



BROMSGROVE DISTRICT COUNCIL

MEETING OF THE PLANNING COMMITTEE

MONDAY 28TH MARCH 2011
AT 2.00 P.M.

COUNCIL CHAMBER, THE COUNCIL HOUSE, BURCOT LANE, BROMSGROVE

MEMBERS: Councillors E. C. Tibby (Chairman), G. N. Denaro (Vice-Chairman), Mrs. J. M. Boswell, Miss D. H. Campbell JP, R. J. Deeming, Mrs. J. Dyer M.B.E., B. Lewis F.CMI, Mrs. J. D. Luck, E. J. Murray, S. R. Peters, C. J. Tidmarsh, P. J. Whittaker and C. J. K. Wilson

Updates to the Reports of the Head of Planning and Environment Services will be available in the Council Chamber one hour prior to Meeting. You are advised to arrive in advance of the start of the Meeting to allow yourself sufficient time to read the updates.

Members of the Committee are requested to arrive **at least fifteen minutes** before the start of the meeting to read any additional representations and to ask questions of the Officers who will also make themselves available for at least one hour before the meeting. Members are also requested to give Officers **at least forty-eight hours notice** of detailed, technical questions in order that information can be sought to enable answers to be given at the meeting.

AGENDA

1. To receive apologies for absence and notification of substitutes
2. Declarations of Interest
3. To confirm the accuracy of the minutes of the meeting of the Planning Committee held on 7th March 2011 (Pages 1 - 6)

4. Updates to planning applications reported at the meeting (to be circulated prior to the start of the meeting)
5. 10/0931-DK - Outline application for approximately 50 car parking spaces for Wythall Railway Station with associated provision of approximately 2.1 hectares of open space with up to 65 market and affordable dwellings - Land at Norton Lane, Wythall, B47 6HA - Mr. A. Plant / St. Francis Group (Pages 7 - 32)
6. 11/0054-TC - Removal or variation of condition 2 for application 09/0353 to extend opening hours from 7.00 a.m. to 11.00 p.m. seven days a week - 33 Worcester Road, Bromsgrove, B61 7DN - Mr. M. Ali (Pages 33 - 36)
7. 11/0111-TC - Side first storey bedroom extension - 4 Brockhill Lane, Beoley, Redditch, B98 9BU - Mr. D. Jones (Pages 37 - 40)
8. Constitutional Amendments to Scheme of Delegation for Planning Enforcement and Development Control (Pages 41 - 66)
9. Constitutional Amendment and Proposed Member Protocol For Involvement in Pre-Application Discussions For Proposed Developments in the District (Pages 67 - 82)
10. Adoption of the Planning Enforcement Policy (Pages 83 - 98)
11. Appeal Decisions (Pages 99 - 106)
12. To consider any other business, details of which have been notified to the Head of Legal, Equalities and Democratic Services prior to the commencement of the meeting and which the Chairman considers to be of so urgent a nature that it cannot wait until the next meeting

K. DICKS
Chief Executive

The Council House
Burcot Lane
BROMSGROVE
Worcestershire
B60 1AA

17th March 2011

BROMSGROVE DISTRICT COUNCIL

MEETING OF THE PLANNING COMMITTEE

MONDAY, 7TH MARCH 2011

AT 2.00 P.M.

PRESENT: Councillors E. C. Tibby (Chairman), G. N. Denaro (Vice-Chairman) (during minute nos. 142/10 to 150/10), Mrs. J. M. Boswell, Miss D. H. Campbell JP (during minute nos. 142/10 to 150/10), R. J. Deeming (during minute nos. 142/10 to 148/10), Mrs. J. Dyer M.B.E., B. Lewis F.CMI (during minute nos. 142/10 to 151/10 and 154/10 to 156/10), Mrs. J. D. Luck (during minute nos. 142/10 to 150/10), E. J. Murray, S. R. Peters, C. J. Tidmarsh, P. J. Whittaker and C. J. K. Wilson

Observers: Councillors D. L. Pardoe and C. B. Taylor

Officers: Mr. H. Bennett, Mrs. S. Sellers, Mr. D. M. Birch, Mr. M. Dunphy, Mr. D. Kelly, Ms. J. Carstairs, Mr. S. Hawley (Worcestershire Highways) and Mr. A. C. Stephens

142/10 **APOLOGIES FOR ABSENCE**

No apologies for absence were received.

143/10 **DECLARATIONS OF INTEREST**

Councillor E. C. Tibby declared a prejudicial interest in application reference 10/0198-DK (relating to land at Burcot Lane, Bromsgrove) and stated that he owned land adjacent to the site to which the application relates. During the consideration of this application, Councillor Tibby left the room and took no part in the consideration or voting thereon. The Vice-Chairman, Councillor G. N. Denaro, took the Chair for the duration of the consideration of this application.

144/10 **MINUTES**

The minutes of the meeting of the Planning Committee held on 7th February 2011 were submitted.

RESOLVED that the minutes be approved as a correct record.

145/10 **10/0920-DMB - OUTLINE APPLICATION WITH MEANS OF ACCESS FROM SELSDON CLOSE AND PEDESTRIAN / CYCLE ACCESS FROM LEA GREEN LANE, TO BE DETERMINED (INTERNAL ACCESS, LAYOUT, SCALE, APPEARANCE AND LANDSCAPING RESERVED FOR**

SUBSEQUENT APPROVAL), FOR THE ERECTION OF UP TO 76 DWELLINGS (CLASS C3), PUBLIC OPEN SPACE, BALANCING POND AND ASSOCIATED EARTHWORKS TO FACILITATE SURFACE WATER DRAINAGE, LANDSCAPING, CAR PARKING, AND OTHER ANCILLARY WORKS) - LAND AT SELSDON CLOSE, WYTHALL - TAYLOR WIMPEY UK LIMITED

Further consideration was given to the application which had been deferred at the last meeting of the Committee in order to obtain further information relating to drainage and highways issues.

The Head of Planning and Regeneration Services reported the receipt of information from supporters of "Keep Wythall Village Green," additional information from the applicant, and gave clarification on the location of the site referred to on the additional drainage report (attached at Appendix A to the report). She also referred to the appeal decision in respect of land at Brook Crescent, Hagley (ref.: 10/0378).

Consideration was then given to the application which the Head of Planning and Regeneration Services, according to the recommendation contained within the report, would have been minded to approve subject to the satisfactory completion of a planning obligation under Section 106 of the Town and Country Planning Act 1990. However, on the matter being put to the vote, Members considered the application should be refused for the following reasons:-

- (i) By virtue of utilising Selsdon Close to access the development, the width of this road and the subsequent conflict with parked vehicles would lead to an adverse impact on the existing amenities of adjoining occupiers; and
- (ii) The proposal would have unacceptable traffic implications and perpetuate a traffic hazard in the locality.

RESOLVED that permission be refused for reasons (i) and (ii) listed above.

146/10 **10/1098-DK - FORMATION OF 1 NO. FISHING LAKE, FOREST SCHOOL, CAR PARK - LAND AT BURCOT LANE, BROMSGROVE - A. AND S. BRITAIN**

The Head of Planning and Regeneration Services reported the comments of Natural England.

At the invitation of the Chairman, Mr. I. Ray addressed the Committee and spoke in support of the application.

RESOLVED that permission be refused for the reasons set out on page 69 of the report.

147/10 **10/1179-SG - REMOVAL OF CONDITION 3 IN RELATION TO APPLICATION REF. B/2001/0835 (FORMERLY KNOWN AS 42 MEARSE**

LANE) - 2 INGEVA DRIVE, BARNT GREEN, B45 8FD - MR. AND MRS. R. DISTEFANO

The Head of Planning and Regeneration Services reported the receipt of an amended plan from the applicant.

