

Delegated Report

Planning Ref: 20/01012/OUT

Applicant: Mather Jamie Of Behalf Of Central England Cooperative

Ward: Burbage Sketchley and Stretton



Hinckley & Bosworth
Borough Council

Site: Land West Of Workhouse Lane Burbage Leicestershire

Proposal: Residential development up to 40 dwellings, public open space and associated Infrastructure (Outline - access only).

1. Recommendations

1.1. **Refuse planning permission** for the reasons set out below.

2. Planning application description

2.1. The application seeks outline permission for the erection of up to 40 dwellings, open space and associated infrastructure, with all matters reserved except for access.

2.2. The council has worked proactively with the applicant to overcome various issues during the planning process, as is demonstrated by the number of amended plans submitted.

2.3. The applicant had previously engaged the Council in pre-application discussions, which concluded that the scheme was contrary to Policy DM4 of the SADMP, but advised that should all matters be resolved through the application process, it was possible that a view would be taken in light of the Council's 5 Year Housing Land Supply, and the 'Tilted Balance' that is engaged as a result. These matters will all be addressed in full in the following sections.

3. Description of the site and surrounding area

3.1. The application site comprises a single agricultural field adjacent to the built-up area of Burbage. It sits to the southern east of that settlement, and would be accessed via Workhouse Lane.

3.2. The site is broadly rectangular in shape, and devoid of any noticeable features, though a small cluster of trees can be found in the northern part of the site.

3.3. The site is adjoined by residential development, and so the prevailing character is semi-rural or developed countryside. The site is within close proximity to Junction 1 of the M69, and a short drive from Hinckley railway station. There are a number of amenities within walking distance in Burbage, including a post office, schools, public houses and shops.

3.4. The application site is located within flood zone 1. It is not within a Conservation Area, nor does it contain any Listed Buildings. There are no other designations on the site that would be material to decision-making.

4. Relevant planning history

3.5. There is no relevant planning history on the site.

5. Publicity

5.1. The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site and a notice was displayed in the local press.

5.2. 19 public comments have been received, raising the following concerns:

- Increased traffic
- Unsuitable access road
- Insufficient capacity in local schools
- Insufficient capacity in local GP surgeries
- Too much development
- Noise impact
- Contrary to Burbage Neighbourhood Plan
- Out of character
- Air quality/pollution
- Lack of transparency relating to future developments to the west
- Loss of countryside
- Impact on play area
- Removal of native trees and woodland

6. Consultation

6.1. No objection has been received from:

- LLFA (Conditions relating to surface water management)
- LCC Minerals
- LCC Ecology (Condition relating to hedgerow planting)
- LCC Archaeology (Condition relating to archaeological works)
- HBBC Affordable Housing (20% AH provision)
- HBBC ES Pollution (Conditions relating to Noise Impact Assessment, Construction Environmental Management Plan, Land Contamination)
- LCC Education
- NHS West Leicestershire CCG (£106 Contribution of £20,252.50)

7.1. The applicant has been in lengthy dialogue with the Highways Authority and has provided amended plans, additional traffic assessment information, and a proposal for off site highways improvement works to mitigate against the impacts of the proposal.

7.2. Any impasse has been reached and the Highways Authority hold an objection to the scheme:

“The Local Highway Authority advice is that the residual cumulative impacts of the development are severe in accordance with the National Planning Policy Framework (2021) and the Local Planning Authority is advised to consider refusal on transport/highway grounds for the reasons outlined in this report.

1. *The Applicant has failed to demonstrate the principle of a safe and suitable access route can be achieved to the site between the junction of Workhouse Lane and Britannia Street and the proposed site access, contrary to paragraph 108 of the National Planning Policy Framework.*

Advice to Local Planning Authority

Following the observations submitted by the Local Highway Authority dated 15 July 2021, the Applicant has submitted a Technical Note dated 21 July 2021 which

states the LHA need to provide more clear evidence on their grounds for objection given the previous Technical Notes and a Stage 1 Road Safety Audit which have been submitted.

The LHA advised refusal of the application within its observations submitted to the Local Planning Authority on 18 December 2020, 15 February 2021 and 15 July 2021. The latter two responses referred to the comments submitted on 18 December 2020.

