the east of the obstacle course/former dirt bike track. These stumps appear to be used for campfires and outdoor recreation and in my opinion do not classify as development under the NPPF.

5.5.6 Lastly, regarding the noise complaints, this is addressed within paragraph 5.4.3 above.

6. CONCLUSIONS

6.1 The application site is previously development land used for outdoor recreation purposes and the proposal would have no impact on the openness of the Green Belt given its size, height and location within an existing outdoor education centre. It will cause no material harm to the amenity of neighbouring residential properties provided that there is no additional lighting and the use of the zip wire is restricted to the specified hours. As such, I recommend the approval of this application.

7. RECOMMENDATION - APPROVE Subject to Conditions

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.
2. The development shall be carried out strictly in accordance with approved drawings: 3284-01-01 Application Boundary, 3284-01-02 General Arrangement, 3284-01-03 Tower and Zip Line Elevations received 4/8/22.

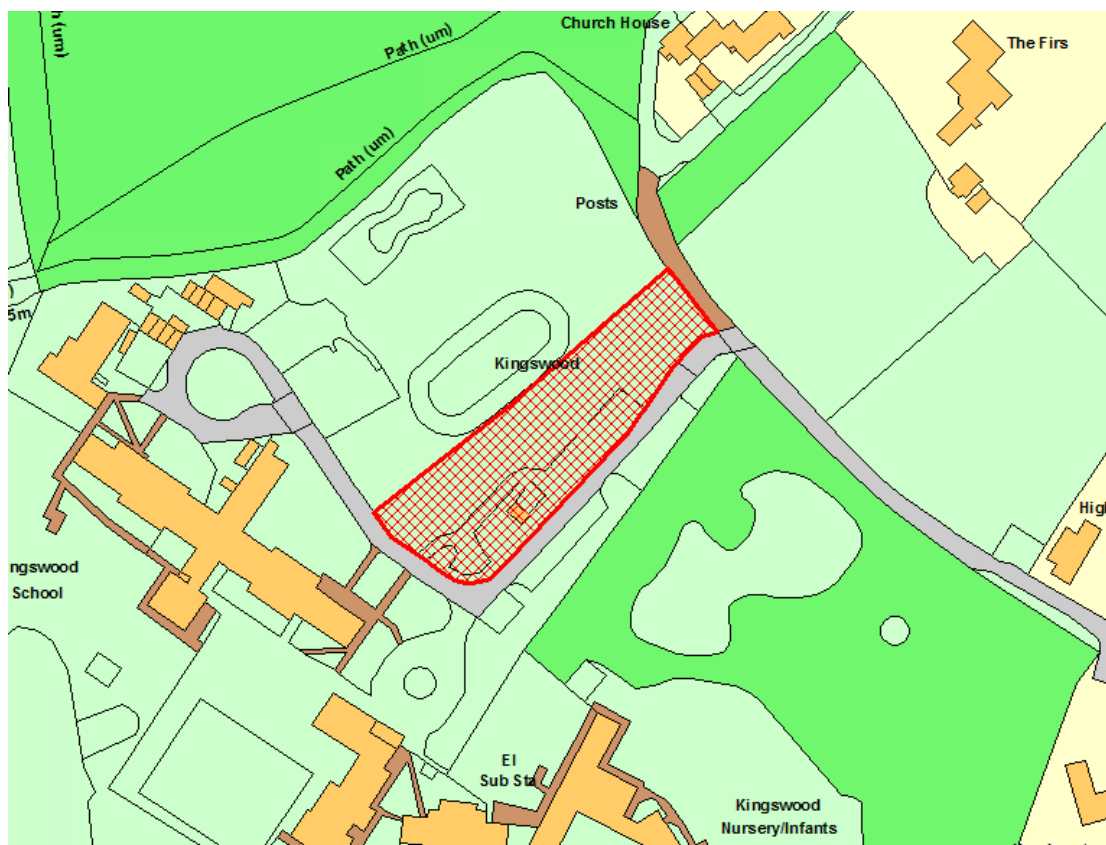
3. The materials used for the external appearance of the zip lining/abseil towers are required to match that provided on plan 3284-01-03 Tower and Zip Line Elevations (received 4/8/22).
4. The approval of this application does not imply permission for any additional lighting surrounding the zip lining/abseil tower area.
5. The zip line shall only be used between the hours of 9:00am - 8.00pm Monday to Friday; 9:00am - 5:00pm Saturdays and 10:00am - 04:00pm Sundays and bank holidays.
6. The existing zip lining/abseil towers, located just to the south of those considered under this application and as noted on the submitted General Arrangement plan numbered 3284-01-02 dated July 2022 must be removed in their entirety within three months of the date of decision.

Reasons

1. The reason for the imposition of these time limits is to comply with the requirements of Section 91 of the Town and Country Planning Act 1990.
2. In order to define the permission and to avoid doubt.
3. To safeguard the amenity of the area in accordance with policy EQ11 of the adopted Core Strategy.
4. To safeguard the amenity of the area in accordance with policy EQ11 of the adopted Core Strategy.
5. To ensure that the use of the premises does not detract from the reasonable enjoyment of surrounding residential properties in accordance with policy EQ9 of the adopted Core Strategy.
6. The site is within the Green Belt within which, in accordance with the planning policies in the adopted Core Strategy, there is a presumption against inappropriate development

Proactive Statement - In dealing with the application, the Local Planning Authority has approached decision making in a positive and creative way, seeking to approve sustainable development where possible, in accordance with paragraph 38 of the National Planning Policy Framework, 2021.

INFORMATIVE - The applicant is reminded that, under the Conservation of Habitats and Species Regulations 2017 (as amended) and the Wildlife and Countryside Act 1981 (as amended), it is an offence to (amongst other things): deliberately capture, disturb, injure or kill great crested newts; damage or destroy a breeding or resting place; deliberately obstruct access to a resting or sheltering place. Planning approval for a development does not provide a defence against prosecution under these acts. Should great crested newts be found at any stages of the development works, then all works should cease, and Natural England should be contacted for advice.



Kingswood Centre Barn Lane Kingswood Staffordshire WV7 3AW

**22/00800/FUL
NON MAJOR**

Mr Philip Hammonds

**HATHERTON
Cllr C Benton,
Cllr D Williams**

Doveleys Farm Sandy Lane Hatherton Staffordshire WS11 1RW

Retrospective application for alterations to existing vehicular access and provision of access drive off Hatton Road/Sandy Lane junction

1. SITE DESCRIPTION AND PLANNING HISTORY

1.1 Site description

1.1.1. The application site extends to approximately 380 sq.m. and passes through the centre of an existing field which has previously been used for equestrian purposes. The remains of the equestrian use (a menage) can last be seen on 2016 aerial photos and since that time the site has been grassed over and free from development. The new access is proposed to serve Doveley's Farmhouse, which is adjacent to the north-west.

1.1.2 The eastern-most part of the application site previously consisted of a grass verge off the highway (measuring approximately 4m in depth) beyond which was a field gate into the site. As part of this development the grass verge has been concreted and the field gate has been relocated further into the site (around 12m from the edge of highway) with new timber perimeter fencing. The new driveway extends a length of approximately 74m, joining up with the curtilage of Doveley's Farmhouse to the north-west.

1.2.3 The site is within an area of mixed use comprising residential, agricultural and equestrian sites. There are dwellinghouses directly opposite the site which fall under Cannock Chase District Council.

1.2 Planning History

1980, Erection of one detached house and garage, refused (80/00605)
1989, Residential Development 2 Dwellings, refused (89/00674)
1993, Certificate of Lawful Use for the use of land as stables and grazing, approved (93/00910)
1993, Stables and tack rooms, approved (93/00953)
1997, Field shelter for horses, approved (97/00780)
1998, Change of use of agricultural building to restoration of furniture, refused (98/00177)
1998, Use of building coloured red on the attached plan as a Class B1 Workshop, approved (98/00731)
1999, Field shelter for horses, approved (99/01161/FUL)
2005, All weather menage for horses, approved (05/00371/FUL)
2016, To confirm the residential curtilage of the dwelling house, refused (16/00977/LUE)
2018, The demolition of an existing Class B1 industrial unit, outbuildings (including stables) and the erection of an extension to an existing Class C3 residential dwelling, the erection of a two-bay garage building and the extension of residential curtilage, withdrawn (18/00584/FUL)
2019, Creation of vehicular access and erection of brick retaining walls, approved (19/00007/LUE)
2019, Detached dwelling and garage, refused (19/00358/OUT)

2021, Extensions to existing dwelling incorporating re-build of existing barn, approved (21/00904/FUL)

2. APPLICATION DETAILS

2.1 Proposal

2.1.1. This is a retrospective application for alterations to the existing vehicular access and the provision of a new hard-surfaced access drive off Hatton Road/Sandy Lane junction to serve Doveley's Farmhouse.

2.2. Agents Submission

2.2.1 The application is accompanied by a covering letter and an Access Assessment Report, key points as follows:

- There has always been a field access in this location.
- The original access to Doveley's Farm (marked as Access 1 on the drawings) is now used solely to access the stables.
- In 2013 a new access was constructed (marked as Access 2 on the drawings) adjacent to Doveley's Farmhouse which was used to serve the farmhouse. Access 2 has now been closed off due to concerns regarding visibility/highway safety concerns.
- Access 3 (the subject of this application) is now used to access the farmhouse from the Hatton Road/Sandy Lane junction.

3. POLICY CONTEXT

3.1 Within the Green Belt

3.2 Adopted Core Strategy

Policy GB1: Development in the Green Belt

Policy EQ1: Protecting, Enhancing and Expanding Natural Assets

Policy EQ9: Protecting Residential Amenity

Policy EQ11: Wider Design Considerations

Policy EQ12: Landscaping

Policy EV12 Parking Provision

3.3 National Planning Policy Framework

Chapter 13: Protecting Green Belt Land

Chapter 15: Conserving and enhancing the natural environment

3.4 National Planning Policy Guidance

3.4.1 Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

3.4.2 The law makes a clear distinction between the question of whether something is a material consideration and the weight which it is to be given. Whether a particular consideration is material will depend on the circumstances of the case and is ultimately a

decision for the courts. Provided regard is had to all material considerations, it is for the decision maker to decide what weight is to be given to the material considerations in each case, and (subject to the test of reasonableness) the courts will not get involved in the question of weight.

4. CONSULTATION RESPONSES

Councillors (expired 12/09/22) No comments received

Parish Council (comments received 26/08/22) Hatherton Parish Council fully supports this application as it is an improvement to the original access and enhances highway safety.

County Highways Officer (comments received 08/09/22) Acceptance. This application is retrospective and therefore this recommendation of approval can only be based upon the work carried out. The location is semi-rural. There are no recorded vehicular accidents at this location in the last 5 years. An informative is required regarding a retrospective Section 184 Notice of Approval.

County Ecologist (comments received 17/10/22) The application is a retrospective application for creation of a new access drive. This means that hardstanding has increased, with the loss of a small area of pasture grassland. It is recommended that biodiversity enhancements are put in place to mitigate for this loss. Suitable improvements could include the planting of native standard trees (parkland type), or creation of a new native hedge to the side of the access track. A list of species and planting specifications is appended for information. If minded to approve, it is suggested that a condition requiring submission of landscaping plan to provide biodiversity enhancement is required.

NatureSpace Officer (expired 12/09/22) No comments received

Western Power (comments received 29/09/22) National Grid do have apparatus in this area and do have concern regarding the works. The National Grid plan shows that there is an Hv underground cable (red line) in the verge adjacent to the area in question. If ground levels are to be altered this may alter the depth of the cable. This cable should be half a metre deep. If the levels change this could cause the cable to be too shallow or too deep which is a huge safety issue for National Grid. Also HSE safe dig regulations must be followed when working in proximity to our cables.

There is also another underground Hv cable within the land in question. All of the above is relevant to this also.

There is also an H pole with two stay wires in this area which forms part of the high voltage electricity network (labelled Sandy La.). No excavation can be done within 3 metres of the poles or stay wires as this could undermine them. Also a 3 metre safety zone must be maintained from the overhead lines themselves.

We also have an Lv pole and associated conductor (Circle and Blue line labelled 2). This is a lower voltage than the red line but must still be respected by following the same rules as above.

As with any works taking place in proximity to National Grid apparatus it is best for the person carrying out the works to contact National Grid directly prior to the works taking place. This way NG can advise them how best to carry out their works as safely as possible.

Also if the works cannot be carried out safely then NG staff can best advise them on how to go about requesting a quote from NG to divert the apparatus at their cost.

Cannock Chase District Council (expired 12/09/22) No comments received

Site Notice (expired 15/09/22) No comments received

Neighbours (expired 12/09/22) No comments received

5. APPRAISAL

5.1 This application has been called into Planning Committee by Councillor Benton who makes the following comments:

- The alleged redesignation of the land either side of the access drive as part of the residential curtilage is mistaken.
- Planning permission would be required for residential use and would not be forthcoming.
- The land clearly has no current residential permitted development rights. That could be made abundantly clear by condition to avoid doubt.
- Furthermore, the land concerned (some 0.22 ha) is perfectly capable of being used as a paddock or for agricultural/horticultural purposes

5.2 Key Issues

- Principle of Development
- Impact on the character and appearance of the Area/Landscape
- Neighbour Amenity
- Ecology
- Highways

5.3 Principle of Development

5.3.1 The development is within the Green Belt where there is a presumption against development subject to a number of exceptions. As stated within paragraph 150 of the NPPF and Policy GB1 of the Core Strategy, engineering operations and material changes in the use of land can be acceptable forms of development providing that they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

5.3.2. It has previously been established with a Certificate of Lawfulness (planning application reference 16/00977/LUE) that the field containing the application site has a long-established use for equestrian purposes and does not form part of the residential curtilage of Doveley's Farmhouse. However the new access road has been laid through the centre of the equestrian site (a separate planning unit from the farmhouse) to provide direct access to the dwelling via vehicle and the existing access has been blocked off.

5.3.3 It is considered that the regular and consistent use of the new access by vehicles accessing the dwellinghouse and any potential parking would result in this becoming part of the planning unit of Doveley's Farmhouse and is therefore tantamount to a material change of use of the land from equestrian to residential.

5.3.4. The application site/land in question is not physically separated from the residential curtilage and has taken on the function and appearance of serving and being incidental to the enjoyment of the dwelling. Bearing in mind also that the residential curtilage of Doveley's Farmhouse and the field containing the application are within the same ownership, it is considered that this development has served to bring the equestrian site into the same planning unit as the dwelling. And given that the new access runs the length of the site and is used regularly by the occupiers of Doveley's Farmhouse and their visitors, the restoration of any equestrian or agricultural use could prove impracticable.

5.3.5 Turning back to the wording of NPPF paragraph 150, engineering operations and material changes of use can be appropriate forms of development within the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. The land around the application site is a section of Green Belt which sits on the border between South Staffs District and Cannock Chase District. There is a distinct change in character on either side of the highway (Sandy Lane/Hatton Road) with land uses to the north, south and west of the highway (within South Staffs District) of a much more mixed character and looser development pattern. In contrast, the development to the east of highway (within Cannock Chase District) consists of wholly residential uses in a consistent domestic and dense plot pattern. It is the Council's opinion that the land around the application site forms a buffer between the agricultural uses to the west and the residential uses to the east, and for that reason the change of use to residential would fail to preserve the Green Belt's function to check the unrestricted sprawl of large built-up areas and to assist in safeguarding the countryside from encroachment (NPPF paragraph 138 refers).

5.3.6 In conclusion, I consider that the extension of domestic curtilage or garden land would have an adverse visual impact, which would injure the openness of the Green Belt, by way of potential 'inappropriate development', in terms of boundary treatments, changing the character and setting of the land to a cultivated appearance, outbuildings and the proliferation of domestic cluster that is normally associated with domestic gardens. Moreover, the proposal would not constitute an appropriate form of development as defined within NPPF paragraph 150 as it would conflict with the purpose of the Green Belt to restrict sprawl and to safeguard the countryside from encroachment.

5.3.7 In line with NPPF paragraphs 147 and 148, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

5.4 Impact on the character and appearance of the Area/Landscape

5.4.1 Core Strategy Policy EQ11 requires that developments are of high quality and are appropriate to their locality in terms of scale, volume, massing and materials. In line with Policy EQ4, the intrinsic rural character and local distinctiveness of the landscape ought to be maintained.

5.4.2 Whilst some of the grassed verge has been concreted over to facilitate the development, there is a similar access adjacent and the low-level timber fence is appropriate for the rural location. The operational development that has been carried out is not considered to have a detrimental impact on the character of the street-scene or of the wider landscape, as such the proposal complies with Policy EQ11.

5.5 Neighbour Amenity

5.5.1 Policy EQ9 of the Core Strategy states that the amenity of neighbouring occupiers will be taken into account as part of all development proposals.

5.5.2 The closest residential properties are those on the other side of the junction of Hatton Road/Sandy Lane. These dwellings fall within Cannock Chase District however a site notice has been posted and Cannock Chase District Council have been consulted.

5.5.3 The closest dwelling to the new access, No. 69 Sandy Lane is positioned opposite the site entrance, approximately 21m away from the development. Given that there was always a field gate in this position and that the development would serve a single dwelling rather than an equestrian site, it is considered that there would be no undue harm to residential amenity.

5.6 Ecology

5.6.1 Policy EQ1 states that permission will not be granted for development which will cause significant harm to habitats of nature conservation, including hedgerows and trees, where appropriate mitigation cannot be provided.

5.6.2 The development falls within the amber impact risk zone for Great Crested Newts where there is suitable habitat and a high likelihood of great crested newt presence. The development has not necessitated the removal of any trees or vegetation. Unfortunately since the works have already been carried out there is very little that could be done at this stage to address the impact on GCN.

5.6.3 The County Ecologist has been consulted who notes that that hardstanding has increased, with the loss of a small area of pasture grassland. It is recommended that biodiversity enhancements are put in place to mitigate for this loss. Suitable improvements could include the planting of native standard trees (parkland type), or creation of a new native hedge to the side of the access track. If minded to approve, it is suggested that a condition requiring submission of landscaping plan to provide biodiversity enhancement is required. It is therefore considered that there is no conflict with the aims of Policy EQ1.

5.7 Highways

5.7.1 Policy EV12 requires appropriate provision to be made for off-road parking and consideration of highway safety. The new access road has been constructed from an existing field gate (east of the application site) which has always been in place to serve the equestrian site. The application states that the existing access into the farmhouse off Sandy Lane (north of the application site) was considered to be unsafe from a visibility point of view, hence the existing access was blocked off and the applicant now accesses the dwelling via the new access road off the Sandy Lane/Hatton Road junction.