At the invitation of the Chairman, Mr. M. Woodward addressed the Committee and spoke in opposition to the proposals. In addition, Councillor C. B. Taylor also addressed the Committee in his capacity as Ward Member for the area in which the application site was located.

Consideration was then given to the application which had been recommended for approval by the Head of Planning and Regeneration Services. However, on the matter being put to the vote, Members considered that the condition attached to plan reference B/2001/0835 should not be removed as this would cause undue overlooking and lead to a loss of amenity for the adjoining occupiers.

RESOLVED that permission to remove condition 3 attached to plan reference B/2001/0835 be refused for the reason outlined above.

148/10 **10/1216-DK - CHANGE OF USE FROM B2 TO D2 SWIMMING POOL - UNIT 12, SHERWOOD HOUSE, SHERWOOD ROAD, BROMSGROVE, B60 3DR - MR. D. CORBETT**

The Head of Planning and Regeneration Services reported the comments of the Tree Officer and additional comments from Worcestershire Highways. She also stated that a supporting statement had been submitted by the applicant.

At the invitation of the Chairman, Mr. D. Corbett addressed the Committee and spoke in support of the application.

Consideration was then given to the application which had been recommended for refusal by the Head of Planning and Regeneration Services. However, on being put to the vote, Members considered that -

- (i) the proposal would create employment opportunities;
- (ii) the occupation of the unit was preferable in view of the length of time the unit had been vacant; and
- (iii) the parking provision to serve the unit was adequate.

RESOLVED that permission be granted subject to the imposition of any reasonable conditions and notes considered necessary by the Head of Planning and Regeneration Services.

149/10 **10/1230-TC - DEMOLITION OF EXISTING GARAGE AND CONSTRUCTION OF 2 STOREY EXTENSION - 120 REDDITCH ROAD, ALVECHURCH, B48 7RY - MR. R. FLAVELL**

At the invitation of the Chairman, Mr. R. Flavell addressed the Committee and spoke in support of the application.

Consideration was then given to the application which had been recommended for refusal by the Head of Planning and Regeneration Services. However, on the matter being put to the vote, Members considered that, by virtue of the design and materials of the proposals, the scheme would not cause an unacceptable loss of residential amenity to adjoining occupiers and would therefore be an acceptable feature in the streetscene.

RESOLVED that permission be granted subject to the imposition of any reasonable conditions and notes considered necessary by the Head of Planning and Regeneration Services.

150/10 **BROMSGROVE TOWN CONSERVATION AREA**

Consideration was given to a report relating to the Bromsgrove Town Conservation Area and the proposals for alterations to the boundary of the Conservation Area which had recently been the subject of a formal consultation exercise. Members were informed that the report was for information only as the proposed changes would be considered by the Cabinet in the near future.

RESOLVED that the report be noted.

151/10 **HEWELL GRANGE ARTICLE 4 DIRECTIONS**

Consideration was given to a report relating to the proposals for the adoption of Article 4 Directions, under the Town and Country Planning (General Development Order) 1995 (as amended), in respect of the Hewell Grange Conservation Area. Members were informed that the report was for information only as the proposed changes would be considered by the Cabinet in the near future.

RESOLVED that the report be noted.

152/10 **TREE PRESERVATION ORDER (NO. 14) 2010 - TREES ON LAND TO THE SOUTH OF POPLAR CLOSE AND WOODBANK DRIVE, CATSHILL, BROMSGROVE**

Members gave consideration to a report relating to Bromsgrove District Council Tree Preservation Order (No. 142010 which had been made in respect of trees on land to the south of Poplar Close and Woodbank Drive, Catshill, Bromsgrove.

RESOLVED that Bromsgrove District Council Tree Preservation Order (No. 14 2010 be confirmed without modification.

153/10 **APPEAL DECISIONS**

Members gave consideration to a report which detailed three planning appeal decisions which had been received since the last meeting of the Committee.

RESOLVED that the report be noted.

154/10 **LOCAL GOVERNMENT ACT 1972**

RESOLVED that under Section 100 I of the Local Government Act 1972, as amended, the public be excluded from the meeting during the consideration of items of business on the grounds that they involve the likely disclosure of exempt information as defined in Part I of Schedule 12A to the Act, as amended, the relevant paragraphs of that part, in each case, being as set out below, and that it is in the public interest to do so:-

| <u>Minute No.</u> | <u>Paragraphs</u> |
|-------------------|-------------------|
| 155/10 | 2 and 6 |
| 156/10 | 2 and 6 |

155/10 **ENFORCEMENT OF PLANNING CONTROL (REF.: 20110307-01)**

The Chairman referred to this item on the agenda and reported that consideration of the matter would be deferred. This was noted.

156/10 **PI/2010/00093 - 28 QUEENS HILL, BELBROUGHTON, DY9 0DU**

RESOLVED that the Head of Planning and Regeneration Services, in consultation with the Head of Legal, Equalities and Democratic Services, be authorised to proceed with the most appropriate course of enforcement action to remedy the breach of listed building control at 28 Queens Hill, Belbroughton.

(NOTE: Under paragraph 17.7 of the Council's Procedure Rules, Councillor B. Lewis F.CMI requested that it be recorded that he had abstained from voting on this matter).

The meeting closed at 5.00 p.m.

Chairman

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Agenda Item 5

| Name of Applicant Type of Certificate | Proposal | Map/Plan Policy | Plan Ref. Expiry Date |
|--|---|--------------------|---------------------------------|
| Mr. A. Plant, St. Francis Group 'A' | Outline application for approximately 50 car parking spaces for Wythall Railway Station with associated provision of approximately 2.1 hectares of open space with up to 65 market and affordable dwellings (as augmented by Phase 1 Desk Study, Proposed Site Layout (amended), Illustrative Main Street and Public Open Space Elevations, Received 09.12.2010; Illustrative Ground Floor House Type Plans, Received 11.01.2011) - Land at Norton Lane, Wythall, B47 6HA | Green Belt | 10/0931-DK 14.04.2011 |

RECOMMENDATION: that permission be **REFUSED**.

COMMITTEE SITE VISIT: 24th March 2011.

Consultations

WH Consulted 05.10.2010. Response received: 02.12.2010.

No objection subject to the following conditions:

HC5 - Visibility Splays

HC25 - Access, Turning and Parking

HC44 - Wheel Washing

HC51 - Parking for site operatives

HC53 - (Modified) Welcome Pack Condition

The following informatives are also required:

HN1 - Mud on Highway, HN4 - Private Apparatus within the Highway, HN6 Section 278 Agreement, HN7- Section 38 Agreement details, HN8 Drainage Details for Section 38, HN9- No Drainage Discharge to Highway, HN12 Protection of Visibility Splays, HN16 Design of Street Lighting for Section 278, HN24 Temporary Direction Signs to Housing Developments.

S106 Agreement Heads of Terms:

The applicant should enter into a Section 106 Agreement to contribute £30,000 towards:

- Improvement to the footway between the pedestrian access at the railway station pedestrian access.

- Install alternative pedestrian crossing points near Lea Green Lane/Station Road, Norton Lane so there is better connection towards the shops in Station Road and the school further along.
- Provide cycle improvements to improve accessibility for cyclists to the Sainsburys Supermarket at the Maypole and the schools in Shawhurst Lane and the shopping area near Simms Lane, effectively to the village centre.

ENG Consulted 05.10.2010. Response received: 24.11.2010.
No objection subject to conditions.

STW Consulted 09.03.2011. No response to date.

SE Consulted 09.03.2011. No response to date.