The LHA have re-visited the site on 16 February 2022 and maintain that carriageway widths on Workhouse Lane between the Britannia Road Road and Frezenberg Close junction are below the 5.5m required within Part 3, Table DG1 of the Leicestershire Highway Design Guide. Carriageway widths between the Britannia Close junction and the existing build-out on Workhouse Lane narrow to approximately 4.2m, creating a pinch point where vehicles exiting Britannia Road could come in to conflict with vehicles turning right towards Britannia Road or continuing northbound along Workhouse Lane. In addition, the tight junction radii and restricted visibility due to third party land/planting mean drivers would need to pull out some way in to Workhouse Lane in order to see oncoming traffic when turning left.

The LHA consider the additional development traffic could exacerbate the situation which would be to the detriment of highway safety and free flowing traffic. Drivers may also be tempted to pull up half on to the footway and continue to drive half on the footway/ carriageway in order to allow other vehicles to pass which would be to the detriment of pedestrian safety. During the site visit there did not appear to be scope to undertake widening in the area without third party land. Therefore the LHA maintain its ongoing reason for refusal, originally advised on 18 December 2020.”

7.3. Burbage Parish Council also objected to the scheme, on the following grounds:

“Burbage Parish Council resolved to object the application for access and the principle of development on this site. Workhouse Lane is a singletrack road with very narrow footpaths and an increase in traffic movements would pose a danger to all road users and pedestrians alike, with no scope to widen the road and footways sufficiently and is therefore inadequate for access for development. Furthermore, member questioned the validity of the traffic assessments as being out of date, with factual inaccuracies. The right turn on exiting Workhouse Lane towards the direction off Lutterworth Road is a dangerous junction with no visibility and an extremely narrow footpath and would pose further danger to road users and pedestrians alike.

The site lies within open countryside, development would urbanise the site and have an adverse effect on the intrinsic value, beauty, open character and landscape character which is currently enjoyed by residents and forms part of the landscape setting of the village. The site is also a ridge and furrow field and loss of this heritage asset would harm the intrinsic value it brings to the character of the Parish. There was also little confidence in the ecology report supplied as there are data source inaccuracies with reference to locations not identified as being relevant to Burbage in Leicestershire. The development would have a negative impact on the wildlife with loss of habitat and disturbance, a full wildlife assessment would be expected as it was reported that a recent nearby development had disturbed resident wildlife which as a consequence had caused great nuisance to existing neighbours.

Members also had strong concerns regarding the current surface water flooding issues that are experienced regularly on Workhouse Lane and felt that the survey had been conducted at the wrong time of year to fully capture the potential issues of development. It was noted by one member that the area, whilst in Zone 1 for flooding risk (rivers), is actually identified by the LCC as at high risk for surface water flooding, which had been given no regard in the survey.”

- 7.4. These matters relate to materials considerations and will be covered in the following sections.

7. Policy

7.5. Core Strategy (2009)

- Policy 4: Development in Burbage
- Policy 5: Transport Infrastructure in the sub regional centre
- Policy 15: Affordable Housing
- Policy 16: Housing Density, Mix and Design
- Policy 19: Green Space and Play Provision
- Policy 20: Green Infrastructure
- Policy 24: Sustainable Design and Technology

7.6. Site Allocations and Development Management Policies DPD (2016)

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM3: Infrastructure and Delivery
- Policy DM4: Safeguarding the Countryside and Settlement Separation
- Policy DM6: Enhancement of Biodiversity and Geological Interest
- Policy DM7: Preventing Pollution and Flooding
- Policy DM10: Development and Design
- Policy DM11: Protecting and Enhancing the Historic Environment
- Policy DM13: Preserving the Borough's Archaeology
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

7.7. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2021)
- Planning Practice Guidance (PPG)
- National Design Guide (2019)

7.8. Other relevant guidance

- Good Design Guide (2020)
- Leicestershire Highway Design Guide
- Landscape Character Assessment (2017)
- Landscape Sensitivity Assessment (2017)
- Open Space and Recreation Study (2016)
- Housing Needs Study (2019)
- Affordable Housing SPD (2011)
- Leicestershire Minerals and Waste Local Plan

8. Appraisal

- 8.1. As this is an outline planning application with all matters reserved except for access, the number of detailed considerations relevant at this stage are limited. Nonetheless, the following represent the key issues

- Principle of development

- Housing land supply
- Housing mix and supply
- Impact upon highway safety
- Landscape and visual impact
- Design and layout
- Residential amenity
- Flood risk and drainage
- Ecology and biodiversity
- Archaeology
- S106 Heads of Terms
- Planning balance