5.7.2. The applicant has commissioned an Access Statement which accompanies the application. This assessment concludes that the previous access into the farmhouse was dangerous due to limited visibility, and that the new access provides better visibility, as such is safer from a highway safety point of view.

5.7.3. The County Highways Officer has commented that the location is semi-rural and there are no recorded vehicular accidents at this location in the last 5 years. On that basis no objections are raised on highway grounds. The applicant is, however, required to apply for a retrospective Section 184 Notice of Approval from Staffordshire County Council for the works carried out.

5.7.4. The County Highways Officer was unable to comment on the safety of the previous access into the farmhouse, as no independent highways assessment has been carried out, however they confirm that the new access is undoubtedly safer than the previous. The proposal therefore complies with Policy EV12.

6. CONCLUSIONS

6.0.1 The new vehicular access through the equestrian site into the curtilage of the dwellinghouse is considered to amount to an extension of the domestic curtilage, tantamount to a material change of use from equestrian to residential and constituting an inappropriate form of development within the Green Belt. The material change of use would erode Green Belt openness by the proliferation of domestic clutter and would be harmful to the function of the Green Belt to prevent urban sprawl and encroachment into the countryside. Inappropriate development is harmful by definition and should not be approved except in very special circumstances. Whilst it is accepted that the new vehicular access is safer than the previous access in highway safety terms, there is limited evidence to demonstrate that the previous access was unsafe to the extent that a new access through a separate site was necessary, or that another access point would not have been suitable. On that basis the considerations that have been advanced do not amount to the very special circumstances needed to clearly outweigh the harm the development would cause to the Green Belt by reason of inappropriateness, as well as any other harm resulting from the development, contrary to Policy GB1 of the Core Strategy and paragraph 148 of the NPPF.

7. RECOMMENDATION - REFUSE

Reasons:

1. The site is within the Green Belt and the development would be tantamount to a material change of use from equestrian to residential purposes, thereby constituting inappropriate development which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The development is therefore contrary to Policy GB1 of the Core Strategy and paragraph 150 of the NPPF.
2. No considerations have been advanced that amount to the very special circumstances needed to clearly outweigh the harm the development would cause to the Green Belt by reason of inappropriateness, as well as any other harm resulting from the development, contrary to Policy GB1 of the Core Strategy and paragraph 148 of the NPPF.
3. The development by virtue of the incorporation of the application site into the residential curtilage, the provision of additional hardsurfacing, vehicles and general domestic paraphernalia associated with a residential use would be prejudicial to the openness, character, function and amenity of this part of the Green Belt, contrary to Policy GB1 of the Core Strategy.

Proactive Statement - Whilst paragraph 38 of the National Planning Policy Framework (2021) requires the Local Planning Authority to work with applicants in a positive and proactive manner to resolve issues arising from the proposed development; in this instance a positive solution could not be found and the development fails to accord with the adopted Core Strategy (2012) and the National Planning Policy Framework (2021).



Doveleys Farm, Sandy Lane, Hatherton, WS11 1RW

SOUTH STAFFORDSHIRE COUNCIL**PLANNING COMMITTEE – 15 NOVEMBER 2022****MONTHLY UPDATE REPORT****REPORT OF THE LEAD PLANNING MANAGER****PART A – SUMMARY REPORT****1. SUMMARY OF PROPOSALS**

1.1 A monthly update report to ensure that the Committee is kept informed on key matters including:

- Proposed training
- Any changes that impact on National Policy
- Any recent Planning Appeal Decisions
- Relevant Planning Enforcement cases on a quarterly basis
- The latest data produced by the Department for Levelling Up, Housing and Communities

2. RECOMMENDATION

2.1 That Committee notes the content of the update report.

3. SUMMARY IMPACT ASSESSMENT

POLICY/COMMUNITY IMPACT	Do these proposals contribute to specific Council Plan objectives?	
	Yes	
	Has an Equality Impact Assessment (EqIA) been completed?	
	No	
SCRUTINY POWERS APPLICABLE	Report to Planning Committee	
KEY DECISION	No	
TARGET COMPLETION/ DELIVERY DATE	15 November 2022	
FINANCIAL IMPACT	No	There are no direct financial implications arising from this report.
LEGAL ISSUES	No	Any legal issues are covered in the report.
OTHER IMPACTS, RISKS & OPPORTUNITIES	No	No other significant impacts, risks or opportunities have been identified.
IMPACT ON SPECIFIC WARDS	No	District-wide application.

PART B – ADDITIONAL INFORMATION

4. INFORMATION

- 4.1 **Future Training** – Further training dates are being arranged to cover Planning Enforcement as requested in the Member questionnaire responses. Please let us know if there are other topics on which you would like training. In addition, regular training/refresher sessions on using Public Access will be organised.
- 4.2 **Changes in National Policy** – No change since previous report.
- 4.3 **Planning Appeal Decisions** – every Planning Appeal decision will now be brought to committee for the committee to consider. There have been 7 appeal decisions since my last report, copies of the decisions are attached as Appendix 1-7. These relate to:
- 1) An appeal against an enforcement notice with an alleged breach of planning control as being '*without planning permission, the making of a material change of use of a dwellinghouse to use as a residential care institution falling under use Class C2, of the Town and Country Planning (Use Classes) Order 1987 (as amended)*' at 2 Woodlands Drive, Coven, South Staffordshire WV9 5DR. The appeal was dismissed, and the enforcement notice upheld (with minor corrections) for a number of reasons including impact on local character and amenity as well as a lack of parking. The inspector also concluded that the Council's refusal to grant a certificate of lawful use or development in respect of the existing use of the appeal premises as accommodation with care (C2) for a child (under 16) or young person (16-18) was well-founded, and that Appeal should not succeed. This appeal decision was circulated to all members on the 30th September via email as requested by Councillor Sutton.
 - 2) An appeal against a refusal for the use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/day room ancillary to that use, and the erection of a stable at land west of Dark Lane, Coven, Wolverhampton WV10 7PN. The appeal was allowed for permanent use as land for the stationing of caravans on the site because whilst the inspector recognised that the proposal constituted inappropriate development in the Green Belt, a number of factors in the planning balance weighed in its favour. These factors include (but are not limited to), the best interests of the children on site, the unmet need for gypsies and traveller pitches in the district, the absence of a 5 year supply and the Council's failure to make appropriate alternative provision. Overall the inspector concluded that the harm caused by reason of inappropriateness and any other harm, is clearly outweighed by other considerations in these particular circumstances, so as to amount to the very special circumstances necessary to justify the development.
 - 3) An appeal against an enforcement notice with an alleged breach of planning control as being '*without planning permission, the making of a material change of use of land, to land used as a Sawmill and for storage purposes including open outdoor storage, and unauthorised operational development to facilitate the material change of use consisting of the erection of a structure using container units to support a roof*

canopy and the erection of lighting columns x2 at Saredon Road, Cheslyn Hay, Walsall WS6 7JD. The appeal against the enforcement notice was allowed, however it was a successful outcome for the Council. The purpose of taking the action was to prevent the development from becoming time immune from enforcement action and in turn preventing the safeguarded land from coming forward as housing in the new Local Plan. As the inspector concluded, the imposition of a condition limiting the duration of the development would ensure the land is available for longer term development needs and would significantly limit any harm to the character and appearance of the area. The economic benefits of allowing the sawmill to continue and giving the appellant sufficient opportunity to secure an alternative site would outweigh the limited remaining harm to the character and appearance of the area.

- 4) An appeal against a refusal and an enforcement notice for the use of change of use of land to mixed use for the keeping of horses and as a residential caravan site for 3 No. gypsy families, each with two caravans including no more than one static caravan/mobile home, together with laying of hardstanding, erection of 3 No. ancillary amenity buildings and construction of driveway at Doveleys Farm, Sandy Lane, Cannock. The appeal was dismissed, and the enforcement notice upheld (subject to minor corrections), because (and not limited to) the inspector concluded that there is considerable harm to the landscape of the AONB caused by the development. It was also noted that the proposal would lead to Green Belt harm, and the inspector did not consider that this and the other identified harm is clearly outweighed by the factors in favour of the development. Overall, very special circumstances justifying a temporary or permanent grant of planning permission did not exist.
 - 5) Three separate appeals at 25, 31, 35 Deacons Field, Brewood, ST19 9GA. The appeals relate to 3 separate refused certificates of lawful use for allotments in agricultural use. The applications relate to previous planning enforcement cases where gardens have been extended into an agricultural field. The inspector concluded that on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of an allotment in agricultural use was not well-founded and that the appeal should succeed. The Council will keep a watching brief to confirm the use is in accordance with the granted certificate use.
- 4.4 In May 2020 the Secretary of State for Transport made an order granting development consent West Midlands Interchange (WMI). Documents can be seen here : <https://infrastructure.planninginspectorate.gov.uk/projects/west-midlands/west-midlands-interchange/> Officers are now working with the site promoters to understand next steps.
 - 4.5 In April 2022, PINS confirmed that the M54/M6 link road Development Consent Order (DCO) has been granted by the Secretary of State. Further information can be found here <http://infrastructure.planninginspectorate.gov.uk/document/TR010054-001195> . Latest communication suggests that site investigation works will soon start to take place on site.
 - 4.6 **Relevant Planning Enforcement cases on a quarterly basis** – 79% of Planning Enforcement cases are currently being investigated within 12 weeks of the case

being logged. This is slightly below the target of 80%. This is to be expected due to the level of old cases now being closed and the number of high priority open cases and appeals underway. The internal Service Review to look at areas for streamlining, efficiencies and service improvements is underway.

- 4.7 **The latest data produced by the Department of Levelling Up, Housing and Communities** – As members will recall, DLUHC sets designation targets that must be met regarding both quality and speed of planning decisions. The targets are broken into major and non-major development. If the targets are not met, then unless exceptional circumstances apply, DLUHC will “designate” the relevant authority and developers have the option to avoid applying to the relevant designated Local Planning Authority and apply direct, and pay the fees, to the Planning Inspectorate. Details can be seen at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/760040/Improving_planning_performance.pdf
- 4.8 We will ensure that the Committee is kept informed of performance against the relevant targets including through the DLUHCs own data.
- 4.9 For Speed – the 2020 target for major developments is that 60% of decisions must be made within the relevant time frame (or with an agreed extension of time) and for non-major it is 70%. For Quality – for 2020 the threshold is 10% for both major and non-major decisions. Current performance is well within these targets and the position as set out on DLUHCs website will be shown to the Committee at the meeting – the information can be seen on the following link tables:
- 151a – speed – major
 - 152a – quality – major
 - 153 – speed – non major
 - 154 – quality – non major

The link is here – <https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics>

- 4.10 The latest position is on the DLUHC website, and the key figures are below:

Speed

151a – majors – target 60% (or above) – result = 92.7% (data up to June 2022)

153 – others – target 70% (or above) – result = 86.2% (data up to June 2022)

Quality

152a – majors – target 10% (or below) – result = 1.8% (date up to March 2021)

154 – others – target 10% (or below) – result = 0.6% (date up to March 2021)

5. IMPACT ASSESSMENT – ADDITIONAL INFORMATION

N/A

6. PREVIOUS MINUTES

N/A

7. BACKGROUND PAPERS

Appendix 1 – Appeal Decision – 2 Woodlands Drive, Coven, South Staffordshire WV9 5DR

Appendix 2 – Appeal Decision – land west of Dark Lane, Coven, Wolverhampton WV10 7PN

Appendix 3 – Appeal Decision – Saredon Road, Cheslyn Hay, Walsall WS6 7JD

Appendix 4 – Appeal Decision – Doveleys Farm, Sandy Lane, Cannock

Appendix 5 – Appeal Decision – 25 Deacons Field, Brewood, ST19 9GA

Appendix 6 – Appeal Decision – 31 Deacons Field, Brewood, ST19 9GA

Appendix 7 – Appeal Decision – 35 Deacons Field, Brewood, ST19 9GA

Report prepared by:

Kelly Harris
Lead Planning Manager



Appeal Decisions

Inquiry Held on 16, 17 & 19 August 2022

Site visit made on 17 August 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2022

Appeal A Ref: APP/C3430/C/21/3289833

Land at 2 Woodlands Drive, Coven, South Staffordshire WV9 5DR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Nurtured Future Living against an enforcement notice issued by South Staffordshire Council.
 - The enforcement notice was issued on 25 November 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the making of a material change of use of a dwellinghouse to use as a residential care institution falling under use Class C2, of the Town and Country Planning (Use Classes) Order 1987 (as amended).
 - The requirements of the notice are: Permanently cease the use of the Land and Property as a residential care institution providing care to young persons who occupy the property under use Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended).
 - The period for compliance with the requirements is 3 (three) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act, as amended.
-

Appeal B Ref: APP/C3430/X/22/3292915

Land at 2 Woodlands Drive, Coven, South Staffordshire WV9 5DR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Nurtured Future Living against the decision of South Staffordshire Council.
 - The application Ref 20/00691/LUE, dated 13 August 2020, was refused by a notice dated 11 March 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as: The property comprises a residential property within a residential location in the Village of Coven. The property was constructed in the early 1970's and comprises a two bedroom semi-detached bungalow. The current tenant of the property-Nurtured Future Living Ltd provides care and accommodation to children that have typically been removed from their family home and are under care orders and the responsibility for care has been passed to a relevant local authority. Whilst "unregulated" homes are sometimes acceptable as a short term emergency solution, the preference is to place such children in homes that are "Regulated" by OFSTED and can then provide a viable long term, stable care solution/environment for such a child thus avoiding the need to move the child (again) and the uncertainty and anxiety this can induce. The purpose of the application is to ascertain that Class C3 (b) is a lawful use of the property.
-

Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by:
 - deleting all the wording of the alleged breach in paragraph 3 and substitution with, "Without planning permission, the making of a material change of use of a dwelling house to use as accommodation with care (C2) for a child (under 16) or young person (16-18)."
 - Deleting the words "a residential care institution providing care to young persons" in paragraph 5 and substituting with "as accommodation with care (C2) for a child (under 16) or young person (16-18)".
2. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. The appeal is dismissed.

Procedural Matters: Lawful Development Certificate and Enforcement Notice

4. The Inquiry sat for three days. Evidence was heard in person on day one and day two. On day three closing submissions were heard via video link.
5. Evidence at the Inquiry was taken under solemn affirmation.
6. S191(1)(a) of the Town and Country Planning Act, 1990 (the Act) states that if any person wishes to ascertain whether any existing use of buildings or other land is lawful he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.
7. A pre-inquiry note asked Nurtured Future Living Ltd (NFL) (the Appellant) to consider whether the description of the use for which a certificate of lawful use (LDC) is sought, as set out in the banner heading for Appeal B above, was correct; considering their evidence that the use of the dwelling to provide care for a child and young person would fall within Use Class C2 of Part C of Schedule 1 to the Town and Country Planning (Use Classes) Order, 1987, as amended (UCO). It was subsequently agreed by the main parties and confirmed at the Inquiry, that the correct description for the LDC should be: *"Use as accommodation with care (C2) for a child (under 16) or young person (16-18)."*
8. Furthermore, although acknowledging that the alleged breach of planning control in the Notice is not invalid, in the interests of consistency the main parties invited me at the Inquiry to vary the Notice to allege: *"Without planning permission, the making of a material change of use of a dwelling house to use as accommodation with care (C2) for a child (under 16) or young person (16-18)."*
9. I am satisfied that the revised description for the LDC and the alleged breach of control accurately describes the use which had been taking place on the Land

when the LDC application was made. I shall therefore correct the description of the use in the LDC application and the alleged breach of planning control in the Notice. I shall also correct the requirements of the Notice to align with the corrected breach. I am satisfied that the revised description for the LDC and corrections to the breach and requirements of the Notice would not cause any injustice to NFL or the Council. I have dealt with the appeals on that basis.

10. Appeal A was originally made on grounds (a) (b) and (c). Ground (b) was withdrawn by the appellant following early discussions with the Council and confirmed in their Statement of Case.

Appeal A on ground (c) and Appeal B

Background and Main Issues

11. In an appeal on ground (c) (Appeal A), the issue is whether the use of the Land to provide accommodation with care for a child (under 16) or young person (16-18) gives rise to a breach of planning control.
12. In Appeal B, NFL seek to establish that the use of 2 Woodlands Drive to provide accommodation with care for a child (under 16) or young person (16-18) is lawful. Section 191 (4) of the Town and Country Planning Act 1990 as amended (1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal and the issue is whether the Council's decision to refuse to grant a Certificate of Lawfulness of existing use or development (LDC) was well founded.
13. Prior to NFL first occupying the property in July 2020, the appeal property (No 2) was in use as a dwellinghouse. It is understood from a neighbouring resident, who was heard at the inquiry, that the previous occupiers were an elderly couple. There is no dispute between the parties that the use of No 2 at that time was a dwellinghouse as set out in Class C3(a) of Part C of Schedule 1 to the UCO.
14. Between July 2020 and August 2021, the property provided accommodation with care for a child or young person. It is common ground that the occupation of the appeal premises by a child or young person requiring "care" (as defined by the UCO) would result in the premises falling within Use Class C2 "residential Institution"¹.
15. It is established case law² that the materiality of a change of use is not just established by recognising that there has been a change in the use class. The correct starting point for such an analysis is the actual use of the property as a dwellinghouse at, or when last occupied before the existing use or alleged breach of planning control occurred. Consideration must be given to whether off-site or on-site effects of the change indicate that there is a change in the definable character of the site's planning land use. It is therefore those considerations that form the main issue in these appeals.

¹ Statement of Common Ground (SOCG), dated 14 July 2022.

² *North Devon DC vs First Secretary of State and Southern Childcare Ltd* [2003] JPL 1191

Reasons

16. No 2 Woodlands Drive is a modest two-bedroom semi-detached bungalow which is situated within a small residential cul-de-sac comprising a mix of semi-detached two-storey dwellings and bungalows. No 2 has an attached garage and front driveway. There is also an area of lawn to the front of the property and a private rear garden.
17. At the time of the application for the LDC (August 2021) the appeal property had been providing care for either a single child or a young person. We heard at the Inquiry from the Director of Operations at NFL (HS), and it was also set out in her Proof of Evidence (PoE), that NFL was created to provide care and supported living homes for children and young people, and the model used by NFL is 'Solo Placements'. The aim is that the home, which has a support package created to meet the individual needs of each child/young person, supports the person on a range of areas, including mental health needs, trauma, education, employability and independent living skills and health and wellbeing. In the case of the solo placements at the appeal premises, care is provided at a staff ratio of 2:1 with the care workers on 0800hrs to 2000hrs and 2000hrs to 0800hrs shift patterns. In addition, the home had a house manager who attended the property Monday-Friday between 0900hrs and 1700hrs. There is a company pool car left at the property to enable the care workers to transport the cared for child or young person to education, appointments, etc.
18. From the evidence before me, including what I heard at the Inquiry and saw on my site visit, there are on-site and off-site impacts attributable to the use of the property to accommodate a child or young person with care. I consider below how those impacts have affected the character of the appeal site and its planning land use.