SHM Consulted: 05.10.2010. Response received: 18.11.2011.
The affordable housing on-site provision has not been identified at this stage. 40% affordable housing should be provided on the following basis:

- The tenure split of the affordable housing to provide 75% social rent and 25% intermediate housing (which can consist of a mix of shared ownership units and intermediate rental units provided at no more than 80% of open market rent)
- A proposed split of units to be provided would be:
 - 1 bedroom flats: 4
 - 2 bedroom houses 8
 - 3 bedroom houses 10
 - 4 bedroom houses 2
 - 2 bedroom bungalows 2
 - Total: 26The applicant should be in discussion with an RSL provider and come forward with proposal on the basis of the above tenure split.

LP Consulted 05.10.2010. Response received: 01.12.2010.

There is a general presumption against inappropriate development in the Green Belt and this proposal does not meet the exceptions listed in DS2 or PPG2. The proposed 65 dwellings and 50 space car park would significantly reduce the level of openness on the site. The applicant attempts to put forward 5 very special circumstances to outweigh the material harm to the openness of the Green Belt. Each of these will be addressed in turn.

1. Housing Need

The first 3 circumstances put forward can be addressed together as they are housing related and refer to the need to meet targets, provide affordable housing and achieve a 5 year supply of housing.

It is important to consider the issue of Housing supply in the determination of this application but following the change in Government, the policy situation is far from clear. On the 6th June 2010 a Parliamentary Statement was released stating that Regional Spatial Strategies were being revoked under s79(6) of the Local Democracy Economic Development and Construction Act 2009 and will thus no longer form part of the development plan for the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004. However, on the 9th August Cala Homes submitted a High Court challenge against the decision of the Secretary of State for the Communities and Local Government (CLG). On the 10th November the High Court ruled that the Secretary of State's decision to revoke RSS was unlawful on 2 grounds. Immediately after this ruling the CLG Chief Planner wrote to all local authorities stating that the ruling changed little and the intention to remove RSSs was still a material consideration in the determination of planning applications. On the 19th November Cala Homes then issued a second claim, seeking a declaration from the Court that the government's stated intention to revoke Regional Strategies is not a material consideration for the purposes of making planning decisions. On 29th November the court placed a temporary block on the government's claim that its plans to abolish Regional Strategies must be regarded as a material consideration in planning decisions. A full hearing is currently pending to assess the CLG advice. Whilst the future of the RSS and the localism agenda is not entirely clear, currently the RSS remains part of the Development Plan and needs to be considered when assessing planning applications.

The determination of whether the Council has a five year supply of housing land should be based on the most up to date and relevant information. For Bromsgrove specific housing issues, this is considered to be the planning inspectorates report into phase 2 revision of the RSS which recommended an initial housing target of 4,000 dwellings. It should be remembered that this figure was also put forward by the Council at The Examination in Public. It was considered that this initial allocation of 4,000 houses would help to address affordable housing needs and begin to re-balance the housing market; a significant element of the justification for this level of development was the existence of deliverable ADR sites across the district which could help meet the needs whilst not requiring green belt development or a full green belt review. The Council's approach of carefully targeting smaller units to meet identified needs across the district was strongly endorsed by the Panel. As this figure of 4,000 was based on robust local evidence and conforms with what was the emerging RSS, it is considered by officers as the most relevant target to use when addressing matters of housing supply.

At April 2010, when using the 4,000 figure, a supply of only 2.19 years can be demonstrated when taking into account completions

and current commitments since 2006 which is the start of the plan period the 4000 dwellings figure relates to.

Whilst a 5 year supply does not currently exist, other material factors need to be considered before releasing Green Belt land for development. The Strategic Housing Land Availability Assessment (SHLAA) identifies a number of sites that are suitable and available and could deliver in excess of the 4,000 target. The majority of these sites are identified as Areas of Development Restraint (ADRs) in the Local Plan. It should be remembered that the purpose of the ADR designations in the BDLP was to provide a sufficient reserve of land to allow development post 2001 but to ensure the permanence of Green Belt boundaries to 2021. It is therefore logical that development should occur on ADRs before the release of sites in the Green Belt. The applicant has made no attempt justify why this site is more suitable for housing or more deliverable within 5 years than these ADR sites. The deliverability of the ADRs is highlighted by the submission of recent planning applications at the Selsdon Close (76 units) and St. Godwalds Road (212 units) ADRs. These submissions have the potential to begin to address the supply shortfall and address affordable housing needs. In particular the Selsdon Close scheme, if approved, could deliver affordable housing which could help meet local needs in Wythall.

The Core Strategy is still emerging and has been developed with regular Member involvement over a considerable number of months. Subject to the resolution of the high court proceedings and the publication of the localism bill, the Draft Core Strategy 2 is to be published in early 2011. It is anticipated the Core strategy will identify strategic sites around Bromsgrove Town and also set out a framework for the delivery of the remaining ADRs. The combination of these strategic sites and the other ADRs will ensure that a 5 year supply can be achieved and then maintained for a significant number of years. It is therefore considered that the release of Green Belt land to achieve housing targets cannot be justified when there are deliverable and suitable ADRs.

The Affordable Housing Delivery Plan highlights that the proposed breakdown of affordable housing is 2/3 social rented and 1/3 intermediate with 26, 2 and 3 bedroom properties to be provided. This broadly conforms with the Council's long term strategy although the views of the Strategic Housing Manager should be sought for any specific requirements for provision in this area. It appears that the 26 smaller / affordable units are in proximity to the railway line and the car park with the rest of the site being larger units further away from the railway line and fronting onto the open space.

The Council's Housing Market Assessment (2008) identified a high level of need for two and three bedroom properties and this is reflected in policies within the Draft Core Strategy 2. It is noted that

about one third of the properties are 4 and 5 bedroom. It is considered that at least 70-75% of the units should be 3-bedroom or smaller.

2. Car Parking for Wythall Station

The applicant has put forward the need for a car park to serve Wythall Station as a very special circumstance. This is supported by policy WYT10 of the Local Plan. However no detailed assessment of the need for a station car park at Wythall has taken place. The submitted Transport Assessment (TA) contains very little information that identifies a need for the car park. The TA does highlight that the growth in passenger numbers between 1994 and 2005 at Wythall Station is below average in percentage terms when compared to other Worcestershire train stations. However, this is not surprising when there is generally only one train an hour at Wythall Station. At stations where there are more frequent trains there is greater potential for passenger numbers to grow.

The TA highlights that there is some on-street parking near to the station but this does not in itself justify a 50 space car park. Wythall is a local station that for much of the day has only an hourly service to Birmingham and Stratford. The station serves the local community the majority of which can comfortably reach the station by a sustainable mode of transport. Those travelling from further a field by car have the opportunity to use the next station along the track (Whitlocks End) where there are over 100 parking spaces. It is understood that the county council will expect contributions to be made to improve local walking and cycling infrastructure should this scheme be approved, if this is the case then the requirement for the car park would be further lessened as the accessibility of the station locally would be improved reducing the need to access it via car.

It would appear that no formal agreement has yet been reached as to who would manage the station. The TA states that "Centro currently support the station and it is expected that they will operate and maintain the car park." Without a clear management plan in place there is no mechanism to ensure that the car park is used solely by rail users rather than overspill parking for the proposed residential development. It would be expected that any official station car park would require the co-ordinated involvement of Centro but in this instance it is unclear what discussions have taken place between Centro and the applicant.