Principle of development

- 8.2. Paragraph 2 of the National Planning Policy Framework (NPPF) July 2021) states that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and that the NPPF is a material consideration in determining applications. Paragraph 12 of the NPPF confirms that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making.
- 8.3. Paragraph 11 of the National Planning Policy Framework (NPPF) and Policy DM1 of the Site Allocation and Development Management Policies Development Plan Document (SADMP) set out a presumption in favour of sustainable development, and state that development proposals that accord with the development plan should be approved unless other material considerations indicate otherwise. The development plan in this instance consists of the adopted Core Strategy (2009) (CS) the Site Allocations and Development Management Policies DPD (2016) (SADMP).
- 8.4. The Emerging Local Plan for 2020-39 has just been out for consultation at Regulation 19 draft stage (February to March 2022). The LDS anticipates that the Plan will be submitted in summer 2022. This will increase the weight to be afforded to the new Local Plan.
- 8.5. The Core Strategy (CS) sets out the settlement hierarchy for the Borough. The application site is located adjacent to the settlement of Burbage but is on land which is designated as countryside. It cannot, therefore be considered against Policy 4 of the Core Strategy, which relates solely to development within the defined settlement of Burbage.
- 8.6. Policy DM4 of the SADMP states “that to protect its intrinsic value, beauty, open character and landscape character, the countryside will first and foremost be safeguarded from unsustainable development.
- 8.7. Development in the countryside will be considered sustainable where:
 - a) It is for outdoor sport or recreation purposes (including ancillary buildings) and it can be demonstrated that the proposed scheme cannot be provided within or adjacent to settlement boundaries; or
 - b) The proposal involves the change of use, re-use or extension of existing buildings which lead to the enhancement of the immediate setting; or
 - c) It significantly contributes to economic growth, job creation and/or diversification of rural businesses; or

- d) It relates to the provision of stand-alone renewable energy developments in line with Policy DM2: Renewable Energy and Low Carbon Development; or
- e) It relates to the provision of accommodation for a rural worker in line with Policy DM5 - Enabling Rural Worker Accommodation”.

8.8. The proposed development does not relate to any of the criteria above, but this does not mean that the development is not sustainable. The application sets out why development in this location is deemed to be sustainable; and provides a reasonable and accurate assessment of how the proposal would contribute to sustainable development as required by the NPPF. The proposal is also supported by a Landscape Visual Impact Assessment (LVIA) setting out the impact on the wider landscape character.

8.9. Despite the proposal not complying with Policy DM4, it does represent sustainable development in this location, and is considered therefore to be acceptable in principle, for the reasons set out below.

Housing land supply

8.10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

8.11. Using the standard method as outlined by MHCLG, Hinckley and Bosworth Borough is able to demonstrate 4.89 years of deliverable housing at 1st April 2022. Due to this and the change in the housing figures required for the borough paragraph 11(d) of the NPPF is triggered. Therefore, this application should be determined in accordance with Paragraph 11(d) of the National Planning Policy Framework (NPPF) whereby permission should be granted unless adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This is weighed in the balance of the merits of the application when considered with the policies in the SADMP and the Core Strategy which are attributed significant weight as they are consistent with the Framework. Therefore, sustainable development should be approved unless other material considerations indicate otherwise.

8.12. Under these circumstances, the NPPF sets out, in paragraph 11d) that, for decision makers:

“where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (8), granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed7; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”*

8.13. Footnote 8 in the NPPF states that the application of this approach “includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years”.