Staffing

19. As described above, NFL advise that the care of a child or young person requires a staff ratio of 2:1. The Inquiry was told that this arrangement also seeks to reflect a typical family dynamic, providing two parental figures. However, the carers do not reside at the property and operate on day and night shift patterns with a 15 minute handover period.
20. In addition to the care workers, the home has a house manager. The manager attends the property Monday - Friday during office hours (0900hrs – 1700hrs) to undertake administrative duties and tasks. Those duties include managing care arrangements and carers; reviewing referrals and complaints; and completing paperwork. Whilst those duties are associated with the care of the child/young person in the home, the house manager is not a care worker.
21. HS also told the Inquiry that during office hours she would visit the property at least once a fortnight, and there may also be visits from social workers, family/friends, health professionals, although some of those meetings may take place via video link. If Ofsted registered there would also be six monthly inspections by two inspectors.
22. The previous C3(a) use of the dwellinghouse would not have had a house manager, i.e. a member of staff who attends the property every weekday, at set hours, to carry out office/administrative tasks. Whilst it would not be

unusual these days for a home to have an office space within it, there is no evidence that the previous C3 (a) utilised any of its rooms as office space. Nor is there evidence that the previous use required an employee from outside of their household to attend the property with the regularity and frequency that occurs with NFL's house manager. There is thus a demonstrable need for the property to provide on-site parking for the house manager and a regular pattern of car movements associated with that member of staff which was not found with the previous C3(a) of the property and would not be found in a typical C3(a) dwelling.

23. In addition, the care workers also attend the property on a regular shift pattern and generate a parking requirement. I appreciate that an elderly person/couple might have the need of a carer to call in the morning and evening time. However, it would be unusual for two carers to be at the property all day and night. Likewise, the shift patterns of the four carers would not replicate the patterns of activity likely to be associated with the previous use of the dwelling, and whereby there are generally four cars, in addition to the pool car at the property during shift changeovers. Nor would the previous use of the property as a C3(a) dwelling have required an additional company/pool car to be parked at the property and utilised solely for transporting a cared for child/young person.
24. In this case the property is a two-bedroom bungalow, with a driveway originally laid out for the parking of two cars. I accept that there is a possibility that the occupants of a two-bedroom bungalow may have three cars and noted on my site visit that the majority of bungalows within the street have adapted their drives so that a third vehicle can be accommodated. However, from the evidence before me, including the photographic evidence provided by third parties and incorporated within the Council's and HS evidence, the staffing requirements alone generate a different pattern of traffic movements and necessitate a greater parking requirement than would usually be associated with a single household occupying a bungalow of this size, and moreover, the previous use of the property which was occupied by an elderly couple.
25. The employment of a house manager, number of carers with regular shift patterns, and the on-site requirement for a company car, mean that vehicles have been regularly parked on the road/pavement outside the home. I appreciate that on-street parking is not uncharacteristic within residential areas and often occurs for short periods when there are deliveries to properties or family friends visit. However, given the nature of Woodlands Drive, including the type and size of the properties within it, generally occupied by more elderly residents, and in the absence of any substantive evidence that on-street parking occurs with the frequency and regularity necessitated by the use of the property to accommodate with care a child/young person, the staffing requirements of the home alone has in my opinion had an impact on the wider area and had a material effect on the character of the use.

Occupants

26. The property has been in use to provide care for a single child or young person. The details of those placements are set out in the SOCG and there is no dispute between the parties that those placements have involved a child or young person with behavioural/safeguarding and/or mental health concerns.

27. Third party objections, submitted both in response to the original application for the LDC and in response to the appeals, record previous incidents and express concerns over noise/disturbance from the property, inappropriate behaviour and regular visits from emergency services, as well as concerns relating to on-street parking.
28. HS Addendum PoE sets out the background to the police attendant record for the property which has been obtained from the police and records their attendance between June 2020 – June 2022³. It shows that prior to the service of the enforcement notice there had been 20 police attendances since the first use of the appeal premises as accommodation for the care of a child/young person. The records indicate that the call outs related to a variety of issues, including violence against a person; child safety concerns; criminal damage; community nuisance; anti-social behaviour and missing person inquiries. In addition, HS also advised at the Inquiry that it was not unusual for a cared for child to have an 'incident', which NFL describe as a behavioural change that involves verbal, physical or property damaging aggression/frustration. HS advised in cross-examination that those incidents could be as many as five a week but would not normally require a police presence. They would however often involve shouting, screaming and banging.
29. Whilst recognising that generally there is a reasonable explanation for the child/young person's behaviour, and in the acknowledgement that NFL staff are specifically trained to de-escalate those incidents, there is clear evidence from the police attendance log; correspondence from Staffordshire Police⁴; correspondence from neighbouring residents, and evidence at the Inquiry from a Local Councillor, that the occupation of 2 Woodlands Drive by a child or young person has resulted in an increased police attendance at the property, as well as periods of intense noise and disturbance, albeit each incident might be short lived. There is no evidence that the police were required to attend the previous use of the property as a C3(a) dwelling and episodes of noise and disturbance from the previous occupation of the dwelling by elderly residents would have been extremely rare. The use of the property has resulted in a propensity for noise and disturbance, and an increase in police attendance to the premises within the street. Consequently, there has been a resultant material change in the character of the use.

Other Matters

30. The appellant and Council have submitted other appeal decisions which are intended to support their respective cases. It is no surprise that these generally pull in opposite directions in respect of the various issues and cases put forward. Whilst I have read them, and some of them were discussed in more detail at the Inquiry, what is clear is that the individual circumstances of each appeal case are seldom, if ever, replicated. Both parties agreed that they could not find any previous decision involving solo placements. However, that does not mean that all accommodation which provides care for a single child/young person would not result in a material change of use and is lawful. I also note that none of the examples provided by either of the main parties related to an application under s191(a) of the Act, for an existing use. However, it is clear that each case includes consideration of differing issues which are attributed differing amounts of weight as the individual

³ Appendix 1, HS Addendum Proof of Evidence.

⁴ Council's PoE Appendix 1, email correspondence from Staffordshire Police.

circumstances dictate. When considering different issues in areas with individual characteristics, it is no surprise that a spectrum of conclusions and different decisions arise. Whilst I have born in mind the general conclusions, I have determined these appeals in relation to the individual circumstances of the case and evidence before me.

Conclusions

31. For the reasons set out above I consider that the use of the property with care for a child or young person has resulted in a material change in the use of the property. There is no planning permission granted by the local planning authority for that change of use and that change of use is not permitted under any provision of the Town and Country Planning (General Permitted Development) (England) Order 1995, as amended. A breach of planning control has occurred and Appeal A on ground (c) fails.
32. In addition, I conclude that the Council's refusal to grant a certificate of lawful use or development was well-founded and Appeal B should not succeed.

Appeal A on ground (a), deemed planning application.

Main Issue

33. The main issue in this case is the effect of the development on the living conditions of neighbouring residents and the character of the surrounding area.
34. The proposal is for the use of the property as accommodation with care for a child or young person. Children are a group sharing a protected characteristic and therefore the public sector equality duty (PSED) applies⁵.

Reasons

Background

35. Since September 2021 to provide a home for the care of a child or young person it is necessary for the home to be registered and Ofsted regulated. A pre-requisite of an application for Ofsted registration is a grant of planning permission for its use or an LDC. An unregistered home is only allowed to provide accommodation for young people requiring support (those aged 16-18) or for an approved emergency placement (28 days). NFL are seeking a grant of planning permission to enable them to apply and hopefully gain Ofsted registration for solo placements at the appeal property. If I was to grant planning permission for the proposed use, but NFL failed to obtain Ofsted registration for their use of the property, HS told the inquiry that NFL had made a decision that they would sell the appeal premises. However, as permission would be for the use of the Land and not solely for the benefit of NFL, the premises would be available for the permitted use by another operator. I have determined the appeal on that basis.

Parking

36. Policy EV12 of the South Staffordshire Local Plan, Core Strategy DPD, adopted 2012 (LP) sets out the Council's policy in relation to parking provision for new development. It states that the Council will require appropriate provision to be made for off street parking in development proposals in accordance with

⁵ Section 149 of the Equality Act 2010.

adopted parking standards. Those standards are set out in Appendix 5 to the LP which also includes details of how those standards should be used and their objectives. Whilst the proposed use does not fall within any of the standards specified, Appendix 5 specifies that for any use not included in the standards, the number of parking spaces will be assessed and determined based on the individual merits of the scheme. Furthermore, the objectives of the standards make it clear that it is necessary to ensure that sufficient space is provided for a development to ensure that parked vehicles do not become either a safety hazard or environmental nuisance.

37. There is no dispute that the use of the property as a care home would, at certain times of the day, i.e. shift changes, require five cars to be parked at the property. Furthermore, with the pool car and vehicles belonging to the two carers and house manager, there would be a continual requirement for four parking spaces during the daytime. In addition, there will be routine visits from NFL's Director of Operations, social workers, personal advisors, Ofsted Inspectors, and occasional visits from emergency services. As with any household there will also be other visitors and deliveries at times.
38. The driveway and parking area within the front garden of No 2 has recently been modified to make provision for three cars to be parked off the road, and HS has sought to demonstrate that with further modification space could be provided to park four cars on the forecourt⁶. However, from my inspection of the site this arrangement would be difficult to achieve in practice and would require cars to be parked in tandem. Similarly, although HS suggested at the Inquiry that staggering the carer's changeover could reduce the need for a fifth car parking space, I believe this would be difficult to achieve in practice. It would require clear communication between all carers. The draft management plan⁷ indicates that there would be 13 different care workers employed on a shift pattern at No 2. With that number of different employees, it is unlikely that communication would be perfect. Indeed, it is clear from third party representations that previously when assurances have been made by NFL that they would address residents on-street parking concerns, there was little if any improvement. On-street parking has continued to be a feature associated with the previous use of the property as a care home.
39. I appreciate that on-street parking is often found on residential streets in areas where houses do not have any off-street parking, or for short periods of time by visiting family, friends, or delivery vehicles. However, from the evidence before me, and observations on my site visits, Woodlands Drive is characterised by residential dwellings which have sufficient off-street parking to meet the needs of their occupiers and in accordance with the Council's parking standards. Any on-street parking is therefore generally short term and associated with visitors and deliveries. That would not be the case with the proposed use of No 2 Woodlands Drive where there is not sufficient off-street parking for its use as a care home, and staff would regularly have to park on the road.
40. I recognise that the Council has not raised any highway safety concerns, however it is evident from third party representations that constant on-street parking in this location is an environmental nuisance. Whilst I appreciate that NFL would require their staff to park responsibly, Woodlands Drive has a

⁶ Photograph, Appendices to HS Proof of Evidence.

⁷ Appendices to HS Proof of Evidence.

relatively narrow carriageway and thus unless cars are parked partially on the pavement, it is difficult for larger vehicles to pass. Parking on the pavement would also obstruct pedestrians, particularly those with pushchairs, wheelchairs or mobility scooters. In addition, the appeal property is situated close to the junction of Woodlands Drive with Wood Avenue. Any on-street parking close to the junction introduces greater opportunities for conflict between vehicles entering and leaving Woodlands Drive, which would not to my mind be in the best interests of highway safety.

41. I conclude that the proposed development would not provide for sufficient parking and there would be conflict with the development plan, in particular with Policy EV12 of the LP the aims of which are set out above.

Noise and disturbance

42. Woodlands Close is a short residential cul-de-sac. There is an intimate relationship between the dwellings and their occupants by reason of the small number of dwellings and their semi-detached form and layout. Their linked garages/driveways and open frontages onto a narrow carriageway all contribute to that relationship and to the character of the area. Considering that intimate relationship, any significant increase in activity or noise at any one of the properties would in my view be extremely noticeable within this residential neighbourhood.
43. The solo placements that took place between July 2020 and October 2021 at the appeal premises included 28 day emergency placements and involved children and young adults that required specialist services with multiple needs such as intensive family support, specialist child and adolescent mental health services, and services for children with disabilities (Tier 3). From the evidence before me, including that heard at the Inquiry and within correspondence from neighbouring residents, the Council, the Police, and local Councillors, including accounts of a meeting with NFL, the use of the premises during that period resulted in episodes of noise and disturbance to neighbouring residents. HS confirmed at the Inquiry that it was not unusual for a child or young person in solo care to have an 'incident'. Unless those incidents involved violence the police would not normally be involved. However, even when contained within the property an incident would be noisy and often with shouting, screaming and banging until the situation is de-escalated. Incidents where there was a requirement for police attendance (20 within a 14 month period), included records of violence and aggression towards persons, environmental/community nuisance, criminal damage, missing persons and concerns for the safety of a child⁸.
44. The previous use of the premises to provide accommodation with care to a child or young person took place in a regime which did not require the home to be regulated. Nevertheless, NFL only employ staff who are appropriately qualified and who have been trained to a high standard in the following areas: mental health awareness; positive behaviour support; preventing radicalisation, safeguarding children, suicide awareness, whistleblowing, county lines, ligature training and team teach and de-escalation⁹. NFL are now seeking to gain Ofsted registration. This would allow NFL to house a child (10-14 years) on a long-term placement and HS advised that if regulated they

⁸ Staffordshire Police attendance record June 2020 -June 2022. HS Appendices Addendum Proof.

⁹ Staff Training, HS Proof of Evidence.

would not be required to take on the emergency placements which they have taken in the past. Long term placements mean that there would not be the frequency of new residents who require settling in periods and those are often the most disruptive periods. Furthermore, they would aim to take Tier 2 cases and would have a greater control over the placement and suitability of the appeal premises for that child.

45. As I set out in paragraph 39 above, Woodlands Drive by reason of its design, layout and generally more elderly occupants is sensitive to any changes in noise characteristics. Moreover, the appeal premises is attached to No 1 Woodlands Drive with an internal party wall between their respective living areas and abutting gardens and frontages. Correspondence received from a relation of a previous elderly occupier of No 1, expressed severe concerns about the behaviour of previous occupants and the impact this was having on the living conditions and health and wellbeing of their relative, in relation to noise and disturbance.
46. I understand that if the property becomes Ofsted regulated then NFL will have greater control over the placements they offer/receive, and it is likely that if they were able to secure a long-term placement for a Tier 2 child, then 'incidents' would be less frequent. I also recognise the positive outcomes that NFL have had with previous placements¹⁰. However, HS recognised at the inquiry that when registered NFL would be the appropriate organisation to accommodate the needs of all children or young persons, and that Ofsted prefers regulated providers to be unrestricted. Thus, there is no guarantee that Tier 3 placements would not occur, or if Ofsted regulation is not forthcoming, that emergency placements or young person's requiring support would not be accommodated by another provider. Furthermore, although not exclusively the case, the nature of solo placements is that they are required for a child or young person who would not engage positively with others and those children tend to come with a lot of traumas.
47. I have had regard to the range of family circumstances that could be accommodated in a typical C3 dwellinghouse, including families with teenage children who play loud music, may have parties, or a family that has a child with complex and specialist needs. However, whilst I appreciate that there are undoubtedly situations in residential neighbourhoods where there are incidents of anti-social behaviour from a C3 dwellinghouse use, a care home use will inevitably have a greater turnover of residents who require settling in, and those residents by the nature of their circumstances and need for solo placements will have a propensity to have regular 'incidents' resulting in noise and disturbance to neighbouring residents.
48. Noise and disturbance would not be solely in relation to the behaviour of the occupants. There would be demonstrably more vehicular movements associated with the C2 use than by a typical family occupying a small two-bedroom bungalow. Even if the occupiers of the bungalow had three cars, although less likely for a property such as this, then on a typical day the routine staffing alone in the care home would result in 10 vehicular movements, as opposed to six movements with a typical C3 use. The living room windows of the adjoining property No 1, are close to the parking area at the front of the appeal property. This intimate relationship means that the

¹⁰ Email in relation to AL placement, dated July 2020 Appendices HS Proof of Evidence.

comings and goings of carers on morning and evening shifts, including at weekends, would be extremely noticeable and cause some disturbance to the adjoining occupier.

49. I accept that regulation by Ofsted would give NFL more control over future placements and that the appellant would be required to comply with a range of regulations and rules governing the operation of the accommodation and child/young person and carers. I have also considered the proposed management plan. However, from the evidence before me NFL currently adhere to government legislation and guidelines and require their staff to be appropriately qualified and undertake a high standard of comprehensive training. Sound proofing of the party wall with No 1 would provide some mitigation and reduce the amount of noise transmitted to the adjoining property's living accommodation. However, noise would still emanate from open windows and there would be disturbance from the level of activity associated with the use.
50. For the reasons set out above, I conclude that the proposed use would result in a material increase in comings and goings from the property and a propensity for noise and disturbance which in this sensitive location would result in significant harm to the living conditions of neighbouring residents and have a harmful effect on the character of the area. There would be conflict with the development plan, and in particular with Policy EQ9 of the LP which seeks to ensure that new development does not unacceptably affect the amenity of residents or occupants, with particular regard to privacy, security, noise and disturbance, pollution, odours and daylight.

Fear of Crime

51. Third party correspondence in relation to the previous C2 use of the premises includes concerns in relation to security and in particular concerns in relation to the number of times the property was attended by emergency services, including the police.
52. Policy EQ9 of the LP includes a requirement that the amenity of residents is not unacceptably affected in relation to matters of security and is supported by paragraph 130 (f) of the National Planning Policy Framework (the Framework) which seeks to ensure, amongst other things, that the fear of crime does not undermine the quality of life or community cohesion and resilience. I have also had regard to relevant caselaw¹¹.
53. I recognise that given the number of call outs from the police associated with the previous use of the property and the noise and disturbance attributable to 'incidents' at the property, it is reasonable for neighbouring residents to feel some discomfort and concern about the impact of the proposed use on local surroundings. However, whilst understanding that a fear does not have to be recognised to be justified, there does need to be a sound basis for residents to be fearful for their security for material harm to arise. In this case the home would only provide a solo placement. Although the child or young person may display behaviour which is aggressive and disturbing, there is no evidence that such behaviour has ever previously resulted in criminal activity or been aimed at neighbouring residents or their properties. Furthermore, some of the Police

¹¹ *West Midlands Probation Committee v Secretary of State for the Environment, Transport and the Regions* [1997] 11 WLUK 123

visits have been in relation to missing persons, and not all are in response to violence.