Even if a need for the car park could be justified this does not explain why 65 homes should gain consent in a Green Belt location. There is no evidence to suggest that precisely 65 homes are required to fund the car park and make it viable. WYT10 of the local plan supports a car park *'which is designed to minimise its appearance and effect on adjacent land uses'* the inclusion of 65

houses in the scheme certainly does not minimise its appearance and effect on adjacent land uses. Further to this the supporting text for WTY10 identifies the proposals for the recreational use which exist on part of the site and indicates that the possibility for a dual use car park is examined. The application makes no attempt to examine this possibility of a dual use car park on this or any other site, and should the residential scheme gain consent and be developed the recreational scheme would no longer be possible. WYT10 at no point makes any reference to a residential scheme or any other development type being used as an enabler for the car park and as stated above there is no evidence submitted which identifies that 65 houses is the required amount to fund what in effect is a fairly minor element of the overall scheme. Whilst it could be seen on the face of it that this application conforms with policy WYT10, the real position is that only the car park element in isolation conforms with WYT10 and any other development associated with it is contrary to this and many other parts of the development plan.

3. Open Space

The 5th circumstance put forward by the applicant is the provision of open space. The applicant has made no attempt to identify whether there is a shortfall of open space in the district or more locally in Wythall or why this site is the most appropriate location for public open space. Open space should be provided on any residential scheme of this size as an essential community facility and is in no way considered to be a very special circumstance that overrides Green Belt harm. In my view the open space is also not well integrated into the overall scheme and should the outline permission be granted further consideration of this should be made at the detailed stage.

In summary it is considered that the applicant is using the perceived need for a car park as a method of gaining consent for housing in a Green Belt location. However it is considered that there are no very special circumstances to outweigh the material harm to the openness of the Green Belt caused by either the car park or the housing scheme.

LP
(Open Space)

Consulted: 05.10.2010. Response received: 03.02.2011 as follows:
The amount of play space generated by this development is 6,483sqm. The amount of open space currently proposed on site comfortably exceeds this and accords with SPG11. However, only natural and informal areas of play are proposed. A local equipped area of play (LEAP) should be provided since the development is above 50 units. The area of open space proposed generates on-site maintenance costs of £244,539.

Head of Leisure Services Consulted 05.10.2010. Response received: 03.02.2011.

I have roughly measured the distance by road to the nearest LEAP (Hollywood Lane) and it is estimated 0.8 miles and therefore would just fall outside the above.

It is also our long term vision to reduce the number of smaller LEAPs and create/enhance larger POS with play provision within the community. However, due to lack of provision in this location we would suggest that the site would benefit from a suitable play provision in accordance with the Worcestershire Play Strategy and we would request that BDC are fully involved in the implementation, consultation and design process.

With regard to the POS then as advised this is purely indicative at this stage and detail has not been provided - apart from size contribution. However, I would refer any contribution calculations to include balancing pond and associated water areas in line with recommendations from Clive Wilson at Redditch.

I hope this will be sufficient information at this early stage in the application and I look forward to reviewing the proposed open space contribution when supplied in more detail.

WMRA Consulted 08.10.2010. No response received.

WCC Education Consulted: 27.01.2011. Response received: 28.01.2011.

The application requires a contribution towards education provision in the locality. The contributions required for this area are currently:

£5,345 per open market 2 or 3-bed house
£8,018 per open market 4+bed house
1 bed properties and social housing are exempt.

On the basis of the mix of dwellings proposed and accounting for the affordable units, the total contribution would be £245,881.

Urban Designer Consulted 08.10.2010. Response received: 18.10.2010.

Site Planning

The general site planning principles are sound. The new housing would be concentrated on the higher land next to the railway and existing housing. The lower levels are proposed for open space and the entrance to the site is in the only possible location.

Density

The density at 25 dwellings/hectare, excluding the open space is low. This will form the edge of the urban area and a more compact form would result in a more defined edge.

Layout

The layout proposed is conventional suburban. There is little evidence of the advice of Manual for Streets in terms of spatial enclosure, walking and cycling or placemaking. The properties are set 20m apart on the proposed street which could be reduced. There is no pedestrian movement possible other than on the sides of the vehicle carriageway.

Form

There is reference to examples of local housing types with no analysis of them. The architectural vocabulary has not been enhanced as could be the case.

Sustainable Design

There is no reference for example to passive or active solar energy collection or sustainable drainage systems.

Central Squares

These are a welcome departure from the conventional suburban layout. However, the squares should not be disaggregated.

Riverwalk footpath

In principle, this is a good proposal, but its implementation is unsatisfactory because nowhere does it come closer than 10m to the river. The route is not part of a joined up network.

Station Car Park

The change in the location of the car park described in paragraph 4.26 appears to be a positive move. However, there is no direct connection from the car park to the station platform.

Summary

Whilst the Design and Access Statement makes reference to PPS3, Manual for Streets, Building for Life, etc.) there is little evidence in the scheme that these principles have been taken on board. The applicant should raise their aspirations to produce a development of greater quality and distinction.

Augmented Plans (Received 13.01.2011) following the serving of an Article 3(2) Direction. Urban Designer re-consulted 19.01.2011. Response received: 07.02.2011.

General

The layout is much improved with a clearer block structure and more permeability. The planning and enclosure of the station car park is now quite positive. The possibility of a direct link to the station is being explored.

Summary

The augmented plan is an improvement over the original. However, the principles of the architectural language of the site need clarification and should be evident at this, outline stage. The information provided in this respect gives little confidence that there are architectural principles which can be drawn through to reserved matters stage.

WMERC

Consulted 05.10.2010. Response received: 19.10.2010.

1. I note the proposals to include up to 40% affordable housing. Most affordable housing is constructed to secured by design standards to reduce the risk of crime and disorder. I feel the whole development would benefit from construction to such a standard.
2. Whilst I appreciate this is an outline application, I raise objection to the car park for the station. It is isolated and there are no clear lines of sight. The vehicles would be vulnerable to attack.
3. I have concerns in relation to the path leading to the car park. It would have to be open and lit in order to reduce the fear of crime and prevent robberies.

WCC
Landscape
Officer

Consulted 05.10.2010. Response received: 10.11.2010.

The site is identified by the Worcestershire County Landscape Character Assessment (LCA) as being an area of Timbered Pastures that extends across Wythall. There are densely scattered hedgerow oak trees and a small scale pattern of hedge trees. It is an ancient landscape, in good condition and extremely vulnerable to development pressure.

The application site was historically quarried and later used for landfill. The River Cole SWS runs alongside the application site. The Landscape and Visual appraisal provided by Pegasus Planning is adequate but does not refer to the LCA. The removal of the site from the Green Belt is contrary to policy DS2 and would result in the coalescence of the settlements.

NE

Consulted: 05.10.2010. Response received: 22.10.2010.

Natural England has no objection to this proposal. We advise securing the recommendations made in the Ecological Scoping Survey through

conditions. We also recommend a condition to ensure the delivery of ecological enhancement, in line with PPS9 key principle iii.

WWT Consulted 05.10.2010. No response received.

EHM Consulted 05.10.2010. Response received: 29.11.2011.

Contaminated
Land

Objection. There is insufficient information to demonstrate that the site can be made suitable for use with regard to contaminated land and the associated risks to human health. The principal risks arising are because of the past use of the site as a sand and gravel pit. Previous studies have identified heavy metals and the groundwater is also known to contain elevated levels of selenium, boron, copper and zinc. Landfill gas risk assessment must also be undertaken.

The applicant provided a Phase 1 Desk Study (SP Associates, Ref: S1238) on 08.12.2010.

Additional Comments from EHM received 08.03.2011.
No objection subject to conditions.

EHM Noise Consulted 05.10.2010. Response received: 16.02.2011.
No objection.

EA Consulted 05.10.2010. Response received: 01.11.2010.

Objection - there is insufficient information in respect of the risk of flooding and pollution to controlled waters.

The applicant provided a Flood Risk Addendum letter (Ref: SG.CD.LUK14-15895-FRA) on 16.11.2010. This sought to address River Section Chainage Labels, Finished Floor Levels and Maintenance of the Water Features.