- 8.14. Paragraph 60 of the NPPF sets out that *“it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay”*.
- 8.15. Paragraph 77 of the NPPF sets out that *“To maintain the supply of housing, local planning authorities should monitor progress in building out sites which have permission. Where the Housing Delivery Test indicates that delivery has fallen below 95% of the local planning authority’s housing requirement over the previous three years, the authority should prepare an action plan in line with national planning guidance, to assess the causes of under delivery and identify actions to increase delivery in future years.”*
- 8.16. The 2021/ 22 housing land monitoring statement is currently being prepared but on the basis of the previous years’ assessment, section 2.2 of the aforementioned monitoring statement required an action plan to be produced to set out how the Council will deal with under delivery in light of achieving 92% of the Housing Delivery Test (HDT).
- 8.17. Development on this site would contribute to the housing land supply and consideration should be given to para 77 of the NPPF which states:
- “To help ensure that proposals for housing development are implemented in a timely manner, local planning authorities should consider imposing a planning condition providing that development must begin within a timescale shorter than the relevant default period, where this would expedite the development without threatening its deliverability or viability”*
- 8.18. Therefore, currently the ‘tilted’ balance in paragraph 11(d) of the NPPF applies and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 8.19. The provision of up to 40 dwellings, a proportion of which is to be Affordable Housing, is considered to be a significant benefit of the proposal and weighs heavily in favour of the scheme.
- Housing mix and supply
- 8.20. Policy 16 of the CS requires a mix of housing types and tenures to be provided on all sites of 10 or more dwellings, taking account of the type of provision that is likely to be required, based upon table 3 in the CS and informed by the most up to date housing needs data. All developments of 10 or more dwellings are also required to meet a ‘very good’ rating against Building for Life, unless unviable. A minimum density of 30 dwellings per hectare is required in rural areas, a lower density may be required where individual site circumstances dictate and are justified.
- 8.21. The Good Design Guide SPD advocates the use of the Building for Life assessment.
- 8.22. Paragraph 62 of the NPPF states that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. The above policy allows for the most recent evidence to be taken into account in decisions and thus policy 16 is considered up to date in this regard.

- 8.23. Final number and mix of dwellings will be determined at Reserved Matters stage, but the illustrative layout shows a mix of types and sizes can be accommodated. The development is for up to 40 dwellings and the appropriate layout and density will be determined at Reserved Matters stage. The applicant has not undertaken a Building for Healthy life Assessment (the replacement for Building for Life). A detailed assessment should be provided at Reserved Matters stage and is requested as a condition.
- 8.24. Policy 15 of the CS sets out that a minimum of 2,090 affordable homes will be provided in the Borough from 2006 to 2026. At least 480 dwellings will be in the rural areas, at a rate of 40%. The rest will be delivered in urban areas at a rate of 20%. The Borough has an unmet affordable housing need and this is given significant weight in the planning balance. The Housing Needs Study (2019) identifies a Borough need for 271 affordable dwellings per annum (179 in the urban area and 92 in the rural area) for the period 2018-36. The Study states this is not a target, but that affordable housing delivery should be maximised where opportunities arise.
- 8.25. The housing officer has requested 20% of units on the site to be affordable, with a mix of 75% of those to be social or affordable rented and 25% intermediate tenure/shared ownership. The greatest need for affordable rented housing in the Borough is for smaller units of accommodation to assist single people or childless couples, and for small families of 1 or 2 children. A mix of rented housing should therefore be provide, but with a weighting towards 1 and 2 person flats or quarter houses and 2 bed 4 person houses.
- 8.26. The applicant has indicated that the site will provide the policy-compliant requirement of 8 affordable homes. As this site is in the urban area, the section 106 agreement requires a connection to the Borough as set out in the Council's Housing Allocations Policy.
- 8.27. Subject to these requirements being met through completion of a Section 106 legal agreement, this proposal is deemed to be acceptable with respect to housing mix and affordable housing.
- Impact upon highway safety
- 8.28. Policy DM17 of the SADMP supports development that makes best use of public transport, provides safe walking and cycling access to facilities, does not have an adverse impact upon highway safety. All proposals for new development and changes of use should reflect the highway design standards that are set out in the most up to date guidance adopted by the relevant highways authority (currently this is the Leicestershire Highway Design Guide (LHDG)).
- 8.29. Policy DM10(g) states that where parking is to be provided, charging points for electric or low emission vehicles should be included, where feasible.
- 8.30. Paragraph 111 of the NPPF outlines 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. Paragraph 112(e) of the NPPF states development should be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.
- 8.31. The Highways Authority have objected to the scheme, and despite considerable efforts to overcome the concerns raised, have failed to do so. As such the applicant

has failed to demonstrate the principle of a safe and suitable access route can be achieved to the site between the junction of Workhouse Lane and Britannia Street and the proposed site access, contrary to the requirements of Policies DM17 of the SADMP and paragraph 108 of the National Planning Policy Framework.

- 8.32. The concerns raised by the Parish Council and neighbours with to the scheme with respect to highways impact are also noted and have fed into the consideration of the information submitted by the applicant, and the discussions held with the Highways Authority.