54. Increased police activity within the street and noise incidents at the property will undoubtedly be concerning for neighbouring residents. However, given that the placements only relate to one child/young person and the high level of training and 2:1 staffing ratio that would be employed within the home, from the evidence before me, I do not consider that neighbouring residents fear of crime has a sound basis.
55. For the reasons given above, I conclude that the proposed development would not have a harmful effect on the security of neighbouring residents. There would be no conflict with the development plan in this regard nor with the Framework, the aims of which are set out above.

Other Matters

56. There is no dispute between the main parties that there is a compelling national need for regulated children's homes. This need is evidenced in the Children's Commissioner's Report¹², and it was heard at the Inquiry that this unmet need can mean that children are living in unsuitable accommodation, including in some instances caravans or tents.
57. However, it is the Council's case that there is not a demonstrable need for such accommodation in Staffordshire or South Staffordshire and rely on correspondence from Staffordshire County Council who advise that there is no evidence to suggest there is such a housing need in Coven for Staffordshire¹³. In addition, the Council has provided evidence of other homes which have been granted consent in the local area¹⁴. On the other hand, the NFL provided details of a recent enquiry for an urgent placement from Staffordshire County Council's Children's Services Team¹⁵. I also note that none of the previous placements at No 2 have been for a local child and AN accepted in cross examination that there is no evidence of a 'long standing, urgent or unmet local need.'
58. The evidence before me on local need is limited and not comprehensive. However, what is clear and undisputed is a demonstrable need nationally for regulated children's homes, a subset of which is a need for solo placements. The Framework also makes it clear that it is necessary to ensure that the needs of groups with specific housing requirements are addressed. A grant of planning approval for this development would help to secure Ofsted registration and provide a home with care for a child or young person. This would be a clear benefit in the planning balance.
59. As was the case with Appeal B, the appellant and Council have submitted other appeal decisions which are intended to support their respective cases. I have had regard to these decisions, but as noted by the appellant in their closing submission, every case turns on its own facts and cases concerning uses of this type pull in different directions. Therefore, whilst I have read them, and born in mind the general conclusions, I have determined this appeal in relation to its individual merits and short-comings.

¹² Children's Commissioner's Report Unregulated, September 2020.

¹³ Appendix 5 LPA Statement of Case.

¹⁴ Appendix 2 LPA Proof of Evidence.

¹⁵ Appendix to HS Proof of Evidence.

Planning Balance

60. Section 38(b) of the Planning and Compulsory Purchase Act, 2004 states that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
61. I have found that the appeal proposal would conflict with the development plan. The proposed development would not provide sufficient on-site parking for the use, and this would result in an environmental nuisance which would be harmful to the character of the surrounding area. Furthermore, I have found that there would be substantial harm to the living conditions of neighbouring residents through noise and disturbance. This would be in conflict with the development plan and the Framework (paragraph 130 (f)) which seeks to ensure a high standard of amenity for existing and future users.
62. On the other side of the balance is the demonstrable national need for regulated Children's homes, and for those homes to be in the right place and within a sustainable community. That need is supported by the Framework (paragraph 60). In this case the proposal would provide a home for a single child or young person and taking into account that level of provision should be afforded moderate positive weight in the planning balance.
63. I have had due regard to the PSED, but the harm caused by the proposed development as set out above, significantly and demonstrably outweighs its benefit in providing a home for a single child or young person, and in terms of eliminating discrimination, advancing equality of opportunity for those persons and fostering good relations between them and others. I therefore conclude that it is proportionate and necessary to dismiss this appeal.

Conclusion

64. For the reasons given above and taking into account all other matters raised, I conclude that Appeal A on ground (a) should not succeed.

Overall Conclusions

65. For the reasons given above, I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Town and Country Planning Act, 1990, as amended (Appeal A).
66. I also conclude that the Local Planning Authority's refusal to grant a certificate of lawful use or development in respect of the existing use of the appeal premises as accommodation with care (C2) for a child (under 16) or young person (16-18) was well-founded, and that Appeal B should not succeed.

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Constanze Bell Of Counsel, instructed by Marie Bourke, Senior Associate,
Tyr Law.

She called

Hayley Self, Director of Operations at Nurtured Future Living

Alyn Nicholls BA (Hons) MRTPI.

FOR THE LOCAL PLANNING AUTHORITY

Piers Riley-Smith Of Counsel, instructed by Pardip Sharma, South Staffordshire
Council.

He called

Ms Laura Moon Senior Planning Officer, South Staffordshire Council.

THIRD PARTIES

Councillor Wendy Sutton Brewood and Coven Ward.

Mr Alan Giles 16 Woodlands Close, Coven.

Documents submitted at the Inquiry:

1. Schedule of Conditions.



Appeal Decision

Hearing held on 26 July 2022

Site visit made on 26 July 2022

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2022

Appeal Ref: APP/C3430/W/21/3274008

Land west of Dark Lane, Coven, Wolverhampton WV10 7PN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Michelle Follows against the decision of South Staffordshire Council.
 - The application Ref 20/00404/FUL, dated 26 May 2020, was refused by notice dated 29 October 2020.
 - The development proposed is use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/day room ancillary to that use, and the erection of a stable.
-

Decision

1. The appeal is allowed and planning permission is granted for the use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/day room ancillary to that use, and the erection of a stable at land west of Dark Lane, Coven, Wolverhampton WV10 7PN, dated 26 May 2020, subject to the conditions in the Schedule to this decision.

Main Issues

2. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the revised Framework and any relevant development plan policies;
 - The effect of the proposal on the openness of the Green Belt;
 - The effect of the proposal on the Cannock Chase SAC; and
 - Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether the proposed development would be inappropriate development

3. The appeal site comprises a triangular parcel of land flanked on its western side by a canal. Extending along its eastern boundary is Dark Lane. The site is located within the countryside, outside of the village of Coven.

4. The site sits to the south of a modern dwelling, and to the north of an existing gypsy and traveller site, occupied by the appellant's parents and sister. On the eastern side of Dark Lane are further gypsy and traveller pitches and on the other side of the canal are cottages and a golf driving range. The surrounding area has a semi-rural character with gaps between the built form.
5. A static caravan is positioned on the site along the western boundary with a grassed area next to it forming a garden. The remainder of the site is largely laid out to hardstanding. The site is screened from the public realm by mature planting and boundary fencing.
6. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
7. Policy E of the Planning policy for traveller sites (PPTS) states that traveller sites, either temporary or permanent in the Green Belt are inappropriate development.
8. Policy GB1 of the South Staffordshire Core Strategy (2012) (CS) relates to development in the Green Belt and states that development proposals will be assessed in accordance with national guidance. Policy H6 relates to proposals for gypsy and traveller sites. Part 8 a) sets out that proposals that have a demonstrably harmful impact on the openness of the Green Belt will be resisted.
9. The appellant contends that both policies are not consistent with the Framework as they are more restrictive and do not take account of the 'very special circumstances' balance. Policy GB1 diverts to national policy in respect of development in the Green Belt allowing the decision taker to apply the Green Belt balance. Despite the appellant's contention I find that both policies are consistent with the Framework, as they seek to protect the Green Belt from inappropriate development.
10. The site contains a static caravan, but this would be re positioned within the site to sit parallel to Dark Lane. The proposal also includes the construction of a day room, along the southern boundary, stables and a space for a touring caravan to be parked in roughly the position currently occupied by the static caravan.
11. Both parties agree that the proposal would be inappropriate development in the Green Belt and based on the evidence before me I can only draw the same conclusion. As such, it represents inappropriate development within the Green Belt as set out in paragraphs 147 and 148 of the Framework, the PPTS and CS Policy GB1 and Part 8 a) of Policy H6.

The effect of the proposal on the openness of the Green Belt

12. The Framework states that one of the essential characteristics of the Green Belt is its openness. Openness is the absence of development notwithstanding the degree of visibility of the land in question from the public realm. Openness has both spatial and visual aspects.
13. The appellant contends that the proposal would be small scale residential development having a limited impact upon openness, at the bottom end of the scale of harm. The Council, however, advise that the quantum of development

made up of the mobile home, day room and stables would have a far greater impact on openness.

14. Visually I acknowledge that the proposed development would be largely screened from the public realm by existing boundary planting reducing the visual impact of the proposal. Conditions relating to the number of caravans, site layout, commercial use and vehicles and landscaping would also serve to mitigate this impact. However, in terms of Green Belt impact the proposal would introduce built form made up of a number of buildings and structures on the site resulting in a loss of openness in spatial terms. As such, I find that it would lead to a moderate reduction to the openness of the Green Belt contrary to one of the aims of the Framework.
15. One of the purposes of the Green Belt is to assist in safeguarding the countryside from encroachment. Prior to the siting of the static caravan the site was undeveloped. There has been an intrusion into the countryside, but this is limited due to the small area of the site and is well contained due to the neighbouring built form, road and canal. In addition, the site, in my view, is heavily influenced by and has more affinity to this built form rather than the wider countryside. The harm by this intrusion would not be significant, despite the presence of hardstanding, caravans and associated structures.

Effect on the Cannock Chase SAC

16. The appeal site lies within the 8-15km Cannock Chase SAC Zone of Influence (outer zone). The SAC is a European site and is principally an area of lowland heathland and the most extensive such habitat in the Midlands. The SAC contains the main British population of the hybrid bilberry, a plant of restricted occurrence; and important populations of butterflies and beetles. Also found within the SAC are the European Nightjar and five species of bats.
17. As the appeal site is in close proximity to the SAC, and residential development is of a type that is likely to result in recreational visits to the protected habitat and the creation of new paths, path widening, erosion and nutrient enrichment it is necessary for me, as the competent authority for the purposes of the Habitat Regulations¹, to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the SAC.
18. The Cannock Chase SAC Partnership has agreed Strategic Access Management and Monitoring Measures (SAMMM) with Natural England which requires a mitigation payment per residential dwelling from all new development within an 15km radius.
19. The appellant has submitted a UU which commits her to a financial contribution towards measures outlined in the SAMMM. I am satisfied that the contribution would sufficiently mitigate the development's impact overcoming the Council's concern in respect of this matter. As such, whilst the development would have a likely significant effect on the integrity of the SAC it would be adequately mitigated through monies in the UU.

Other Matters

20. I note that the Council consider the proposal would not harm the character or appearance of the Staffordshire and Worcestershire Canal Conservation Area

¹ Conservation of Habitats and Species Regulations 2017 (as amended)

and I have no reason to disagree. The proposal would preserve the significance of this designated heritage asset, in accordance with the Framework.

21. The Council have referred to two appeal decisions which they consider relevant to the scheme before me. However, it is incumbent upon me to assess the merits of the proposal before me based on its individual merits, as I have done. Whilst I have paid regard to these decisions it is evident that the individual circumstances in each appeal are not comparable to the scheme before me. They do not lead me to reach a different conclusion on the main matters.
22. I have taken account of representations received regarding impact on living conditions, highway safety, noise, odour and trees. The proposed mobile home would be sited along the boundary with Dark Lane and whilst raised from the ground the boundary treatment along the canal would provide adequate screening. In addition, there is sufficient separation between nearby dwellings and the proposal to ensure satisfactory living conditions.
23. I find that the development would not severely diminish the living conditions of existing occupiers in terms of noise or odour when considering the modest scale of the development and the relatively low levels of noise generated by residential activities.
24. There is no credible evidence before me to suggest that the development would result in the loss of trees. There is also no substantive evidence to suggest that the development would harm highway safety, particularly as the Highway Authority raise no objection.
25. With regards to matters related to the impact on property values, the courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property could not be a material consideration. I have not therefore taken this into account when making my decision.

Other considerations

26. While also protecting the Green Belt from inappropriate development the PPTS sets out that local planning authorities should use a robust evidence base to establish the accommodation needs to inform the preparation of local plans and make planning decisions. At paragraph 10, it states that local plans should identify and update annually 5 years' worth of deliverable sites for gypsies and travellers.
27. The Council accept that they cannot demonstrate a 5-year supply of pitches for gypsies and travellers and therefore there is an unmet need. The shortfall, in my view, is considerable standing at 38 pitches. To me and despite the Council's efforts it is apparent that the Core Strategy and the Site Allocations Development Plan Document are not delivering the required number of pitches on the ground.
28. The South Staffordshire Council Gypsy and Traveller Accommodation Assessment Final Report (2021) (GTAA) sets out a need for 121 pitches for the period 2021-2038. There is also need for a further 33 pitches for undetermined gypsy and traveller households and those that do not meet the planning definition in the PPTS.

29. The appellant challenges these figures and contends that the GTAA fails to properly consider concealed households, doubled households and overcrowding, as well as hidden needs. The appellant suggests that over the next 10 years there is a need for 160 additional pitches in the district.
30. Whilst the GTAA is yet to be subject to public examination it provides the most up to date and comprehensive assessment available for the area. For the purposes of this appeal, it provides a picture of the need for pitches in the district. Irrespective of whether I take the figure in the GTAA as more accurate or the appellant's it is evident that there is an unmet need in the district that will need to be addressed.
31. There is a substantial unmet need for gypsy and traveller pitches in the area with the Council unable to demonstrate a 5 year supply of deliverable sites. Whilst the new local plan is emerging the Council accept that sufficient sites are yet to be identified to meet the need outlined in the GTAA. Furthermore, the vast majority of the district falls within the Green Belt, a further constraint in respect of delivery. As such, I attach significant weight to this matter.
32. The appellant currently resides on the site and has done so for the last few years. The appeal scheme would be occupied by the appellant and her children. The parties agreed all these residents fell within the definition of gypsy and travellers in the PPTS, and I have no reason to find differently. All of the children attend schools within the local area and regularly attend a nearby church. I was also told that a number of these residents have medical needs and attend clinics nearby.
33. The appellant's parents occupy pitches immediately to the south of the site, but her personal circumstances means that she cannot reside with them. Despite this, the appellant advises that her parents play an important family role supporting her and her children.
34. The interests of the children would, in my view, be best served by having a settled base and clearly have family, educational and religious connections locally. Moreover, it was established at the hearing that there are no alternative pitches or options currently available to the appellant. If the appeal were to be dismissed there would be no other option but to exist 'roadside' with her children.
35. Taking account of all these factors, I give significant weight to the personal circumstances of the appellant and her children who would continue to occupy the site.

Planning Balance

36. Paragraph 148 of the Framework states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
37. The proposal would be inappropriate development within the Green Belt. It would lead to moderate effects upon the openness of the Green Belt and would cause limited harm because of the conflict with the Green Belt purpose of

assisting in safeguarding the countryside from encroachment. In accordance with the Framework, I give substantial weight to this harm.

38. The PPTS states that subject to the best interests of the child, personal circumstances and unmet demand are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. However, the personal circumstances of the appellant's dependants is a primary consideration. I have also taken into consideration the interference with the human rights of the appellant and her children if they were required to leave the site and take up a roadside existence given the lack of alternatives. This is of substantial weight in favour of the development.
39. The unmet need for gypsy and traveller pitches in the district; the absence of a five year supply of deliverable sites and the Council's failure to make appropriate provision carries great weight in the appellant's favour.
40. I acknowledge that intentional authorised development has taken place. However, on account of the unmet need in the district, the lack of alternative options, the personal circumstances of the appellant and her family and the site's limited contribution to the surrounding character and appearance I give this limited weight in the balance.
41. The Council has suggested granting a temporary permission until 31 December 2024. They contend that this would allow the appellant to remain on site in the short term until the new Local Plan is adopted and permission for an alternative pitch granted, which the appellant could move to. However, I am not satisfied that the Council's approach is going to deliver the required number of pitches in this time frame or indeed within a slightly longer timeframe that would still be reasonable for a temporary permission. Furthermore, there is no certainty that the pitches coming forward would be in a suitable location or size to meet the appellant's individual circumstances. Accordingly, I do not find that such a condition would be reasonable.
42. I have paid regard to the best interests of the children living on the site and the appellant's personal circumstances, as well as the need more generally for pitches in the area. The Council has suggested conditions for a personal permission and for the site to be restored to an open condition once it is no longer occupied by the appellant. However, taking into account the current shortfall of pitches I am of the view that it would be reasonable to permit any person that meets the definition of a gypsy and traveller in the PPTS to occupy the site, in the event the appellant no longer wished to occupy it. I therefore do not consider that such conditions would be reasonable.
43. The Framework makes clear that inappropriate development should not be approved except in very special circumstances and that very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal, is clearly outweighed by other considerations.
44. Taken together and having regard to the above, in my judgement, the harm caused by reason of inappropriateness and any other harm, is clearly outweighed by other considerations in these particular circumstances, so as to amount to the very special circumstances necessary to justify the development.

Conclusion

45. For the reasons set out above the appeal succeeds.

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INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michelle Follows	Appellant
Matthew Green	Green Planning Studio

FOR THE LOCAL PLANNING AUTHORITY:

Paul Turner	Planning Consultant
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DOCUMENTS SUBMITTED AT THE HEARING

1. Unilateral Undertaking
2. Updated witness statement from Ms Fellows
3. Updated Assessment of the Need for Gypsy and Traveller Pitches in South Staffordshire prepared by Green Planning Studio

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Statement of Steve Jarman Opinion Research Services Ltd on behalf of the local authority
2. Response to Statement of Steve Jarman Opinion Research Services Ltd prepared by Green Planning Studio

Schedule of conditions

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites.
- 2) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
- 3) The access and turning areas shall be laid out within the site in accordance with Drawing Number 19_1073_003, within 6 months of the date of the permission, for vehicles to turn so that they may enter and leave the site in forward gear and the areas shall thereafter be kept available at all times for those purposes.
- 4) No more than 1 commercial vehicle shall be stationed, parked or stored on this site. Its weight shall not exceed 3.5 tonnes.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) Within 3 months of the date of the permission a scheme of landscaping shall have been submitted to the local planning authority. Once approved in writing the scheme shall be carried out in accordance with the details within 6 months.