Revised comments received from EA 13.01.2011 as follows:
The EA is now in a position to withdraw its objection on the grounds of flood risk since the letter provided resolves the three outstanding issues raised.

The applicant provided a Phase 1 Desk Study (SP Associates, Ref: S1238) received 09.12.2010.
EA Re-consulted 22.02.2011, no response to date.

Final comments received: 16.03.2011
No objection subject to conditions.

NR Consulted 05.10.2010. Response received: 25.10.2010.

Network Rail Town Planning have no objection in principle to the development, however due to its close proximity to the operational railway a number of advisories should be attached to any consent.

The developer has sought to include an area for Wythall railway station parking there is no detail as to its management going forward. Network Rail has no specific objection to 3rd parties looking to enhance the travelling experience of rail passengers and it should obviously be encouraged. Linking it to the station would be something that London Midland, as resident Train Operator and holder of the station safety case would have to comment on - so the proposal would obviously be subject to more specific consents. Of real importance to London Midland would be the spec and management of the area as if its publicised as a station car park then, any queries on it once built would be directed to the Train Operator of Wythall Station. Therefore the developer should have contacted London Midland to discuss this issue in detail and to obtain any consents.

CENTRO Response received 09.02.2011.

Centro supports the principle of this development and associated park and rise along the Shakespeare Line as it assists in making public transport a viable alternative to the private vehicle.

WCC
Transportation Response received 27.10.2010.

Worcestershire County Council has spent time searching for suitable site to provide parking facilities adjacent to Wythall station and therefore would support the proposals. The proposal for a car park is supported by policy RAIL4 of the Worcestershire Local Transport Plan 2006-2011. WCC prepared an 'options' document on the feasibility of various sites for a station and the preferred option was identified as site A which is contiguous with the station and accessed from *Norton Drive*.

London Midland
Rail Services Consulted 28.10.2010. No response received.

National Grid Consulted 11.03.2011. No response received.

Solihull MBC Consulted 28.10.2010. No response received.

Wythall PC Consulted 05.10.2010. Response received: 15.10.2010.

The application was considered by the Planning Committee of the Parish Council at the meeting held on the 13.10.2010 and the following are the agreed comments:

- Objection - the land is Green Belt. However, the park and ride scheme would be welcome.

- There appears to be no survey conducted as to whether the existing infrastructure could support the additional traffic on this dangerous section of Norton Lane.
- There are a small number of parking spaces proposed within the site which could result in displacement.
- The Local Plan Inspector ruled out the site as an ADR because it would result in the coalescence with development to the east.
- The land has formerly been used as a tip and would be unstable for the building of dwellings.

Re-Consulted 19.01.2011. Response received 11.02.2011.
Objection as per letter dated 15.10.2010.

Tidbury Green
PC Response received: 22.10.2010.

We object to the application on the following grounds:- development of the Green Belt; development on a land-fill site which was an unregulated tip building on the flood plane reduce the 'space' between Wythall and Tidbury Green where there is still the possibility of TG being developed at the back of Lowbrook Lane which would result in no 'gap' if this development is permitted impact significantly upon traffic usage along Norton Lane.

Wythall
Residents
Association Response received: 20.12.2010.
Objection - Green Belt development.

Publicity 11 letters sent 05.10.2010, expired 26.10.2010.
4 letters sent 22.02.2011, expired 15.03.2011.
Re-consultation: 184 letters sent 19.01.2011, expired 09.02.2011.
2 identical site notices posted on 02.11.2010. (expired: 23.11.2010)
Press Notice posted 14.10.2010 (expired 04.11.2010).

205 letters received objecting to the application and the main issues are outlined. These also summarise the responses received following re-consultation.

- The loss of a Green Belt site and the coalescence of the settlements
- The precedent which would be set for other developers to swallow up Green Belt land
- Substantial increases in the levels of traffic and insufficient capacity in the highway network to cope. There would be an increase of anything between 280 and 350 additional cars on the roads as a result of these developments
- Norton lane has become a 'rat run' connecting the new developments at Dickens Heath with the M42
- Additional pressure on the local road junctions including Norton Lane, Lea Green Lane and Lowbrook Lane
- Proposed entrance will conflict with the Lowbrook Lane/Norton Lane junction

- There would be an increased risk of road accidents
- The position of the proposed car park limits its utility
- The Council should not rely on RSS figures since the responsibility for land use planning and housing supply has been handed to Local Authorities under the localism agenda
- Inadequate justification provided for proposed car park. The existing community all live within walking distance of the station
- There is only one hourly train service to Birmingham and a much reduced service at weekends. The limited timetable and choice of destination greatly reduces the justification for a 'Park and Ride' facility
- Inadequate existing sewerage infrastructure
- Public transport is inadequate and one bus route has been lost in Wythall
- There are inadequate services including medical services in the area
- Loss of wildlife and habitat. The environmental survey was conducted after the land was cleared.
- Conflict with government policy which seeks to protect the environment
- The application is outline so the number of dwellings could be increased
- Potential for reduced water pressure
- The contaminated nature of the site
- The risk of flooding
- Lack of local shops and services
- Lack of school capacity
- Detrimental impact on local house prices
- Light pollution
- Anti social behaviour
- Security concerns
- Loss of the rural and semi rural feel of Wythall and attendant loss of quality of life

The site and its surroundings

The application site comprises a large area of land (4.72 Ha in all) in a single field enclosure located within the Green Belt on the north eastern edge of the settlement of Wythall. The River Cole forms the eastern boundary of the application site and also forms the boundary of the District with Solihull. The site has been the subject of landfilling and the gradient generally falls from west to east. The rear gardens of Nos. 8 - 26 Norton Lane form the southern boundary of the application site. There is a relatively new housing (Norton Drive) on the south western boundary of the application site. There is open farmland to the east and north of the application site.

There is a vehicular access to the site from Norton Lane and a pedestrian access which adjoins Norton Drive. A substantial area of hardstanding lies immediately to the north of the existing vehicular access. There are currently a number of mature trees on the application site, some at the entrance at the SE of the site and along the eastern boundary. The remainder of the site is open and currently disused with a mixture of scrub

and rough grassland. There is evidence of inert waste. There are two existing pools on the site close to the River Cole on the eastern and northern boundaries.

The predominant surrounding land uses are residential with a mix of interwar housing in linear formations along Norton Lane, Lea Green Lane and Lowbrook Lane. Lea Green Drive and Norton Drive are examples of later infill development.

Proposal

The application relates to an outline application for the erection of 65 dwellings. The scheme will provide a minimum of 2.1Ha of open space, arrangements for access and associated infrastructure. There will also be 50 parking spaces provided for Wythall Station and a pedestrian link to the station via Norton Lane.

The application originally reserved all matters for future consideration apart from access. Since the development is located in the Green Belt and the scale of the impact of the proposal upon openness must be determined, it was considered that the scale of the proposal could not remain a reserved matter. Therefore, on 15th October 2010, the Council served the requisite notice under Article 3 of the Town and Country Planning (General Development Procedure Order 1995) requiring details to be provided of the scale and appearance of the proposal. These details were received on 13th January 2011. The indicative site layout has also been revised (Ref: SJD-009-021, Received 09.12.2010) and provides detail on the layout and extent of the proposal. The Design and Access Statement was also updated to that effect. This accords with the advice of paragraph 52 of Circular 01/2006 which requires the parameters of a proposed development to be provided at outline stage.

The scheme proposes 2.1Ha of open space located adjoining the eastern boundary of the application site. The Design and Access Statement envisages the provision of separate informal and equipped children's play space and youth and adult play space.