Landscape and visual impact

- 8.33. Policy DM4 of the adopted SADMP states that development in the countryside will be considered sustainable where it does not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside; and it does not undermine the physical and perceived separation and open character between settlements; and it does not create or exacerbate ribbon development. The site is located within open countryside, outside of the settlement boundary and is therefore considered against this policy.
- 8.34. A Landscape and Visual Impact Assessment (LVIA) has been submitted as part of the outline planning permission. The site lies within a number of character areas at national, regional and local level. With respect to the national designation, it lies within the NCA 94 (Leicestershire Vales National Character Area), which is defined as large, relatively open, uniform landscape composed of low-lying clay vales interrupted by a range of varied river valleys. Its sense of place comes less from its overall landform, and more from its visually dominant settlements and views towards surrounding higher ground.
- 8.35. With respect to its regional designation, it is situated within the character area 5a (Village Farmlands) of the East Midlands Regional Landscape Character Assessment; which is defined as gently undulating lowlands dissected by stream valleys, localised steep slopes, moderately fertile loamy and clayey soils, mixed agricultural regime, small and moderately sized woodlands, hedgerows, and localised influence of large estates.
- 8.36. Finally, the site lies within the local landscape character area of LCA F (Burbage Common Rolling Farmland); defining characteristics of which include large scale, gently rolling arable and pasture farmland, some pockets of ancient woodland, medium to large scale rectilinear field patterns, urban fringe influences as a result of exposed settlement edges, major transport corridors dissecting the landscape and introducing noise, and green wedge providing green infrastructure to Burbage, Hinckley, Barwell and Earl Shilton.
- 8.37. The Landscape Sensitivity Assessment (2017) (HBBC) assesses the key sensitivities and values of the character area (8 – Burbage South and East) as being:
- Low hedgerows to field boundaries reflecting the post-medieval field pattern and form part of the overall ecological network
 - The semi-rural character of the area and its role as the setting to Burbage historic core
 - Woodland spinneys, streams and small water bodies in the area around Lutterworth Road provide ecological interest
- 8.38. It suggests that new development should:

- seek to avoid development on the higher ridge top area adjacent to the cemetery which forms the immediate rural setting to the historic core of Burbage – and maintain this area as a rural green wedge
 - Plan for successful integration of development in the landscape through sensitive design and siting, including use of appropriate materials & landscape mitigation to enhance sense of place.
 - Seek to retain historic field patterns where distinctive s-shaped or dog-leg boundaries remain.
 - Retain the pattern of hedgerows and hedgerow trees and incorporate further buffer planting to major transport corridors and new development.
 - Promote opportunities to maintain and enhance the network of rights of way and consider opportunities to create and promote integrated green infrastructure network around the Burbage, Hinckley, Barwell and Earl Shilton edge.
 - Protect localised areas that retain a natural character, notably the small areas of semi-natural woodland, plus the streams and small waterbodies.
- 8.39. Overall, the landscape in this character area is considered to have a low-medium sensitivity to residential development due to the strong influences of the existing settlement edge and the M69 on the rural agricultural character. Part of the area makes a positive contribution to the setting of Burbage (not this site). Hedgerows and hedgerow trees demarcate a historic piecemeal enclosure pattern and provide visual containment. The M69 restricts intervisibility with the wider landscape to the south.
- 8.40. It is of materiality to note that the area is not a 'valued landscape' for NPPF purposes. Indeed there are no landscape or environmental designations or sensitivities or note for the site and its immediate surroundings.
- 8.41. The LVIA submitted as part of the application provides a robust account of the impact from a visual and landscape perspective, and includes details of mitigation measures designed to enable the scheme to meet the requirements of the Development Plan with respect to its impact. These include enhancements to the western boundary of the site with additional tree and hedge planting – which will *“assist in filtering views and softening proposed built form.”*
- 8.42. The application has demonstrated that it will not have an unacceptable impact on the surrounding area from a landscape character or visual impact perspective. This is considered as such when taking into account the council's lack of 5-year housing land supply and because this scheme will provide 80 dwellings comprising 20% affordable housing.
- Design and layout
- 8.43. Policy DM10 of the adopted SADMP seeks to ensure that development complements or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features and that the use and application of building materials respects the materials of existing adjoining/neighbouring buildings and the local area generally.
- 8.44. The Good Design Guide SPD provides guidance upon how to design an appropriate new residential development. This includes appraising the context, creating appropriate urban structures through blocks, streets, enclosure, open space and landscaping, parking, amenity space and design detailing. The SPD advocates the use of a Building for Life Assessment.