Appeal Decision

Hearing held on 13 September 2022

Site visit made on 13 September 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2022

Appeal Ref: APP/C3430/C/21/3272811

Land at Saredon Road, Cheslyn Hay, Walsall WS6 7JD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Peter Wilkes against an enforcement notice issued by South Staffordshire District Council.
 - The notice was issued on 5 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of Land, to Land used as a Sawmill and for storage purposes including open outdoor storage, and unauthorised operational development to facilitate the material change of use consisting of the erection of a structure using container units to support a roof canopy and the erection of lighting columns x2 on the Land outlined in red for identification purposes on the plan attached to this Notice.
 - The requirements of the notice are to:
 - i) Except as provided for by planning permission reference 19/00604/FUL, (upheld by appeal reference APP/C3430/W/20/3252430 by way of the Planning Inspector's decision dated 3rd November 2020), cease the use of the Land outlined in red on the attached plan, as a Sawmill and for storage purposes including all open outdoor storage.
 - ii) Except as provided for by planning permission reference 19/00604/FUL, (upheld by appeal reference APP/C3430/W/20/3252430 by way of the Planning Inspector's decision dated 3rd November 2020) remove all container units, the roof canopy and associated structures, lighting columns x2, wood, materials and machinery from the Land.
 - The period for compliance with the requirements is: 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by, at section 5:

- Delete requirement 5i and insert 'Except as provided for by planning permission granted on appeal, reference APP/C3430/W/20/3252430 dated 3rd November 2020, cease the use of the Land outlined in red on the attached plan, as a Sawmill and for storage purposes including all open outdoor storage.'
- Delete requirement 5ii and insert 'Except as provided for by planning permission granted on appeal, reference APP/C3430/W/20/3252430 dated 3rd November 2020, remove all container units, the roof canopy and associated structures, lighting columns x2, wood, materials and machinery from the Land.'

2. Subject to the corrections above, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of Land, to Land used as a Sawmill and for storage purposes including open outdoor storage, and operational development to facilitate the material change of use consisting of the erection of a structure using container units to support a roof canopy and the erection of lighting columns x2 on the Land at Saredon Road, Cheslyn Hay, Walsall WS6 7JD subject to the conditions set out in Appendix 1 attached to this decision.

Preliminary Matters

3. The appellant initially appealed on grounds (a), (c), (d), (f) and (g) and requested the appeal proceed by way of Inquiry. However, the appellant has since withdrawn grounds (c), (d) and (f) and has agreed to the hearing procedure. I am satisfied, on the basis of the evidence before me, that it is not necessary to test the evidence under oath and therefore the hearing procedure is appropriate in this case.
4. The appellant states in their final comments that the appendices detailed on pages 23 and 24 have not been received. However, the appellant confirmed during the hearing that they have now seen all the documentation submitted.

Status of planning permission granted on appeal

5. Planning permission was granted, on appeal, reference APP/C3430/W/20/3252430 dated 3 November 2020, for replacement structure and erection of lighting columns at the site, subject to conditions. Although the parties initially suggested the permission has not been implemented and therefore the conditions cannot be enforced, it was accepted during the hearing that the permission was retrospective in part and therefore, whilst the approved building has not been constructed, planning permission had effect from the date on which the development was carried out.
6. The implications of this were discussed during the hearing at length, in particular whether the permission inadvertently granted an unfettered permission for the use of the site. The permission clearly relates to operational development, which by virtue of section 75(3) of the Act which sets out that if no purpose (of a building) is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed. Although the building has not been constructed, it would be possible for the appellant to construct it and use it for its intended purpose.
7. However, the planning permission requires the building is removed. A use cannot survive the destruction of buildings and installations necessary for it to be carried on. The appellant suggested it would be possible to use an 'industrial tent' which would need to be of a similar size to the approved building to accommodate the machinery. Whether such a structure would be development for the purposes of the Act would be a matter of fact and degree. Having regard to the evidence before me and my inspection of the site, I consider it highly likely such a structure, in this case, would be a building given its size, permanence and the likely need to fix it to the ground. Consequently, the permission did not grant an unfettered permission for the use of the site.

Validity of the notice

8. The appellant suggests there are inadequacies with the notice, such that it is a nullity. The appellant raises concern regarding the Council's wording of the requirements as they refer to planning permission reference 19/00604/FUL (upheld by appeal reference APP/C3430/W/20/3252430 by way of the Planning Inspector's decision dated 3rd November 2020). However, I consider the wording can be corrected to refer to the planning permission granted on appeal, without injustice to either party as it would not change the substance of the requirements.
9. The requirements require the cessation of the use and the removal of various items and structures without fettering the use of the site in accordance with the above planning permission. It is not necessary for a notice to specify every item that is required to be removed, rather the use of overarching terms, such as 'structures', 'materials' and 'machinery' is sufficient. Having reviewed the evidence and seen the site, I consider the requirements are sufficiently clear such that the appellant knows what they are required to do.
10. The breach only refers to two lighting columns and whilst it is not specified which lighting columns would need to be removed, the removal of two lighting columns would ensure compliance with the notice. Since the removal of the lighting columns is required by the above planning permission by virtue of condition 2, there is a mechanism to ensure removal of any remaining lighting columns.
11. The appellant raises further concerns regarding the requirements which are essentially that the steps required by the notice to be taken exceed what is necessary to remedy the breach. These are matters which should properly be addressed under ground (f), which I shall consider should the appeal under ground (a) fail.

Ground (a)

Main Issues

12. The appeal under ground (a) is made on the basis that, in respect of the breach of planning control constituted by the matters stated in the notice, planning permission ought to be granted.
13. The main issues of the appeal are:
 - Whether the scheme would prejudice the purpose of land safeguarded for longer term development needs; and
 - The effect of the appeal scheme on the character and appearance of the area; and
 - The effect of the appeal scheme on the living conditions of nearby occupants, with regard to noise and disturbance and lighting.

Reasons

Safeguarded Land

14. The appeal site comprises a site which is safeguarded for longer term development needs under policy SAD3 of the Site Allocations Document (SAD)

(2018). Policy GB2 of the South Staffordshire Local Plan Core Strategy DPD (CS)(2012) and policy SAD3 of the SAD say 'all safeguarded land identified for longer term development needs and removed from the Green Belt (including existing Safeguarded Land) will retain its safeguarded land designation until a review of the Local Plan proposes development of those areas in whole or part. Planning applications for permanent development prior to allocation in the Local Plan will be regarded as departures from the Plan'.

15. Planning permission was granted on appeal, reference APP/C3430/W/20/3252430, at the site for replacement structure and erection of lighting columns at the appeal site. The previous Inspector accepted that temporary development on the Land is acceptable in principle and included a condition requiring that the building and structures are removed from the application site not later than the expiration of 2 years from the date of the decision. With respect to the application of policies GB2 and SAD3, I see no reason to take a different view in this case.
16. The Council confirmed during the hearing it considers the review of the local plan is unlikely to be adopted until winter 2023 and that it no longer objects to the temporary use of the site, subject to the imposition of a condition to require the development is removed within 2 years of the date of any permission. Given the date of this decision and the time it is likely for the local plan to be adopted, which the appellant suggested is likely to be ambitious, I agree that any conflict with policies GB2 of the CS and SAD3 of the SAD would be addressed by limiting the duration of the permission via condition.

Character and appearance of the area

17. The appeal site comprises a parcel of land which is set well back from Saredon Road, on the outskirts of Cheslyn Hay. The appeal site is bound by fields on one side and a site which was being developed for housing at the time of my visit on the other side. The appeal site is therefore located in an area with a transitional, edge of settlement character.
18. The buildings, materials and machinery can be seen from Saredon Road through gaps in mature hedgerows. Although there are industrial units to the north, and a quarry to the north east of the site, these are separated from the appeal site by mature vegetation and, given their distance from the highway, do not inform the character of this part of Saredon Road.
19. The previous Inspector concluded that the *proposed structure* (my emphasis), due to its location in a dip, located away from the highway and its open sides and simple form, would reflect the design of an agricultural barn, and so would be in keeping with its semi-rural context. However, this appeal concerns the existing structures within the site and the use of the site, not the building which was proposed as part of the previous appeal.
20. The current structure, which would be retained in the event I grant planning permission under ground (a), appears makeshift in appearance. The open storage of materials, including wood and machinery, gives the site a cluttered appearance, which neither complements the rural character to the east of the site, or the residential character to the south. Consequently, I consider the appeal scheme causes moderate harm to the character and appearance of the area.

21. However, as set out above, the inclusion of a condition requiring the removal of the various structures and paraphernalia associated with the appeal scheme would limit the duration that the structures and materials are *in situ*. In the event that I uphold the notice, the appellant would have 12 months to comply with the requirements. Were I to impose the condition outlined above, any effect on the character and appearance of the area would be temporary, limited to 2 years. I consider this would significantly limit the harm to the character and appearance of the area.
22. The site has a number of employees and therefore makes an important contribution to the local economy. Granting planning permission for a temporary period would give the appellant sufficient opportunity to relocate, thereby ensuring the continuation of this economic benefit, whilst ensuring the character and appearance of the area is not harmed in the longer term. The benefits of allowing the appeal for a temporary period, in my view, outweigh the very limited harm arising to the character and appearance of the area.
23. Subject to the imposition of a condition limiting the duration of the development, there would be no significant harm to the character and appearance of the area and no conflict with policy EQ4 of the CS, which seeks to ensure that development does not have a detrimental effect on the immediate environment and on any important medium and long distance view and policy EQ11 of the CS, which seeks to ensure proposals respect local character and distinctiveness.

Living conditions

24. As set out above, the appeal site is adjacent to a housing development. Although houses closest to the site were still in the process of being constructed at the time of my site visit, given their advanced stage of construction, I consider it likely that the dwellings would be occupied within a matter of months. Policy EQ9 of the CS seeks to protect residential amenity by directing development likely to be harmful to amenity away from sensitive locations.
25. Although the sawmill was not operational during my visit, this type of activity has the potential to generate noise, which occupants of nearby dwellings may find intrusive. A noise assessment carried out in support of the adjacent residential development concluded that, subject to mitigation, the site is suitable for dwellings. The assessment included consideration of the activities carried out at the appeal site and I have no reason to doubt its conclusion in this regard.
26. However, the assessment of the sawmill was limited to the daytime. Operation of the site outside of the hours modelled in the assessment, particularly at night time, when background noise levels are likely to be lower, could cause noise and disturbance as a result of the operation of machinery and deliveries to and from the site. It would therefore be necessary to impose conditions to restrict the hours of operation of machinery and the movement of delivery vehicles.
27. Since the enforcement notice was issued, the appellant has altered the lighting at the site to accord with a scheme contained within a planning obligation, which has been submitted in support of this appeal. The day before the hearing, just before 9pm, I was able to view the site and associated lighting in

use. I saw that, given the location of the lighting away from housing being constructed, the housing itself was not illuminated. As a consequence, I consider it highly unlikely that future occupants of the dwellings would be adversely affected by the existing lighting.

28. Paragraph 55 of the National Planning Policy Framework (2021)(the Framework) advises that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. I raised with the parties whether a lighting scheme could be secured by condition. The Council advised that it wants to remove the ability of the appellant to implement the approved lighting scheme, which it would be unable to do via condition.
29. The scheme ensures that lighting is located away from nearby residential properties and is directed into the site so as to minimise light spill outside of the site. Without such a scheme, lighting has the potential to harm the living conditions of occupants of nearby dwellings. Although there is a lighting scheme which has deemed approval, the planning obligation would ensure that there is no uncertainty as to which scheme is permitted and will ensure that the lighting columns are removed following cessation of the use. I therefore agree that the obligation is necessary in this instance and meets the tests set out in paragraph 57 of the Framework.
30. Thus, subject to conditions and the obligation referred to above, I find that there would be no harm to living conditions arising from the appeal scheme and no conflict with policy EQ9 of the CS, the requirements of which are set out above.

Other Matters

31. An interested party raised concern regarding the effect of vehicle movements on living conditions and highway safety during the hearing and suggested that vehicles are routed to avoid travelling through Cheslyn Hay. However, while the appellant would have control over his own vehicles, he would not have control over vehicles of third parties.
32. Although the Council suggested there is sufficient information to attach such a condition, I am not persuaded this is the case. I have no routing plan before me and whilst it would seem simple to require vehicles to turn right at the junction with the highway onto Saredon Road, the land is outside the appeal site and outside the appellant's control.
33. I saw that there is a school and leisure centre near the site and note that vehicles travelling through Cheslyn Hay will pass a number of residential properties. However, there is no substantive evidence before me to show that living conditions or highway safety are harmed as a result of vehicle movements to and from the appeal site and I note the Inspector in respect of APP/C3430/W/20/3252430 drew a similar conclusion in this regard.

Conditions

34. As set out above, I have found that planning permission should be granted for a temporary period only. It is therefore necessary to include a condition limiting the duration of the permission and requiring the structures and stored items are removed.

35. To protect the living conditions of the occupants of nearby dwellings, I shall impose conditions to control the hours of operation of machinery, to control deliveries to and from the site, to prevent burning of materials of the site and to restrict the use of the site to a sawmill. It was agreed during the hearing that the wording used in conditions attached to the previous appeal decision would be appropriate, save to refer to the entire site and not just the building.

Conclusion

36. The imposition of a condition limiting the duration of the development would ensure the land is available for longer term development needs and would significantly limit any harm to the character and appearance of the area. The economic benefits of allowing the sawmill to continue and giving the appellant sufficient opportunity to secure an alternative site would outweigh the limited remaining harm to the character and appearance of the area.
37. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected. The appeal on ground (g) does not therefore fall to be considered.

M Savage

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Thea Osmund Smith	Barrister instructed by Suzanne Tucker
Suzanne Tucker	Associate Solicitor at FBB Manby Bowdler Solicitors
Mandy Seedhouse	Planning Witness
Mr Wilkes	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Philip Robson	Barrister instructed by solicitor to the Council
Jennifer Mincher	Senior Planning Officer
Catherine Gutteridge	Planning Enforcement Team Manager

INTERESTED PARTIES:

Councillor Boyle

Melanie Brown	Parish Clerk
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DOCUMENTS SUBMITTED AT THE HEARING

1. Letter of notification of the Hearing
2. Pages 61-63, 75-77, 92-93 and 97-99 of the South Staffordshire Local Plan Core Strategy DPD (Adopted December 2012)
3. Policy SAD3 of the Site Allocations Document (SAD) September 2018
4. Policy SAD2 of the Site Allocations Document (SAD) September 2018
5. Proposed wording for a time limited condition, submitted by the Council

APPENDIX 1: CONDITIONS

1. The use hereby permitted shall be for a limited period being the period of 2 years from the date of this decision. All buildings and structures hereby permitted, as shown on drawing number 18/1111/105 Existing Site Layout, Floor Plans and Elevations, dated May 2019 and any associated storage, structures and stored items in connection with the use of the land as a sawmill shall in their entirety be taken down and removed from the site not later than the expiration of 2 years from the date of this decision.
2. Machinery shall be operated from within the development hereby permitted only between the hours of 0800 to 1700 on Mondays to Fridays, 0900 to 1300 on Saturdays and not at any time on Sundays or on Bank or Public Holidays.
3. Deliveries shall be taken at or despatched from the site only between the hours of 0800 to 1700 on Mondays to Fridays, 0900 to 1300 on Saturdays and not at any time on Sundays or on Bank or Public Holidays.
4. There shall be no open burning of any materials on the site.
5. The development hereby permitted shall not be used for any other purpose falling within Use Class B2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) apart from as a sawmill with ancillary office.

End of Appendix 1

Appeal Decisions

Hearing Held on 31 August 2022

Site visits made on 30 and 31 August 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 29 September 2022

Appeal Ref: APP/C3430/C/21/3274332 ('Appeal A')

Land at Doveleys Farm, Sandy Lane, Cannock

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Raymond Clee against an enforcement notice issued by South Staffordshire Council.
- The enforcement notice was issued on 6 April 2021.
- The breach of planning control as alleged in the notice is (i) the unauthorised material change of use of the Land from agriculture to a residential caravan site; and (ii) unauthorised operational development to create hardstanding and track, three wooden buildings, closeboard wooden fencing, breeze block building and associated concrete pad, underground septic tank and unauthorised earth bund.
- The requirements of the notice are (i) cease the unauthorised residential use and occupation of the Land as a gypsy traveller site; (ii) remove from the Land all caravans, unauthorised buildings and structures; (iii) remove from the Land the closeboard wooden fencing; (iv) remove all the imported hard core, kerb stones and associated materials from an area marked in dark blue on an attached plan; (v) remove from the Land the three wooden buildings; (vi) reinstate the land referred to in (iv) to agricultural land by re-turfing or re-seeding the Land; (vii) remove from the Land the unauthorised breezeblock building and associated concrete pad; (viii) remove from the Land the unauthorised septic tank; (ix) remove from the Land the unauthorised earth bund located on the land; and (x) remove from the Land all materials arising from compliance with previous requirements.
- The periods for compliance with the requirements are one month for steps (i), (ii), (iii) and (v); two months for (iv) and (ix); and three months for (vi), (vii) and (viii). No period for compliance is given for step (x).
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Appeal Ref: APP/C3430/C/21/3274333 ('Appeal B')

Land at Doveleys Farm, Sandy Lane, Cannock

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Jamie Clee against an enforcement notice issued by South Staffordshire Council.
- The appeal is made against the same notice as Appeal A, and is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Appeal Ref: APP/C3430/C/21/3274334 ('Appeal C')

Land at Doveleys Farm, Sandy Lane, Cannock

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Joseph Clee against an enforcement notice issued by South Staffordshire Council.
- The appeal is made against the same notice as Appeals A and B, and is proceeding on the same ground as Appeal B.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Appeal Ref: APP/C3430/W/21/3287902 ('Appeal D')

Land north of the White House, Sandy Lane, Cannock WS11 1RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Messrs Joseph and Jamie Clee against the decision of South Staffordshire Council.
- The application Ref 21/00255/FUL dated 14 March 2021, was refused by notice dated 3 November 2021.
- The development proposed is the change of use of land to mixed use for the keeping of horses and as a residential caravan site for 3 No. gypsy families, each with two caravans including no more than one static caravan/mobile home, together with laying of hardstanding, erection of 3 No. ancillary amenity buildings and construction of driveway.

Summary Decision: The appeal is dismissed.