The remainder of the application site would be developed for residential purposes comprising 65 dwellings with a mix of housing types and an average density of 25 dph.

| Property Type | No. of bedrooms | No. of units | Proportion of mix |
|----------------------|------------------------|---------------------|--------------------------|
| House | 1 bed | 4 | 6% |
| | 2 bed | 17 | 27% |
| | 3 bed | 22 | 34% |
| | 4 bed | 12 | 18% |
| | 5 bed | 10 | 15% |
| Total | | 65 | 100% |

The mix will comprise semidetached, detached and terraced housing with the larger detached properties proposed for the eastern edge of the site facing the open space and the smaller properties located in the core of the application site. The scheme will be entirely two storeys.

The development will provide up to 40% affordable housing providing a mix of social rented and intermediate tenure.

The proposed 50 parking spaces for Wythall Station will be provided on the western side of the application site and pedestrian access is proposed from the car park south to Norton Lane to enable access to the existing station entrance to the west. A direct pedestrian link onto the platform is being explored.

It is proposed to use sustainable building techniques in the scheme in accordance with the Code for Sustainable Homes and to utilise Sustainable Urban Drainage Systems to reduce surface water runoff on the site. A range of additional measures to enhance the sustainability of the scheme are proposed at the detailed application stage.

The application is accompanied by the following documents:

Design and Access Statement (Revised November 2010), Planning Statement, Phase 1 Desk Study, Tree Survey, Statement of Community Involvement, Affordable Housing Delivery Plan, Ecological Scoping Survey, Landscape and Visual Appraisal, Flood Risk Assessment, Drainage Strategy, Contamination and Ground Assessment, Report on Existing Noise and Vibration Climate and Transport Assessment. These are available on the planning file and on Public Access should Members wish to view them.

Relevant Planning History

| | |
|-------------|--|
| B/1993/0100 | Erection of steel palisade fence and gate to back of pavement. Granted 24.05.1993. |
| B19235 | Change of use from tipping site to recreational/leisure facility (Resubmission of B11248). Granted 16.07.1990. |
| B11248 | Change of use from tipping site to recreational/leisure facility. Granted 04.11.1984. |
| B10092 | Change of use from tipping site to recreational/leisure facility with associated living accommodation. Refused 18.11.1982. |
| BR/896/1973 | Use of land for the tipping of hardcore and soil in former gravel pit. Granted 01.07.1974. |
| BR/920/1967 | Tipping Granted 09.12.1967 |
| BR/576/1962 | Residential development. Refused 09.10.1962 |

Relevant Policies

| | |
|-----------|--|
| WMRSS | RR1, RR3, RR4, CF2, CF3, CF4, CF5, PA1, QE1, QE2, QE3, QE5, QE6, QE7, QE8, QE9, T1, T2, T4, T7. |
| WCSP | SD.2, SD.3, SD.4, SD.5, SD.8, CTC.1, CTC.2, CTC.5, CTC.6, CTC.7, CTC.8, CTC.9, CTC.15, CTC.17, CTC.18, CTC.19, D.6, D.8, D.12, D.38, D.39, T.1, T.3, T.9 |
| BDLP | DS1, DS2, DS3, DS5, DS11, DS13, S9, S14, S39, C4, C5, C9, C10A, C12, C16, C17, TR1, TR8, TR11, TR13, ES1, ES2, ES4, ES6, ES7, ES8, ES11, ES14, ES16, RAT5, RAT6. |
| Draft CS2 | CP2, CP3, CP4B, CP6, CP7, CP14, CP17, CP19, CP20, CP21, CP22, CP23 |

Relevant Policies (cont'd)

Others PPS1, PPG2, PPS3, PPS4, PPS7, PPS9, PPG13, PPG17, PPS23, PPG24, PPS25, Circular 06/05, SPG1, SPG11. Draft Affordable Housing SPD.

Notes:

The site is located in the Green Belt and I consider that the main issues in the consideration of this application are:

- (i) the impact of the proposal on the openness and visual amenity of the Green Belt
- (ii) whether the proposal amounts to inappropriate development in the Green Belt
- (iii) if considered inappropriate, whether the harm by virtue of inappropriateness, and any other harm would be clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development
- (iv) whether there is sufficient identified housing need to justify the proposal
- (v) the case for provision of a car park for Wythall Station and the suitability of that proposed,
- (vi) the design, form and layout of the proposal
- (vii) the impact of the proposal on the existing highway infrastructure and the safety of the proposed access and egress to and from the site
- (viii) The affect of the proposal on residential amenity
- (ix) The acceptability or otherwise of the proposal in the context of the previous use of the site
- (x) The impact of the proposal on drainage and flood risk
- (xi) The impact on trees, ecology and biodiversity

(i) Green Belt

The site is located within established Green Belt and therefore Planning Policy Guidance Note 2 (PPG2), policies D.28 and D.39 of the Worcestershire County Structure Plan (WCSP) (1996 - 2011) and Policy DS2 of the adopted Bromsgrove District Local Plan (BDLP) 2004 apply to the development in that respect. Core Policy 22 of the Draft Core Strategy 2 is also a material consideration. It is noted that the CS policy reiterates the existing policies of the development plans in seeking to resist development in the Green Belt, except for specific categories of development.

The essential function of the Green Belt is defined in the paragraph 1.5 of PPG2 as follows:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns from merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

The proposal must be assessed as to whether it will have an impact on the above functions. It is seeking permission for the erection of 65 housing units. Paragraph 1.4 of

PPG2 states that the most important attribute of Green Belts are their openness and therefore the proposal must be considered in terms of its impact on openness.

The proposed area of development is approximately 2.6Ha including the housing, access roads, proposed station car park and associated infrastructure. The remainder of the site (2.1Ha) to the east towards the River Cole is proposed for public open space though it will contain footpaths. The housing is proposed on the higher level of the site and will have the effect of merging the existing development along the north side of Norton Lane with the railway to the west extending the built form of the settlement along the railway by at least 200m from the existing furthest extent of development at Norton Drive. As noted above, the applicant has provided further details in respect of the scale and appearance of the development. This includes the floorspace proposed for each house type and the proposed streetscene.

In terms of floorspace, this varies from 90m² for a 2 bed house to 170m² for a typical 3-bed corner property and 180m² for a typical 4/5 bedroom property. Taking an average of 160sqm, the total built form of the development equates to over 10,000m². This does not include the access roads or any other infrastructure. The typical height of the properties is approximately 7.5m and the illustrations of the streetscape show a variety of roof and gable arrangements. A development of this scale would be highly visible from the existing properties on Norton Lane and also from the railway, Lea Green Lane and Lowbrook Lane. There would also be harm to the visual amenity of the Green Belt at this location. The Planning Statement and Landscape and Visual Appraisal presented with the application contend that the proposal would be visually well contained by the surrounding landscape features. It concludes that development of the nature and scale proposed is acceptable. I do not consider that the application site has such a unique complement of landscape features such that the harm caused to openness as a result of the proposal could be mitigated.

In terms of the function, the applicant considers that the proposal is acceptable in terms of openness 'because it is based on a landscape and visually led approach' avoiding unrestricted sprawl, retaining a gap between Wythall and Tidbury Green and providing a defined development boundary with the countryside. The applicant also contends that the development will result in the reclamation of a former tip and thereby recycle 'urban' land.

Members should note the wording of paragraph 1.5 of PPG2 as outlined in paragraph 2 above and also the comments reiterated several times in the representations received in respect of the effect of the proposal in causing a coalescence of Wythall and Tidbury Green. In terms of the function of the Green Belt in paragraph 2 above, the proposal would have a direct conflict with three of the five purposes and an indirect impact on a fourth. The function of maintaining the setting and special character of historic towns is not relevant in this case. The functions of Green Belt outlined in paragraph 1.5 of PPG2 are much more definitive in ruling out development which would precipitate urban sprawl, cause the merging of towns or encroach on the countryside. The landscape approach does not address these issues and the site is located in the Green Belt and cannot be considered previously developed in accordance with the definition of Annex B of PPS3 which excludes:

Land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures.