- 8.45. This is an outline application and therefore detailed layout and appearance considerations are not being assessed at this stage - however, they will form details at the Reserved Matters stage if the outline application is approved. Notwithstanding this, the indicative plans illustrate that the development will comprise up to 40 dwellings with access into the site from the existing residential development. It provides a reasonable approach to the scheme that will flow through into the detailed plans submitted at Reserved Matters stage and indicate that a suitable form of development can be brought forward in accordance with Policy DM10 of the SADMP and the Good Design Guide SPD.

Impact upon neighbouring residential amenity

- 8.46. Policy DM10 (a) and (b) of the SADMP states development will be permitted provided that it would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings, including matters of lighting and noise and that the amenity of occupiers would not be adversely affected by activities within the vicinity of the site.
- 8.47. The Good Design Guide SPD outlines that development will need to provide high quality internal amenity space as this is critical to the quality of life of residents. The guide states that new developments should meet minimum standards of garden sizes and separation distances between dwellings. The National Design Guide also promotes a healthy, comfortable and safe internal and external environment.
- 8.48. Paragraph 130 of the NPPF states that decisions should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 8.49. Paragraph 185 of the NPPF states that decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. The scheme, subject to the detailed matters to come forward at Reserved Matters stage, will have a suitable relationship with nearby residential units.
- 8.50. The Environmental Health Officer has requested additional information with respect to a Noise Impact Assessment, Construction Environmental Management Plan, Land Contamination. These are all reasonable requests for information that can be appropriately sought through condition. The concerns raised by the neighbours to the scheme are noted, but it is considered that the proposed conditions to be placed on the scheme (particularly those relating to noise, air quality and construction management), together with the Council's continued role in approving detailed plans at Reserved Matters stage, will ensure that sufficient scrutiny and control will be retained to ensure all concerns are addressed in full.
- 8.51. Subject to conditions and receipt of amended plans this application is considered to be acceptable in amenity terms and in compliance with Policy DM10 a and b of the SADMP, The Good Design Guide SPD and the requirements of the NPPF.

Flood Risk and Drainage

- 8.52. Policy DM7 of the SADMP seeks to prevent development from resulting in adverse impacts on flooding by ensuring that development does not create or exacerbate flooding.

- 8.53. Paragraph 167 of the NPPF states that when determining planning applications local planning authorities should ensure that flood risk is not increased elsewhere. Paragraph 169 states that major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should take account of advice from the LLFA, have appropriate proposed minimum operating standards, have maintenance arrangements for the lifetime of the development and where possible provide multifunctional benefits.
- 8.54. The Local Lead Flood Authority advises that the proposals are acceptable subject to conditions to secure a surface water drainage scheme, management and maintenance of surface water and infiltration testing. Such a condition would also overcome the concerns expressed by the general public and the Parish Council with respect to surface water drainage, and ensure that HBBC retains control over the design and function of water management on the site. Subject to the suggested conditions, the development will satisfy policy DM7 and the NPPF.

Ecology and biodiversity

- 8.55. Policy DM6 of the SADMP states that development proposals must demonstrate how they conserve and enhance features of nature conservation and geological value including long term future management. Paragraph 174 of the NPPF states that development proposals should contribute to and enhance the natural environment by minimising impacts on and providing net gains for biodiversity.
- 8.56. The application includes a set of proposals designed to enhance the biodiversity of the site through a number of measures, as well as a calculation of the impact that these will have. LCC Ecology have advised that the information and proposals submitted with the application are acceptable. They have advised that detailed hedgerow planting plans should be provided via condition. Subject to the condition requirements this application is considered acceptable with respect to ecology and biodiversity matters and complies with Policy DM6 of the SADMP.