Preliminary Matters

1. The location plan in Appeal D shows an area of land edged in red and a further area edged in blue. There is a small gap between the two areas. Together (and including the gap) they comprise the same area of land covered by the enforcement notice, now known as 'Sandy Acres'.
2. The development the subject of Appeal D was said to have been begun but not completed on the date of the application. It differs in substance from the development observed on the site, which contains no static caravans but larger amenity blocks than those applied for in Appeal D, and with other minor differences. The development presently on site is in turn somewhat different from that described in the notice, mainly resulting from the removal of a breezeblock building referred to in the notice but now replaced by a stable block as authorised by a previous permission.
3. I established at the hearing that, notwithstanding the differences between what is now on site and what was there when the notice was issued, the deemed application on Appeal A seeks permission for what is presently found on the site. In view of the planning history including a permission for the stable block, I am satisfied that such an outcome could be achieved by a combination of an amended notice and the imposition of planning conditions without prejudicing either party to the appeal.
4. I carried out an unaccompanied site visit the day before opening the hearing from which I observed the site from viewpoints on a public right of way to the south, as suggested to me by the parties. On the day of the hearing I carried

out an accompanied site visit following which I closed the hearing, subject to receiving an amended planning obligation and the Council's comments upon it by 14 September 2022.

The notice

5. The notice alleges the change of use to a residential caravan site, but it was agreed at the hearing that an earlier planning permission on the land for a material change of use to the stabling and keeping of horses had been begun, and that the land is now in a mixed use for that use and for the residential use alleged. I shall amend the allegation accordingly, with consequent changes to the requirements.
6. No compliance period was specified for the final requirement of the notice, but it was agreed at the hearing that the notice could be varied so as to stipulate a compliance period without causing injustice to either party. The requirement (no. 9) to remove the earth bund from the land also requires variation, because some of the material used in the bund has resulted from the unauthorised works, so will be required to restore the land if the notice is upheld. It was agreed that requirement no. 6 should be varied so as to require the restoration of the land to its former condition, omitting any reference to restoration as agricultural land in view of the permitted use for horse keeping.

Main Issues

7. The Council's reasons for refusing planning permission were couched somewhat differently from those given for issuing the notice. Reference is made in the notice to the site's location in the Green Belt, the Cannock Chase AONB, a zone of influence (within 8km) of the Cannock Chase Special Area of Conservation, and to the effects of the development on the character, appearance and amenity of the area. Additionally the planning refusal notice alleges detriment to public rights of way and bridleways, and asserts that the development amounts to intentional unauthorised development.
8. The main issues arising in Appeals A and D are therefore:
 - (i) The effect of the development on the openness and the purposes of the Green Belt ('definitional harm' by reason of inappropriateness being agreed);
 - (ii) Any other harm and/or policy conflicts arising, particularly the effects of the development on the landscape and on the character and appearance of the site and the area, including the effects on the interests of users of public footpaths and bridleways; on the integrity of protected species or habitats; and in relation to whether it has amounted to intentional unauthorised development; and
 - (iii) Whether any harm to the Green Belt and any other harm is clearly outweighed by other considerations so as to amount to very special circumstances justifying the development. Such other considerations particularly include the need for and supply of traveller sites and the availability of alternative sites, and the personal circumstances of the appellants and their families, to include consideration of the best interests of the children and any human rights arising.

9. Appeals A – C also raise the question of the time required for compliance with the requirements of the enforcement notice, if permission is not otherwise granted.
10. Other matters raised in representations include the impacts of the development on the living conditions of neighbouring occupiers and whether allowing the development would give rise to inevitable pressure for further development or set an undesirable precedent.

Reasons

The Appeal A appeal on ground (a) and Appeal D

Green Belt

11. Although a number of policies are cited in the notice in support of the reasoning that the use is inappropriate development in the Green Belt, the applicable policies are Core Policy 1 and policies GB1 and H6 of the South Staffordshire Core Strategy DPD, adopted in December 2012. CP1 seeks to protect the Green Belt from inappropriate development. GB1 is, consistently with the National Planning Policy Framework ('the Framework') although using slightly different terminology, permissive of material changes of use and engineering or other operations where the openness of the Green Belt is not materially affected and no conflict with its purposes arises.
12. Criterion 8 of policy H6 is also relevant. The criterion itself relates to impacts on the character and landscape of the locality, but gives as an example resistance to development in the Green Belt where 'demonstrably harmful impact' to openness would arise.
13. The national Planning Policy for Traveller Site ('PPTS') sets out that traveller sites are inappropriate development in the Green Belt, and here there is no dispute between the parties that there is some impact on the openness of the Green Belt, and some conflict with the purpose of safeguarding the countryside from encroachment. Thus some conflict with both the Framework and policy GB1 is acknowledged.
14. The upshot of the policy position here is therefore that, as with any traveller site, the development will be inappropriate in the Green Belt by reason of the PPTS. It will be inappropriate under the Framework if it either fails to preserve openness or conflicts with any Green Belt purposes - as are both acknowledged here. It will conflict with local policy GB1 if openness is 'materially affected' or a conflict with Green Belt purposes arises - again, as is acknowledged. Achieving compliance with policy H6 however appears to set a slightly lower bar. The impact must not merely fail to preserve openness, but must be 'demonstrably harmful' to it, in order for a conflict with that policy to arise. Thus an analysis of the particular gradation of harm, if any, to openness is required. (The policy also allows for the possibility that development conflicting with Green Belt purposes but which is not demonstrably harmful to openness, or does not even affect openness, would nonetheless not offend policy H6, criterion 8 of which has its origins in landscape protection rather than in controlling urban sprawl *per se*. At the hearing the Council referred me to permissions granted for developments that are inappropriate in the Green Belt but which nonetheless are not contrary to policy H6.)

15. Previously an open field, permission was recently granted under reference 19/00701/FUL to change the use of the land for keeping horses, together with the construction of a stable block. The breezeblock building alleged in the notice has been removed and replaced with that permitted stable block. This introduction of this built development onto the site is consistent with Green Belt policy (as essential facilities for outdoor recreation) and with no corresponding effect on openness.
16. The site has however been further developed to facilitate the residential use. North east of the stable building, the northern field has been subdivided into three pitches, each containing (at the time of my visit) an amenity building of some 45 sqm floor area, and touring caravan. Some other structures were also observed, together with some commercial vehicles and the storage of some trade materials towards the front of the site. The amenity buildings that have been constructed on the site are made of (or clad in) similar materials to the stable building, which assists their integration into the landscape but this in itself does not disguise their residential appearance or use and evident inappropriateness in the Green Belt.
17. The previous permission also allowed the provision of some concrete hardstanding, and a horse exercise area beyond the stable building. The hardstanding that has been laid is considerably more extensive, with the track reaching almost to the boundary with Parkside Lane and hard bases for the caravans provided on each of the three pitches.
18. The proposal in the s78 appeal (Appeal D) would introduce slightly more development overall, with each existing amenity building replaced by both a mobile home of a similar size, although oriented against the field boundary, and additional smaller amenity buildings for each plot.
19. In either case the impact on openness, whether visual or spatial, is likely to vary to some extent according to whether the families are on site or away travelling. When the families are absent, there will be fewer caravans on the site and less observable paraphernalia. At the hearing I was informed that the present typical pattern of travel is to be away for up to four months of the year. The impacts on the visual openness of the site are somewhat limited, although the developed nature of the site is evident particularly from vantage points on the public right of way across the valley to the south west. The site is well screened from its immediate environs by hedgerows, although those screening effects will be diminished in the winter months. More planting is proposed, and I observed on site that some holly hedges surrounding each pitch are beginning to establish. The development is largely obscured from view from the adjoining road by the rear of the stable building. A considerable amount of hardstanding is however evident from the road, although some of this would also result from the stabling permission.
20. Nonetheless, when considering the development in the context of national policy which seeks to keep Green Belt land permanently open, the siting of the caravans and associated structures on land previously free of inappropriate development has adversely affected the openness of the Green Belt. Whilst accepting that the other element of the mixed use, namely the keeping of horses, plays a positive role in preserving openness, and whilst accepting too that the nature of caravans is to limit the impacts when compared with permanent structures, I nonetheless find that moderate harm to openness has

arisen from the residential development. I do not take into account the additional observed use for storing building materials because this is not alleged in the notice (or therefore the subject of either planning appeal) and the parties are agreed that a planning condition should prohibit this if permission is to be granted.

21. The principal differences between the proposals in Appeals A and D is that Appeal A seeks to retain amenity buildings that are larger than those proposed to replace them in Appeal D, whereas Appeal D seeks the introduction of an additional static caravan for each pitch. There are some other differences, but the proposals are essentially the same in that they seek to establish living accommodation on three pitches for each appellant's family. There is no significant difference in the impacts on the openness of the Green Belt of either proposal.
22. In either case I find that the development not only materially affects and fails to preserve openness, pursuant to policy GB1 and the Framework, but also that it has a demonstrably harmful impact on it, thus conflicting with that element of criterion 8 of policy H6.
23. Turning to the purposes of the Green Belt, the Council has referred to the South Staffordshire Green Belt study which finds that the land parcel of which the site forms part contains the urban edge of Cannock and so plays a strong role in preventing sprawl. Although the site lies only 120m away from the urban edge of Cannock, I agree with the appellants that it does not read as an extension to the built up area. Although an urbanising land use, it is of a different character from the urban area and is sufficiently separate to be seen in its surrounding agricultural or 'horsicultural' setting, albeit in the context of the urban fringe.
24. However it does conflict with the purpose of safeguarding the countryside from encroachment, as acknowledged by both parties.
25. I observed that Sandy Lane itself, as it runs between Church Lane and Hatton Road, is populated by dwellings and other buildings close to the road in a linear pattern as the road leaves the urban area towards Hatherton. Other than those buildings, the fields forming the approximate square of land between Sandy Lane, Church Road and Parkside Lane appear almost entirely undeveloped with the exception of the appeal site, which itself forms the central portion of the square taking up about a third of it (but with the residential element forming a narrower field across the middle of the square).
26. In longer distance views from the south west the site is seen on rising ground away from the valley floor along Sandy Lane. Further occasional properties are seen on the rising ground behind, lying below the woodland plateau. The structures at the appeal site are seen as intruding into this otherwise sizeable gap. Although the scale of the development itself is modest, its location and siting in the middle of otherwise undeveloped countryside has an obviously encroaching effect. This is somewhat tempered by the moveable nature of the structures on site and the design of the amenity buildings which, being of wooden construction, do not look significantly out of place although their domestic purpose is evident. Surrounding buildings on Sandy Lane and beyond Parkside Lane mean the site has some transitional characteristics, which limit

the harm by reason of encroachment. Nonetheless there is moderate harm to the purpose of safeguarding the countryside from encroachment.

27. The development is inappropriate by definition in the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt, whether definitional or otherwise. Here I have found there to be moderate harm to openness and also to the purpose of safeguarding against encroachment.
28. It is unnecessary to disaggregate the weight to be attributed to each element of harm to the Green Belt rather than to make an overall finding. Here I find that the overall harm to the Green Belt attracts slightly more than substantial weight against the development, whether as existing in the Appeal A appeal or as proposed in Appeal D.

Cannock Chase AONB and character and appearance

29. Core Policy 2 sets out that the Council will support developments where they protect, conserve and enhance the District's natural assets and are not contrary to the control of development within designated areas including the Cannock Chase AONB. Policy EQ4 provides that development within the AONB and its setting will be subject to special scrutiny in order to conserve and enhance the landscape, nature conservation and recreation interests of the area.
30. A Landscape Sensitivity Assessment of July 2019 had the purpose of providing an assessment of the extent to which the character and quality of the landscape abutting the West Midlands conurbation within the Black Country and South Staffordshire and also around settlements in South Staffordshire is, in principle, susceptible to change as a result of introducing built development. Thus the assessment does not consider the whole of the district, but is directed to considering land parcels around the settlement edges.
31. The appeal site falls within one such land parcel, SL72, which covers the 'square' previously referred to as well as the fields beyond Parkside Lane up to the common at Shoal Hill. The study found the parcel to be of the highest landscape sensitivity, described as being due to its natural and recreational character within the AONB and consideration of the impact of development on the special qualities of the landscape as part of a nationally designated area. Parcel SL71, containing the bridleway from which the appeal site can be viewed from the south west, is said to be of moderate landscape sensitivity.
32. Pasturing for horses appears typical on this urban fringe of the AONB. I observed that much of parcel SL71 visible from the bridleway was divided into smaller fields providing horse pasture, divided by post and wire fencing with associated buildings along Sandy Lane in the valley bottom. On the far side of Sandy Lane, in parcel SL72, the field pattern appears one of larger fields but nonetheless the impression is one of a horse-dominated landscape set against the framework of woodland on the higher ground beyond and against the urban area to the east. There was some consensus at the hearing that this edge of settlement landscape differs in character from the wider AONB, which does not in general repeat this pattern of smaller fields subdivided by hedging and post and wire fencing and put to use as horse paddocks and horse related development such as stables. The proximity of this part of the AONB to the

- urban area makes it particularly vulnerable to such urbanising influences, but at the same time these 'horsicultural' developments are undoubtedly already part of the character of this part of the AONB.
33. As to whether this residential caravan site harms the objectives of the AONB designation or its particular landscape character, I bear firmly in mind that the PPTS does not counsel against the provision of gypsy or traveller sites within AONBs or other designated landscapes. New sites in open countryside that is away from existing settlements should be strictly limited; but although there is some separation from the edge of Cannock, I do not find that the site is sufficiently 'away from' the settlement so as to offend this requirement.
34. There is some propensity for improvement of the appearance of the site through additional planting and better management of existing hedgerows. The fence erected alongside Parkside Lane could potentially be removed, thus omitting that particularly discordant feature when the site is viewed from the bridleway. The provision of accommodation meeting the needs of a particularly vulnerable demographic is consistent with the designation of the AONB as a living landscape catering for its residents. Nonetheless overall I find there is considerable harm to the landscape of the AONB caused by the development. Whilst the amenity buildings have been constructed in generally sympathetic materials, the amount of development on the site is very different from that in the surrounding fields, introducing urban features detracting from the natural beauty of this landscape and compromising the integrity of the 'square' and the landscape parcel and thus the AONB as a whole. Thus I find the development, either in Appeal A or in Appeal D but more so the latter because of the increased number of caravans, to be contrary to criterion 8(b) of policy H6 and to policy EQ4.
35. The Framework advises that great weight should be given to conserving and enhancing landscape and scenic beauty in designated areas including AONBs, with the scale and extent of development within such areas to be limited. Whilst the development is of a relatively limited scale, I nonetheless find that it does not conserve or enhance the landscape and I accord this considerable adverse weight.
36. As to the users of public rights of way, their use is not directly interfered with by the development and the adverse impacts on the user experience do not attract additional weight to that I have attributed already. To do otherwise would be to 'double-count' the harm, as the use of public rights of way in and outside the AONB is already integral to the user's experience of the designated area. Nor do I consider that the Council's complaint of the development affecting the local character and appearance attracts any different considerations from those arising in relation to the AONB.

Cannock Chase SAC

37. Consistently with the Habitats Regulations, Policy EQ2 prohibits development unless it can be demonstrated that adverse effects on the integrity of the Cannock Chase Special Area of Conservation will not arise. The Council gives effect to this by requiring payments into a fund used to secure habitats offsetting or mitigation measures where residential development occurs within a 'zone of influence' of the SAC. The reasoning is that new residential occupiers are likely to give rise to increased visitor numbers to the SAC thus requiring

access management measures to avoid a cumulative significant effect on the SAC.

38. Here, the appellants have submitted unilateral undertakings to pay the requisite sums of money and thus the development is not likely to have any significant effect on the SAC. This is a neutral outcome in the planning balance.

Intentional Unauthorised Development

39. The appellants have previously engaged with the local planning authority, in seeking and obtaining permission for the change of use to stabling and keeping horses together with operational development. They are aware of the requirements for planning permission. It was conceded at the hearing that the works to facilitate the development were carried out as a result of their decision to make the site their home, with previous residential occupation in bricks and mortar housing not having been successful. The Council were quickly alerted and a temporary stop notice issued the same day as a team of 15 or 20 men were observed on the site driving plant and machinery or shovelling hardcore. By this time three touring caravans had been sited on the land, in which the appellants and their families have taken up occupation.
40. The enforcement notice, a stop notice and injunctive proceedings followed, all running in tandem. At the hearing I was informed of some 'minor' development in breach of the various notices, such as the levelling out of piles of hardcore on the site. There has however been no substantial additional development since the Council's first notice, although that was served, albeit without delay, at a time when the site had already rapidly been made habitable by the appellants.
41. The Ministerial Statement explains that the Government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission. In such cases there is no opportunity to appropriately limit or mitigate the harm that has already taken place.
42. The appellants have not lived (save for periods when travelling away) on an authorised site for some 20 years, and moving onto this site was explained to me as a deliberate choice. The need for permission was acknowledged, and I find that the development was 'intentionally unauthorised'.
43. Nonetheless this consideration does not attract considerable adverse weight in these circumstances. The amenity buildings are not 'built in' and they and the hardcore are readily removable. The soil removed has been retained on the site and so altogether the development is readily reversible. The works were obviously planned and co-ordinated so as to take place over a very short period of time, but nonetheless there have been no significant breaches of the Council's notices and there is no intention by the Council to prosecute such minor breaches as may have arisen. The appellants have since sought to regularise the development by appealing the enforcement notice on ground (a) (Appeal A) and/or by seeking the planning permission that is now the subject of the s. 78 appeal (Appeal D). The works that have taken place do not go significantly beyond what was needed to create a habitable environment for the appellants and their families.

44. Thus in the context of the statutory regime that makes provision for retrospective applications, where unauthorised development is not in itself a criminal offence, and where the enforcement regime is designed to be remedial rather than punitive, I attribute moderate adverse weight to my finding that the development has been intentionally unauthorised.