The planning history shows that the site has been used for the quarrying and tipping of waste and planning permission BR896/73 made provisions for the ceasing of tipping operations and appropriate restoration of the site. A copy of this decision notice is available on the planning file. In summary, the proposal would conflict with four of the five purposes of including land in the Green Belt.

(ii) Whether Inappropriate Development

Policies D28 and D39 of the WCSP and DS2 of the BDLP conform with the advice of PPG2 in defining the types of development which are acceptable in Green Belt locations. The proposal under consideration is clearly not essential for agriculture, outdoor sport or recreation nor does it involve the conversion of existing buildings to alternative uses or their replacement such that Green Belt openness would be retained. Therefore, I consider that it amounts to inappropriate development.

Members should note the extent of the development as evaluated above and need to be mindful of this in considering the case for very special circumstances provided by the applicant.

(iii) Very Special Circumstances

The requirement for a case for very special circumstances to be provided by the applicant is stated within paragraph 3.4 of PPG2.

"Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development."

Members should note the 'very special circumstances' amount to an entirely special and unique occurrence which could not result in a precedent being set for the proposal or analogous proposals elsewhere in the Green Belt. Whilst there is no specific prescription of the circumstances in the context of PPG2 which amount to very special circumstances, Members should seriously consider whether or not the circumstances of this proposal are entirely unique or special.

The applicant's agent has submitted a case for very special circumstances which are included in the Planning Statement presented with the application (pages 16 - 18). The full details may be viewed on the planning file or on Public Access. There is also a lengthy appraisal of all of the policies of the WCSP, BDLP which are considered to apply to the proposal and reference to the identification of the site in the Council's Strategic Housing Land Availability Assessment (SHLAA) (Site BDC 59).

(iv) - (v) The case can be summarized as follows:

1. The need to provide housing and absence of a five year housing supply
2. Shortage of affordable housing
3. The need for a car park for Wythall Station
4. The delivery of extensive public open space

1. Identified Housing Need

The applicant considers that Bromsgrove District Council does not have a five year supply of housing land. Members should note the detailed response from Strategic Planning on the issue of housing supply. The Examination in Public on the Phase 2 Revision to the RSS identified a need for 4,000 additional homes in Bromsgrove District. This figure is based on up to date evidence and would indicate that a housing supply of only 2.19 years can be demonstrated. In accordance with paragraph 71 of PPS3, the LPA should consider favourably applications for housing where an up to date five year supply of deliverable sites cannot be demonstrated. It should be noted that the requirements of paragraph 69 also need to be met such that the site in question is acceptable in terms of sustainability, the effective use of land and

'Ensuring the proposed development is in line with planning for housing objectives, reflecting the need and demand for housing in, and the spatial vision for, the area and does not undermine wider policy objectives eg. addressing housing market renewal issues'.

A recent appeal case at Bata Field, East Tilbury, Essex is referred to and comprised a scheme of 299 dwellings which were allowed in the Green Belt because of the absence of demonstrable five year supply of housing. The applicant contends that the scheme will provide market and affordable housing for locally generated needs and not encourage migration from the MUA's, despite another stated benefit of the scheme to provide commuter parking spaces for Wythall station.

I do not consider that the housing supply scenarios of Bromsgrove and Thurrock Thames Gateway (to which the above appeal relates) are equivalent to each other either in scale or complexity. Whilst the Inspector attaches significant weight to the lack of a demonstrable five year housing supply, there are several other issues. Firstly, the need for housing in Thurrock was pressing and the Inspector commented that: *I have no doubt that TTGDC is taking what action it can to bring forward identified sites, but there is no clear evidence of this leading to a substantial upturn in delivery in the near future.* He went on to say that: *I recognise the problems inherent in bringing forward complex brownfield sites and that construction rates have been drastically affected by the lack of effective demand, the identified need for housing, and particularly affordable housing, remains pressing* (para 345). These issues clearly do not apply to Bromsgrove District and there is a ready availability of alternative allocated sites to address any shortfall in housing supply.

As Members are aware, there are a number of ADR sites identified in the District and evaluated in the SHLAA to the effect that a five year supply of housing can be provided using these sites. Indeed, one of the reasons for the identification of the 4000 unit figure from the RSS process was the availability of ADR sites for development in the District,

obviating the need to review Green Belt boundaries before 2021. The applicant has not justified why the application site is more suitable for the delivery of housing than the designated ADRs. In terms of constraints, it is noted in the planning history that previous applications for development for leisure purposes (B11248 and B19235) were allowed to expire without implementation. There are a number of constraints on the site as detailed below in terms of potential contamination which are not a constraint on the ADR identified on the opposite side of the railway accessed from Selsdon Close. The suitability of this site has been thoroughly evaluated and a recent planning application (Ref: B/2010/0920) recommended for approval. The Core Strategy also provides an appropriate long term framework for the delivery of housing on the identified ADRs and also retains the existing Green Belt boundaries in accordance with policy C22 where it is not envisaged that there will be any significant changes to Green Belt boundaries during the period to 2021 (para 7.2).

2. Shortage of Affordable Housing

The applicant states that the proposal will provide an appropriate range of housing, of which 40% would be affordable. This is augmented by an Affordable Housing Delivery Plan which is a separate document presented with the application. A tenure split of two thirds social rented and one third intermediate housing is proposed and the comments of Strategic Housing should be noted above. Members should be aware that the provision of affordable housing is required both in the current local plan policy S15 and in the Draft Core Strategy. Thereby, the provision of affordable housing units is a mandatory policy requirement on housing applications above a certain threshold and could not be regarded as a very special circumstance to justify development in the Green Belt. The applicant has enumerated the local affordable housing requirements and stated that there is no affordable housing in Wythall. Whilst the need for affordable housing is accepted, there is no recognition of the potential of the ADR site at Selston Close to deliver substantial affordable housing for Wythall. It is also evident that the scale of the proposal means that the site could not be regarded as an exception site for the provision of affordable housing in the Green Belt in accordance with policy S16.

3. The Need for a Car Park for Wythall Station

The applicant states that there is a long standing and unrealised policy commitment to the provision of a park and ride site to serve Wythall Station. A Transport Assessment (TA) has been presented to substantiate the need for a car park for the station. The proposal for a car park is supported by policy RAIL4 of the Worcestershire Local Transport Plan 2006-2011 and policy WYT10 of the BDLP. The TA refers to the peak times of operation of the car park (before 0815) and thereby avoid conflict with the rush hour departures from the residential development. It is also clear that a pedestrian link will operate to Norton Lane as indicated on the revised site layout plan. The TA refers to the management of the car park by CENTRO and outlines that a direct pedestrian link to the platform is 'plausible'. Members should note that the scheme does not incorporate a Management Agreement with CENTRO nor is the provision of direct access to the platform certain. The applicant has presented a plan outlining station and platform improvements at Wythall but the provision of a direct pedestrian link remains unclear. Members should note that the parking is proposed in a relatively more enclosed position that would be expected of a station car park and the position of Norton Drive would have been more ideal. Motorists would need to travel through the housing development to

reach the station which is not ideal from a functional perspective. The County Council have commented in respect of the issue of parking provision for the station. A feasibility study was carried out in 2006 which examined a number of sites and access for a car park and concluded that the most cost effective was a car park accessed from Norton Drive, rather than the alternative of providing a longer access in a similar position to that proposed in this development. In summary, whilst policy WYT10 supports a car park for the station, it is supposed to minimise the effect on adjacent land uses and clearly the provision of 65 houses with the station car park would not conform with the policy.