Archaeology

- 8.57. Policy DM13 of the SADMP states that where a proposal has the potential to impact a site of archaeological interest developers should provide an appropriate desk based assessment and where applicable a field evaluation. Paragraph 194 of the NPPF also reiterates this advice.
- 8.58. In line with the NPPF Section 16, the planning authority is required to consider the impact of the development upon any heritage assets, taking into account their particular archaeological and historic significance. Paragraph 199 states that where loss of the whole or a material part of the heritage asset's significance is justified., local planning authorities should require the developer to record and advance understanding of the significance of the affected resource prior to its loss. The archaeological obligations of the developer, including publication of the results and deposition of the archive, must be proportionate to the impact of the proposals upon the significance of the historic environment.
- 8.59. Discussions between the applicant and LCC Archaeology led to the following actions being taken:
- Ecus Ltd were commissioned to perform an Archaeological Evaluation of the site, including 3% trial trenching
 - The trial trenching consisted of ten 30m x 1.8m machine excavated trenches

- Several previously unrecorded features were identified; significantly three pits with degraded waterlogged fills and a group of partially waterlogged wooden poles – suggesting the edge of a low lying area of former pond
- Two ditches may have formed field boundaries associated with Iron Age of Romano-British activity in the north of the development site

8.60. The activity uncovered nothing that would suggest that the scheme could not be taken forward, with appropriate conditions in place to ensure that excavation is undertaken appropriately and any findings recorded. The application is therefore acceptable with respect to archaeological considerations and accords with Policy DM13 of the SADMP.

S106 Heads of Terms

8.61. Policy DM3 of the adopted SADMP requires development to contribute towards the provision and maintenance of necessary infrastructure to mitigate the impact of additional development on community services and facilities. Policy 19 of the Core Strategy identifies standards for play and open space within the borough. Developments should accord with the policy and provide acceptable open space within the development, or if that is not possible contribute towards the provision and maintenance of open space off site. The Open Space and Recreation Study 2016 updates these standards and also identifies the costs for off-site and on-site contributions.

8.62. The request for any planning obligations (infrastructure contributions) must be considered alongside the requirement contained within the Community Infrastructure Levy Regulations 2010 (CIL). The CIL Regulations and paragraph 57 of the NPPF state that planning obligations must only be sought where they meet all of the following tests:

- A) Necessary to make the development acceptable in planning terms;
- B) Directly related to the development; and
- C) Fairly and reasonably related in scale and kind to the development.

8.63. The contributions sought are detailed below:

- AH – 20% (75% social or affordable rented and 25% intermediate tenure/shared ownership). Consultation response was issued prior to Government launching the Starter Homes initiative, which will require 25% of the AH units to be Starter Homes, and the remaining 75% to be split as per the Housing Officer's requirements
- Healthcare (£20,252.50)

8.64. All of the above contributions are considered to meet the tests for planning obligations, and were the proposals to be considered acceptable, form part of the S.106 legal agreement to be formulated. As the application is to be refused, no work has been undertaken on this legal agreement, and the lack of it will form a separate reason for refusal.

Planning Balance

8.65. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

8.66. The Council cannot demonstrate a 5-year housing land supply and the housing policies in the adopted Core Strategy and the housing policies of the adopted

SADMP are considered to be out of date as they focused on delivery of a lower housing requirement than is now required. Therefore, the 'tilted' balance in paragraph 11(d) of the NPPF applies and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

- 8.67. The provision of up to 40 dwellings (20% of which to be affordable units) is considered to be a significant benefit of the proposal and weighs heavily in favour of the scheme.
- 8.68. The scheme does not fully comply with Policy DM4 of the SADMP but the impact on landscape and visual amenity has been assessed and is considered to be moderate to minor for this development and the provision of much-needed housing is considered to outweigh the moderate to minor impact identified. The scheme is deemed to be acceptable subject to conditions and also the requirements and financial contributions as part of a signed Section 106 Agreement.
- 8.69. Nonetheless, due to the serious concerns expressed by the Highways Authority about the negative impact of the proposals on the surrounding highway network, it is considered that the scheme does not meet the requirements of the Development Plan and NPPF and should be refused.

9. Equality implications

- 9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2 Officers have taken this into account and given due regard to this statutory duty in the consideration of this application.
 - 9.3 There are no known equality implications arising directly from this development.
 - 9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Recommendation

- 10.1 **Refuse planning permission for the following reasons:**

- 1. The applicant has failed to demonstrate the principle of a safe and suitable access route can be achieved to the site between the junction of Workhouse Lane and Britannia Street and the proposed site access, contrary to the requirements of

Policies DM17 of the SADMP and paragraph 108 of the National Planning Policy Framework.

2. The applicant has failed to agree a S.106 Agreement with the Council to ensure that the scheme makes suitable contributions to infrastructure to mitigate against the impact of the additional development on community services and facilities. The application is therefore contrary to Policy DM3 of the SADMP and Policy 19 of the Core Strategy as well as the NPPF.