Other matters

45. The existing injunction prohibits a grid connection from being made to serve the caravans, and as a consequence the appellants are presently running two generators, one of them particularly noisy and clearly audible from surrounding properties, in the field adjacent to the caravans. It appears to me that the use of the generators is likely to cease whatever the outcome of the appeals. If allowed, the relevant injunctive prohibition will be discharged, so enabling a grid connection to take place. If dismissed, the caravans will need to be removed from the site and thus the generators will not be required.
46. Other matters raised by local residents concern highway safety and other impacts on their own living conditions. I do not consider, other than the noise from the generators, the site to be unduly intrusive on neighbouring living conditions by reason of any overlooking or privacy considerations, although I acknowledge that there is some existing intervisibility and this will be augmented during the winter months.
47. As to highway safety, there is no objection to the development by the local highway authority. Sandy Lane is a single track road (with passing places) and the intervisibility when entering the road from Church Lane is poor. However this affects all traffic along the road. The actual access into and egress from 'Sandy Acres', as the appeal site is now known, has adequate visibility. I do not think this matter warrants dismissing the appeal, especially in the light of the local highway authority's view.
48. A further concern expressed by local residents is the apparent inevitability of further development nearby in future years, either because allowing these appeals would set a particular precedent or because the growing needs of the appellants' families would require an expanded site in the future. I acknowledge these concerns but where, as here, there is a presumption against any future development in the Green Belt and very special circumstances would have to be demonstrated in order to justify it, it is impossible to conclude that a precedent would be set. Any future development proposal would have to be considered in the particular circumstances of that case.
49. Nonetheless I do accept that to allow this development would potentially result in a different appraisal of the contribution of the adjacent fields, especially those lying closer to the urban area to the east, to both the openness and purposes of the Green Belt and to the landscape character of the AONB. Thus a permission here could have some impact on how any future development proposals nearby would come to be appraised. However, in the absence of any demonstrated realistic anticipation of other development proposals in the vicinity, I am not prepared to attribute any further adverse weight beyond the effects of the development proposal itself, in either Appeal A or Appeal D.

Other considerations

Need for and supply of sites

50. The Council's GTAA of August 2021 identifies a need for 121 pitches in the period to 2038, 72 of those by 2025. The need figure is considered by the appellants to be an underestimate for reasons including that the anticipated new households formed from those not meeting the planning definition (i.e. gypsies or travellers but perhaps no longer of nomadic habit) are assumed not to meet the planning definition themselves. The total need figure is for 154 pitches when including those who do not or are assumed not to meet the planning definition.
51. An existing Site Allocations Document ('SAD') of 2018 allocates 20 new pitches and a recent pitch deliverability study of 2021 identifies a total of 57 pitches that could be delivered in the period 2021 – 2025. The Council's preferred options consultation, informed by this study, identified suitable sites for 42 pitches, all in the Green Belt.
52. Ten additional pitches have been authorised since the SAD was adopted and I heard that 11 of the sites allocated in the SAD remain undeveloped (or unauthorised). Notwithstanding the scope for overlap between these figures, on any analysis there is a considerable shortfall in supply, and the Council acknowledge this to be the case and agree that they do not have a five-year supply of sites.
53. The PPTS sets out that where a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration when determining an application for a temporary planning permission, but not where the permission sought is in the Green Belt. The permission sought here is permanent. I give moderate weight to the unmet need for sites in favour of the proposals.

Alternatives

54. The Council also acknowledge that there is no realistic alternative site available to the appellants. A number of letters were supplied to me at the hearing from those in charge of existing sites in the vicinity, all with the general message that the sites are full and no vacant pitches are anticipated. These included correspondence from the appellants' extended family's sites in the area.
55. The appellants explained to me that their temporary stay in bricks and mortar accommodation was unsuccessful, and I agree that this would not be a reasonable alternative. There does not appear to be any reasonable alternative accommodation for the appellants and their families and I have given this significant weight.

Personal circumstances

56. The appellants all have young families, with a current total of six adults and seven children living on the site, the children ranging in age from infants to 11. The appellants explained their rationale for moving onto the site as being to create a settled base in order to allow for a better education for the children. It was explained that the children's schooling has suffered some considerable

disruption as a result of the appellants' previous residences on unauthorised sites and frequently being ordered to move on.

57. A letter was produced from an administrative assistant at a nearby primary school confirming that two of the families' children are on the roll. Another child was due to start in the Autumn Term 2022. The oldest child living on the site is now of secondary school age. At the date of the hearing no attempt had been made to enrol that child in a secondary school, although I was assured it would happen.
58. No attendance records have been supplied to me although I understand that the children's attendance at school has improved since the families moved onto the site. Some term time is spent travelling with their parents although arrangements can be made for remote schooling when that occurs. As the families have no alternative site it is likely that the children's school attendance would be more sporadic if the appeals are dismissed. The ability of the site to provide a settled base for the children to acquire an education is an important consideration, although the failure to enrol the eldest child in secondary school at less than a week before the start of the academic year tempers its significance. Nonetheless I attach significant weight to this factor.
59. All of the families are registered with local medical practices. No particular health needs, save for peri-natal care as the families may grow, and which is not identified as requiring proximity to any particular medical practice, were identified. Nonetheless I attach a small amount of weight to the generalised benefit to the families' health and well-being of a settled home base.
60. Although moving between sites, the appellants have lived and travelled together in their family group for many years. With longstanding local connections and as the owners of the appeal site, it is a convenient place for them to live. I attach moderate weight to the ability of the site to enable the families to live together, as the PPTS seeks to facilitate.

Whether the harm is clearly outweighed by other considerations

61. Very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations. Only then can a permission be justified.
62. The substantial harm caused by reason of inappropriateness and the harm to openness and the purpose of safeguarding against encroachment of the countryside carries slightly more than substantial weight against the proposal. The harm to the AONB character carries additional considerable weight against the proposal.
63. Although the development meets all the criteria of local policy H6 with the exception of criterion 8 on the two counts of harming the openness of the Green Belt and of harming the AONB, because of those exceptions it does not amount to sustainable development.
64. Nonetheless I give moderate weight to the compliance with the remainder of the relevant criteria-based policy. The unmet need for sites in the district and the Council's failure to meet the need carry moderate weight in favour of the proposals. The lack of any reasonable alternative also carries significant weight in favour of the development. By enabling the families to maintain their local

connections and to live together in a family group, and allowing the children to attend school on a regular basis, the development provides social and economic benefits. I attach weight to all these factors as set out above, particularly significantly to the educational benefits.

65. Nonetheless whilst the families' otherwise unmet personal needs and circumstances, and the general unmet need, are important factors, I do not find them to justify the permanent harm to the Green Belt and to the landscape character that have arisen. In this I am mindful of the best interests of the children involved, with no other factor in the case being inherently more important.
66. My attention is also drawn to human rights considerations arising from the European Convention requiring the protection of property (A1P1) and respect for the home and private life (article 8). To dismiss the appeals would be to interfere with these qualified rights. This is justifiable where there is a clear legal basis for the interference, which in this case would relate to the regulation of land use in the exercise of development control measures, and the interference is necessary in a democratic society. I consider below whether this is the case. It is also necessary not to deny the right to education (A2P1). I am also mindful of my duties to facilitate the way of life of gypsies and travellers, and to eliminate discrimination, promote equality of opportunity and foster good relations where relevant protected characteristics arising under the Equality Act 2010 are concerned. I am mindful of all these matters in reaching my conclusions.
67. The accommodation need in the area is due to be assessed through the local plan process. Although there has been slippage in the timetable, the present aim of the Council is to achieve an adopted Plan by the end of next year. Sites which best meet the need with least harm to the environment should come forward through that process. Whilst at present the site suitability study has failed to identify sufficient sites to meet the need identified by the latest GTAA (or the more extensive need identified by the appellants), the Council has identified the provision of sites in the past that have met the locally specific criteria of policy H6. Although the district is highly constrained, both by the Green Belt and by other factors such as designated landscapes and nature conservation interests, I am not persuaded that harm of such significance as that resulting from the development of the appeal site is necessary in order to provide adequate sites to meet the need.
68. Whilst the appeals seek permanent planning permissions, I have considered whether, particularly in view of the emerging Local Plan, a temporary permission should be forthcoming. This would not substitute for a permanent site but would give the families an opportunity to pursue a site through the DPD process. There is a moderate need for each family to remain in situ whilst there is no alternative accommodation available, particularly in the light of the children's educational needs and the benefit to the families of remaining together.
69. The harm occasioned by temporary development would necessarily be limited by reason of the time involved, and the parties agreed at the hearing that on cessation of any temporary or personal permission the operational development on the site (save for the stable block and limited hardstanding

associated with that) should be removed, so mirroring the requirements of the enforcement notice that would otherwise be upheld.

70. The lack of a five year supply of sites is said by the PPTS, in relation to sites in the Green Belt or an AONB, to be an exception to the requirement to treat that lack of supply as a significant material consideration when considering a temporary planning permission. The PPTS is silent as to what particular weight should be attributed to a shortfall in supply on determining a temporary permission in these circumstances; instead the general position is that personal circumstances and unmet need should not, subject to the best interests of children, be likely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.
71. That being the case, I am unable to find that a temporary permission is justified here. Given the very substantial policy objections to the development that exist at this site, without realistic prospect of future change, I do not consider this a suitable case for allowing a temporary permission. It is still necessary to attribute substantial weight to any Green Belt harm, even if temporally limited, and I do not consider that this and the other identified harm is clearly outweighed by the remaining factors in favour of the development, and consider that the interference with the families' human rights and the interests of the children would still be a justified and proportionate response. Very special circumstances justifying a temporary grant of planning permission do not exist.
72. It follows that I do not find there to be very special circumstances justifying a permanent permission either.

The appeals on ground (g)

73. If permissions are not forthcoming then a period of 12 months to comply with the notice is sought in each of appeals A – C. Given that we are at the start of the academic year, I consider that a period of 12 months to vacate the site and comply with the additional requirements is a reasonable one, in order that the children may avoid changing schools (if that is the consequence of my decision) mid-year. Accordingly these appeals succeed to this extent and I shall vary the requirements of the notice accordingly.

Conclusions and Formal Decisions

Appeals A - C

74. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.
75. It is directed that the enforcement notice be corrected and varied as follows:
- Delete the text at allegation 3(i) and replace with "The unauthorised change of use to a mixed use for residential and the stabling and keeping of horses"
 - Delete the text at requirement 5(1) and replace with "cease the unauthorised mixed use"

- Delete the text at requirement 5(6) and replace with "restore the land to its former condition"
 - To requirement 5(9) add "except insofar as its constituent materials are used to restore the land to its former condition pursuant to requirement (6) above"
 - Omit all text concerning the Time for Compliance and replace with "12 months from the date this notice takes effect"
76. Subject to those corrections and variations, the appeals are dismissed and the enforcement notice upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal D

77. The appeal is dismissed.

Laura Renaudon

INSPECTOR

APPEARANCES: MAIN PARTIES

FOR THE APPELLANT:

Raymond Clee	Appellant
Joseph Clee	Appellant
Jamie Clee	Appellant
Philip Brown	Agent

FOR THE LOCAL PLANNING AUTHORITY:

Paul Turner MATP MRTPI	Planning Consultant
Catherine Gutteridge	Planning Enforcement Team Manager
Julia Banbury	Cannock Chase AONB

DOCUMENTS SUBMITTED AT THE HEARING:

1. Correspondence from other residential caravan sites	Appellants
2. Correspondence concerning education and the families	Appellants
3. Unilateral Undertaking	Appellants
4. Pitch Deliverability Assessment August 2021	LPA
5. GTAA August 2021	LPA



Appeal Decision

Site visit made on 17 October 2022

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 October 2022

Appeal Ref: APP/C3430/X/22/3297848

Land to the rear of 35 Deacons Field, Brewood ST19 9GA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Charlotte Inman against the decision of South Staffordshire Council.
 - The application Ref 21/00584/LUP, dated 19 May 2021, was refused by notice dated 5 November 2021.
 - The application was made under section 192(1)(a) of the 1990 Act as amended.
 - The use for which a certificate of lawful use or development is sought is an allotment in agricultural use.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant with the relevant test of the evidence being the balance of probabilities. The planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
3. The application was seeking to establish that the use of the land as an allotment would have been lawful had it been instituted at the date of the application. Section 191(2) of the 1990 Act provides that uses are lawful at any time if no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).

Main Issue

4. The application sought confirmation that the use of land to the rear of No 35 as an allotment would be lawful. This is on the basis that the authorised use of the land is agriculture and the land would remain in agricultural use as an allotment. The use of land and buildings occupied with the land for agriculture and forestry is excluded from the definition of development under Section 55(2)(e) of the 1990 Act and so, it is argued, planning permission would not be required to use the land as described.

5. The Council is of the opinion that the intensity of the proposed use could not be considered to be agriculture. It would amount to a material change of use to residential, which would be development under Section 55(1) of the 1990 Act and would require planning permission. Hence, it would not be a lawful use of the land. The main issue is whether the Council's refusal to grant an LDC was well-founded.

Reasons

6. The appeal site is a rectangular piece of land to the rear of No 35 Deacons Field. The land forms part of a wider strip which extends either side of the site. The appellant intends to use the land as an allotment and has submitted a plan showing a chicken run, beds for fruit trees, wildflowers and vegetables and an area of permanent rye grass, along with an estimate of productivity for 2021. There is also a corner for composting and wildlife refuges. The boundary to the south-west is a post and rail fence with a native hedge. The opposite boundary is formed of a panel fence. The land is separated from the garden area at the rear of the house by a post and rail fence with a slip rail for access.
7. The appellant has also provided an informal written agreement between the occupants of Nos 25, 31 and 35 to use the land as allotments for the private and non-commercial cultivation of vegetables, fruit, flowers, eggs or other domestically used crops.
8. As explained above, the main issue is whether the proposed allotment would be an agricultural use and thus lawful. 'Agriculture' is defined in Section 336 as including but not necessarily being limited to a list of activities - horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly.
9. The appellant draws my attention to the judgement in *Crowborough*¹. The case concerned the proposed use of agricultural land for allotments. The Secretary of State took the view that "allotments" were not "agriculture", as defined in Section 290 of 1971 Act due to the sub-division of the land and the increase in the number of people working it. The Court held that it was correct to look at s290, but it was necessary to consider if allotments could be included in any of the activities set out in that definition. In the Court's view, what is done on allotments could be said to be "horticulture", "fruit growing", perhaps even "seed growing". It was held that allotments fell within the definition of agriculture in Section 290(1) of the 1971 Act.
10. The case is not recent but there is no reason for me to dismiss the judgment for that reason alone. The definition of agriculture is unchanged and the facts of the case are very similar to those before me. I must consider whether the proposed use could properly be said to be included in any of the things that are set out in the definition of "agriculture" or in any other way could be said to be "agriculture".

¹ *Crowborough Parish Council v SSE & Wealden DC* [1981] WL 186859 (1980).

11. The proposed use includes the growing and cultivation of fruit trees and vegetables and for keeping hens for eggs. These are all firmly within the definition of agriculture. In addition, the less intensively managed areas, such as the rye grass and wildflowers, is meadow land. I consider that the use described can be reasonably considered to be agriculture.
12. The Council maintains that the land use would be merely an extension of the domestic garden area, but there is very little evidence to support this assertion. For a material change of use to take place, there has to be a significant difference in the character of activities from what has taken place previously. There is no suggestion that the land would be used for residential purposes, which would be characterised by, for example, a maintained lawn and flower beds, formal or informal seating areas, areas for drying washing, patios/decking, play equipment and ornamental features.
13. I am also provided with appeal decisions which concerned the alleged change of use to private gardens². The appeals are limited in their relevance because, crucially, the issues were different to those before me. The Inspector was considering whether the appeal land was within the curtilage of the dwellings and whether its use as garden would amount to development. The appeals considered the use of the land for horticulture as part of an argument on the 'fallback' position and the potential impact of such a use on the character of the area. The argument was not accepted by the Inspector, who afforded the matter little weight because the growing of vegetables in a garden does not necessarily result in a horticultural use. The Inspector also commented on the suitability of one plot for horticulture, given its size. From the brief comments of the Inspector, it does not follow that the relative size of the plot nor the intensity of vegetable growing should be deciding factors, as the Council indicates.
14. The Council also refers to other appeal decisions, but these are not provided and I am unable to locate the decision letters from the references given.
15. I find, as a matter of fact and degree, that the proposed use of the land as an allotment would fall within the definition of agriculture provided by Section 336 of the 1990 Act. Thus, the use would not be development under the provisions of Section 55(2)(e) and planning permission would not be required for the use as an allotment as described in the application. Consequently, it would be lawful.

Conclusion

16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of an allotment in agricultural use was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Debbie Moore

Inspector

² Ref APP/R0335/C/16/3156893, APP/R0335/C/16/3156896, APP/R0335/X/16/3161500 and APP/R0335/X/16/3165123 dated 21 September 2017.



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 19 May 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (the 1990 Act) as amended, for the following reason:

The proposed use of the land as an allotment would fall within the definition of agriculture provided by Section 336 of the 1990 Act. Thus, the use would not amount to development by virtue of the provisions of Section 55(2)(e) of the 1990 Act. Planning permission would not be required for use as an allotment.

Signed

Debbie Moore

Inspector

Date: 26 October 2022

Reference: APP/C3430/X/22/3297848

First Schedule

An allotment in agricultural use

Second Schedule

Land to the rear of 35 Deacons Field, Brewood ST19 9GA

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

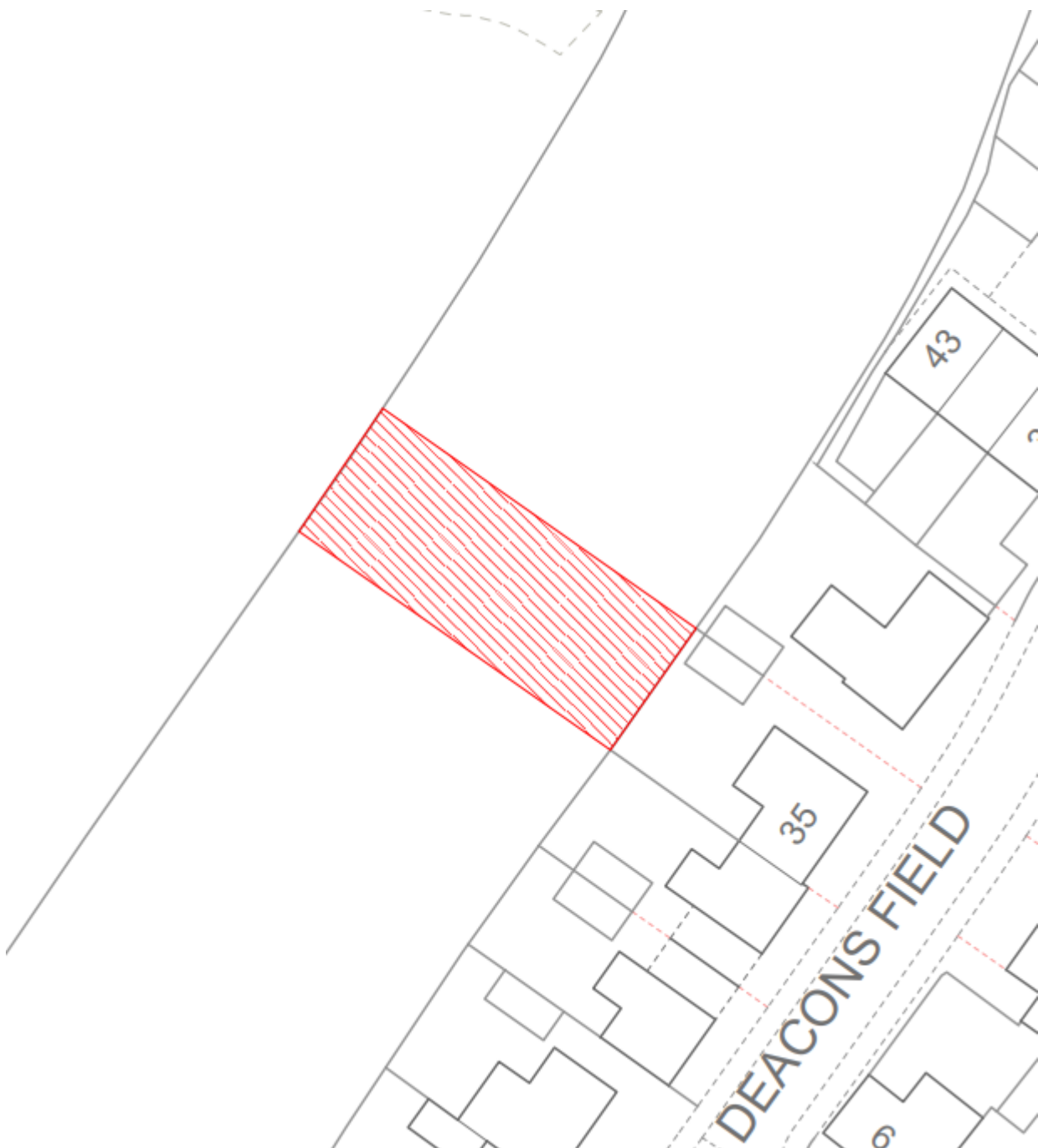
This is the plan referred to in the Lawful Development Certificate dated: 26 October 2022

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

Land to the rear of 35 Deacons Field, Brewwood ST19 9GA

Ref: APP/C3430/X/22/3297848

Scale: NTS





Appeal Decision

Site visit made on 17 October 2022

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 October 2022

Appeal Ref: APP/C3430/X/22/3297849

Land to the rear of 31 Deacons Field, Brewood ST19 9GA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Kate Youlden against the decision of South Staffordshire Council.
 - The application Ref 21/00636/LUP, dated 19 May 2021, was refused by notice dated 5 November 2021.
 - The application was made under section 192(1)(a) of the 1990 Act as amended.
 - The use for which a certificate of lawful use or development is sought is an allotment in agricultural use.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant with the relevant test of the evidence being the balance of probabilities. The planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
3. The application was seeking to establish that the use of the land as an allotment would have been lawful had it been instituted at the date of the application. Section 191(2) of the 1990 Act provides that uses are lawful at any time if no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).

Main Issue

4. The application sought confirmation that the use of land to the rear of No 31 as an allotment would be lawful. This is on the basis that the authorised use of the land is agriculture and the land would remain in agricultural use as an allotment. The use of land and buildings occupied with the land for agriculture and forestry is excluded from the definition of development under Section 55(2)(e) of the 1990 Act and so, it is argued, planning permission would not be required to use the land as described.

5. The Council is of the opinion that the intensity of the proposed use could not be considered to be agricultural. It would amount to a material change of use to residential, which would be development under Section 55(1) of the 1990 Act and would require planning permission. Hence, it would not be a lawful use of the land. The main issue is whether the Council's refusal to grant an LDC was well-founded.

Reasons

6. The appeal site is a rectangular piece of land to the rear of No 31 Deacons Field. The land forms part of a wider strip which extends either side of the site. The appellant intends to use the land as an allotment and has submitted a plan showing a strawberry patch, fruit trees and bushes, planting to attract pollinating insects and two vegetable patches. A central area would be sown with rye grass. A table showing estimated output from the land in 2021 has been provided. The land would be separated from the garden area at the rear of the house by a post and rail fence with a slip rail for access. The other boundaries would be delineated by post and rail fencing.
7. The appellant has also provided an informal written agreement between the occupants of Nos 25, 31 and 35 to use the land as allotments for the private and non-commercial cultivation of vegetables, fruit, flowers, eggs or other domestically used crops.
8. As explained above, the main issue is whether the proposed allotment would be an agricultural use and thus lawful. 'Agriculture' is defined in Section 336 as including but not necessarily being limited to a list of activities - horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly.
9. The appellant draws my attention to the judgement in *Crowborough*¹. The case concerned the proposed use of agricultural land for allotments. The Secretary of State took the view that "allotments" were not "agriculture", as defined in Section 290 of 1971 Act due to the sub-division of the land and the increase in the number of people working it. The Court held that it was correct to look at s290, but it was necessary to consider if allotments could be included in any of the activities set out in that definition. In the Court's view, what is done on allotments could be said to be "horticulture", "fruit growing", perhaps even "seed growing". It was held that allotments fell within the definition of agriculture in Section 290(1) of the 1971 Act.
10. The case is not recent but there is no reason for me to dismiss the judgment for that reason alone. The definition of agriculture is unchanged and the facts of the case are very similar to those before me. I must consider whether the proposed use could properly be said to be included in any of the things that are set out in the definition of "agriculture" or in any other way could be said to be "agriculture".

¹ *Crowborough Parish Council v SSE & Wealden DC* [1981] WL 186859 (1980).

11. The proposed use includes the growing and cultivation of fruit trees/bushes, herbs and vegetables. These are all firmly within the definition of agriculture. In addition, the less intensively managed area, such as the rye grass, is meadow land. I consider that the use described can be reasonably considered to be agriculture.
12. The Council maintains that the proposed use would not be agricultural due to the limited area used for growing fruit and vegetables, and the relatively low intensity of use. It is considered that the proposal would be more akin to domestic garden use. However, there is very little evidence to support this assertion. For a material change of use to take place, there has to be a significant difference in the character of activities from what has taken place previously. There is no suggestion that the land would be used for residential purposes, which would be characterised by, for example, a maintained lawn and flower beds, formal or informal seating areas, areas for drying laundry, patios/decking, play equipment and ornamental features.
13. I am also provided with appeal decisions which concerned the alleged change of use to private gardens². The appeals are limited in their relevance because, crucially, the issues were different to those before me. The Inspector was considering whether the appeal land was within the curtilage of the dwellings and whether its use as garden would amount to development. The appeals considered the use of the land for horticulture as part of an argument on the 'fallback' position and the potential impact of such a use on the character of the area. The argument was not accepted by the Inspector, who afforded the matter little weight because the growing of vegetables in a garden does not necessarily result in a horticultural use. The Inspector also commented on the suitability of one plot for horticulture, given its size. From the brief comments of the Inspector, it does not follow that the relative size of the plot nor the intensity of vegetable growing should be deciding factors, as the Council indicates.
14. The Council also refers to other appeal decisions, but these are not provided and I am unable to locate the decision letters from the references given.
15. I find, as a matter of fact and degree, that the proposed use of the land as an allotment would fall within the definition of agriculture provided by Section 336 of the 1990 Act. Thus, the use would not be development under the provisions of Section 55(2)(e) and planning permission would not be required for the use as an allotment as described in the application. Consequently, it would be lawful.

Conclusion

16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of an allotment in agricultural use was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Debbie Moore Inspector

² Ref APP/R0335/C/16/3156893, APP/R0335/C/16/3156896, APP/R0335/X/16/3161500 and APP/R0335/X/16/3165123 dated 21 September 2017.

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 19 May 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (the 1990 Act) as amended, for the following reason:

The proposed use of the land as an allotment would fall within the definition of agriculture provided by Section 336 of the 1990 Act. Thus, the use would not amount to development by virtue of the provisions of Section 55(2)(e) of the 1990 Act. Planning permission would not be required for use as an allotment.

Signed

Debbie Moore

Inspector

Date: 26 October 2022

Reference: APP/C3430/X/22/3297849

First Schedule

An allotment in agricultural use

Second Schedule

Land to the rear of 31 Deacons Field, Brewood ST19 9GA

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

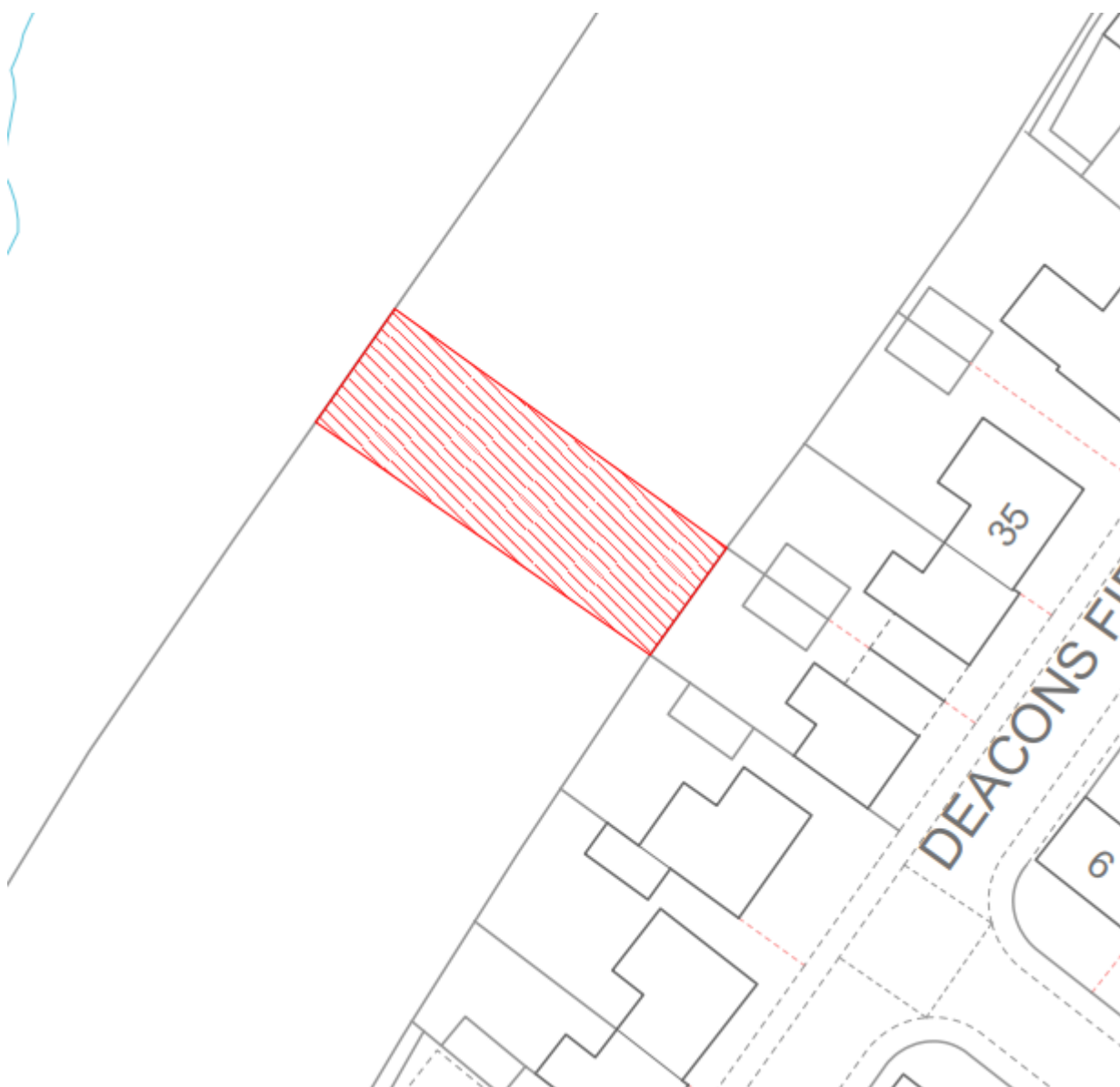
This is the plan referred to in the Lawful Development Certificate dated: 26 October 2022

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

Land to the rear of 31 Deacons Field, Brewwood ST19 9GA

Ref: APP/C3430/X/22/3297849

Scale: NTS





Appeal Decision

Site visit made on 17 October 2022

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 October 2022

Appeal Ref: APP/C3430/X/22/3297850

Land to the rear of 25 Deacons Field, Brewood ST19 9GA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr N and Mrs J Williams against the decision of South Staffordshire Council.
 - The application Ref 21/00566/LUP, dated 19 May 2021, was refused by notice dated 5 November 2021.
 - The application was made under section 192(1)(a) of the 1990 Act as amended.
 - The use for which an LDC is sought is an allotment in agricultural use.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellants with the relevant test of the evidence being the balance of probabilities. The planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act. I note the comments of a neighbour concerning previous works but these appear to relate to those carried out by the former landowner. In any event, I must confine my reasoning to the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
3. The application was seeking to establish that the use of the land as an allotment would have been lawful had it been instituted at the date of the application. Section 191(2) of the 1990 Act provides that uses are lawful at any time if no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).

Main Issue

4. The application sought confirmation that the use of land to the rear of No 25 as an allotment would be lawful. This is on the basis that the authorised use of the land is agriculture and the land would remain in agricultural use as an allotment. The use of land and buildings occupied with the land for agriculture and forestry is excluded from the definition of development under Section 55(2)(e) of the 1990 Act and so, it is argued, planning permission would not be required to use the land as described.

5. The Council is of the opinion that the intensity of the proposed use could not be considered to be agricultural. It would amount to a material change of use to residential, which would be development under Section 55(1) of the 1990 Act and would require planning permission. Hence, it would not be a lawful use of the land. The main issue is whether the Council's refusal to grant an LDC was well-founded.

Reasons

6. The appeal site is a rectangular piece of land to the rear of No 25 Deacons Field. The land forms part of a wider strip which extends either side of the site. The appellants intend to use the land as an allotment to grow fruit and vegetables. A table showing estimated output from the land in 2021 has been provided. The land would be separated from the garden area at the rear of the house by a fence with a gate for access. The other boundaries would be delineated by post and rail fencing, and hedges planted with native species.
7. The appellants have also provided an informal written agreement between the occupants of Nos 25, 31 and 35 to use the land as allotments for the private and non-commercial cultivation of vegetables, fruit, flowers, eggs or other domestically used crops.
8. As explained above, the main issue is whether the proposed allotment would be an agricultural use and thus lawful. 'Agriculture' is defined in Section 336 as including but not necessarily being limited to a list of activities - horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly.
9. The appellants draw my attention to the judgement in *Crowborough*¹. The case concerned the proposed use of agricultural land for allotments. The Secretary of State took the view that "allotments" were not "agriculture", as defined in Section 290 of 1971 Act due to the sub-division of the land and the increase in the number of people working it. The Court held that it was correct to look at s290, but it was necessary to consider if allotments could be included in any of the activities set out in that definition. In the Court's view, what is done on allotments could be said to be "horticulture", "fruit growing", perhaps even "seed growing". It was held that allotments fell within the definition of agriculture in Section 290(1) of the 1971 Act.
10. The case is not recent but there is no reason for me to dismiss the judgment for that reason alone. The definition of agriculture is unchanged and the facts of the case are very similar to those before me. I must consider whether the proposed use could properly be said to be included in any of the things that are set out in the definition of the "agriculture" or in any other way could be said to be "agriculture".
11. The proposed use includes the growing and cultivation of fruit and vegetables. These are all firmly within the definition of agriculture. Areas left unmown and

¹ *Crowborough Parish Council v SSE & Wealden DC* [1981] WL 186859 (1980).

planted with rye grass could be considered to be meadow land. The Council maintains that the proposed use would not be agricultural due to the limited area used for growing fruit and vegetables, and the relatively low intensity of use. It is considered that the proposal would be more akin to domestic garden use. However, there is very little evidence to support this assertion. For a material change of use to take place, there has to be a significant difference in the character of activities from what has taken place previously. There is no suggestion that the land would be used for residential purposes, which would be characterised by, for example, a maintained lawn and flower beds, formal or informal seating areas, areas for drying laundry, patios/decking, play equipment and ornamental features.

12. I am also provided with appeal decisions which concerned the alleged change of use to private gardens². The appeals are limited in their relevance because, crucially, the issues were different to those before me. The Inspector was considering whether the appeal land was within the curtilage of the dwellings and whether its use as garden would amount to development. The appeals considered the use of the land for horticulture as part of an argument on the 'fallback' position and the potential impact of such a use on the character of the area. The argument was not accepted by the Inspector, who afforded the matter little weight because the growing of vegetables in a garden does not necessarily result in a horticultural use. The Inspector also commented on the suitability of one plot for horticulture, given its size. From the brief comments of the Inspector, it does not follow that the relative size of the plot nor the intensity of vegetable growing should be deciding factors, as the Council indicates.
13. The Council also refers to other appeal decisions³, but these are not provided and I am unable to locate the decision letters from the references given. However, it seems that these appeals concerned an unauthorised change of use of land to residential. It is not clear on what basis the Inspector concluded that the plots in that case were residential in character and I cannot draw any comparisons with the matters at issue in this appeal.
14. I find, as a matter of fact and degree, that the proposed use of the land as an allotment would fall within the definition of agriculture provided by Section 336 of the 1990 Act. Thus, the use would not be development under the provisions of Section 55(2)(e) and planning permission would not be required for the use as an allotment as described in the application. Consequently, it would be lawful.

Conclusion

15. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of an allotment in agricultural use was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Debbie Moore Inspector

² Ref APP/R0335/C/16/3156893, APP/R0335/C/16/3156896, APP/R0335/X/16/3161500 and APP/R0335/X/16/3165123 dated 21 September 2017.

³ Ref APP/G2435/C/09/2100303 and APP/G2435/C/09/2100304.

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 19 May 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (the 1990 Act) as amended, for the following reason:

The proposed use of the land as an allotment would fall within the definition of agriculture provided by Section 336 of the 1990 Act. Thus, the use would not amount to development by virtue of the provisions of Section 55(2)(e) of the 1990 Act. Planning permission would not be required for use as an allotment.

Signed

Debbie Moore

Inspector

Date: 26 October 2022

Reference: APP/C3430/X/22/3297850

First Schedule

An allotment in agricultural use

Second Schedule

Land to the rear of 25 Deacons Field, Brewood ST19 9GA

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 26 October 2022

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

Land to the rear of 25 Deacons Field, Brewood ST19 9GA

Ref: APP/C3430/X/22/3297850

Scale: NTS