Members should note the comments received in the representations in terms of the frequency of trains and variety of destinations from Wythall. The applicant has not provided any evidence that the train service will be improved in the event of the provision of a car park. Overall, the provision of a car park for the station would not require the provision of a large housing scheme and no evidence has been presented to show that the development of a 50 space car park would be unviable in the absence of a substantial housing scheme.

4. Open Space Provision

The proposal provides for an extensive area of open space along the corridor of the River Cole allowing for a variety of recreation uses. This is considered to enhance the amenity and biodiversity value of the site. The provision of open space in housing developments is a requirement under policy RAT5 of the BDLP and would be expected in every scheme of this scale. There is no evidence presented to the effect that there is a significant deficiency in terms of open space provision in the locality. The provision of the area of open space is largely down to the technical constraints of developing this part of the site which falls into flood risk zones 2 and 3. Therefore, the benefits of the provision of the open space do not amount to very special circumstances to justify the harm to the openness of the Green Belt outlined in detail in section (i) above.

Conclusions in terms of VSC

The applicant accepts that the development amounts to inappropriate development in the Green Belt but contends that there are very special circumstances which justify the proposal. These are the limitation of the harm to openness by virtue of the landscape design for the scheme, the need for housing and the absence of a five year housing supply, delivery of affordable housing, provision of a station car park and a large area of open space. The Planning Statement (page 4) refers to the existence of an extant permission for a '*Change of use from tipping site to recreational/leisure facility*' granted in 1990. This is assumed to be application B19235, consent dated 16th July 1990. The applicant states that this consent has been implemented and refers to work on the construction of the access. The permission did provide an access and turning head to the east of the present access but there is no physical evidence of the proposed access having been built and no Certificate of Lawfulness such that the original consent has been implemented. Members should note, therefore that the 'fallback' position referred to permitting a leisure scheme on the site, is far more uncertain than the applicant has stated.

Paragraph 8.4 on page 7 of the BDLP makes it clear that changes to established Green Belt boundaries have only been proposed where there exists special circumstances,

providing an overriding justification for so doing. The case for very special circumstances has been thoroughly examined and it is not considered that there is any overriding justification to allow the loss of a site in the Green Belt to a large housing scheme.

(vi) Design, Form and Layout

The requirements of the Development Plan are to ensure that the distinctive character of the District is retained and where possible enhanced. The requirement to retain or enhance local landscape character is outlined in policies CTC1 of the WCSP and DS13 of the BDLP. PPS1 also seeks to promote a high quality of design appropriate for the context in which it is situated. Policy S9 of the BDLP sets out criteria for the development of new dwellings in the Green Belt and the proposal would not fall into any of the acceptable categories.

SPG1 sets out some of the requirements for residential developments which are expected to make positive contribution to the local environment. Paragraph 5.10 sets out design objectives for new residential development which seek to ensure adequate levels of privacy and daylighting and provision of adequate public and private amenity space. The application is outline at this stage. However, additional details of the scale and layout of the proposal have been provided through the Article 3 procedure.

There is a detailed Design and Access Statement accompanying the application which logically begins with an assessment of the context of the site, evaluation of the existing landscape features, movement patterns and existing local design. The design of the scheme has attempted to provide a view corridor with respect to Norton Lane, with many of the new dwellings have unobstructed views of the countryside to the east. The revised masterplan for the site to provide better definition of the area designed for parking for the railway station and of the street hierarchy. There is an additional street added in the central part of the scheme and the proposed central squares have been redesigned. The provision of key buildings as focal points terminating a vista and providing interest on a corner are welcome. The Design and Access statement is a clear, readable and detailed document as would be expected for a residential development of this scale.

In terms of the requirement to protect and maintain the existing trees and landscape features, (in accordance with policies CTC1 and CTC5 of the WCSP) there is an Arboricultural Survey and Landscape and Visual Appraisal accompanying the application.

Members should note the views of the urban designer on the application. The amended scheme is considered to be preferable in terms of its urban design. The overall density of the scheme is considered low for the site and a more compact form is recommended to maintain the edge of the urban area. The station car park is now more effectively enclosed and the overall block structure and permeability of the site has been enhanced through the addition of the mews in the centre of the scheme. The provision of a direct pedestrian link to the station platform is considered an excellent aspiration from an urban design perspective and also for the functionality of the proposed car park as outlined in section (iv) (3) above. Whilst it appears that the general structure and permeability of the development is acceptable, there are omissions in terms of the architectural principles for the site which should be present at outline stage.

(vii) Traffic and Highway Issues

The requirements of the development plan in terms of transport are set out in policies TR11 and TR13 of the BDLP which seek to ensure the provision of adequate off street parking and provide a variety of means of transport respectively. These policies are supported by the guidance of PPG13 (Transport).

Members should note the concerns raised by residents in the consultation process, in terms of the impact of the proposal on the existing highway infrastructure arising from the additional traffic that the development would generate. The proposal would be close to the station which is supported by policy TR13. There is a Transport Assessment provided with the application. This evaluates the trip generation arising from both the proposed station car park and the residential scheme itself. The TRICS data predict 11 arrivals and 26 departures in the morning peak hour and 25 arrivals and 15 departures in the evening peak hour. These trips would be distributed along Norton Lane, Lea Green Lane and Station Road. The capacity of the junction between the former two roads has been examined and considered acceptable. The proposed access road with a width of 5.5m accords with the provisions of Worcestershire County Councils Highway Design Guide. Members should note that there is no objection from WH to the proposal subject to conditions and the applicant entering into a Legal Agreement to promote sustainable access to an from the site. These include the installation of alternative pedestrian crossing points near Lea Green Lane/Station Road, Norton Lane. A contribution of £30,000 has been requested and agreed by the applicant.

(viii) Impact of the proposal on residential amenity

Members should note that the issue of residential amenity has been raised in a number of the representations and includes the impact of the proposal in terms of light pollution and antisocial behavior. The properties on the north side of Norton Lane and Norton Drive adjoin the application site. SPG1 provides guidance on the appropriate separation of residential properties (Fig 14 and para. 8.5) to minimize the loss of light and privacy for the occupiers. Members should note that the application is in outline form, but the layout of the development is well defined on Dwg Ref: SJD-009-021 and additional details of the scale of the proposals have been provided. The properties on Norton Lane have large rear gardens and there is significant separation between them and the proposed new dwellings to the north (>50m). There is a shorter set off of the proposal from the properties adjoining Norton Drive, but I am satisfied that there would not be an undue loss of residential amenity. The topography of the site means that the proposal would be reasonably visible from the rear of properties on Lowbrook Lane but the position of the houses and gardens mitigates the loss of amenity from the lane itself. I consider that the site is not directly visible from Lea Green Lane. I consider that any outstanding issues in terms of residential amenity could be resolved at reserved matters stage, if necessary, through appropriate design alterations.

(ix) Previous Use

Members should note that many of the representations received raised concerns in respect of the previous use of the site for quarrying and tipping. The planning history confirms this. It appears that the site was used for the tipping of inert waste which appears to have ceased in the 1980's. Initially, there was an objection the scheme both

from the EHM and the EA due to insufficient information to demonstrate that the site can be made suitable for use with regard to contaminated land and the associated risks to human health. There was also considered to be a risk in terms of the pollution of controlled waters. Policy ES14 of the BDLP states that developments which are proposed on or close to polluted sites need to be able demonstrate that sufficient measures have been undertaken to reduce any risk.

The applicant provided a Phase 1 Desk Study (SP Associates, Ref: S1238), received on 09.12.2010 and have discussed the matter with the EA. There are now no objections from the EHM in respect of pollution risk. However, Members should note that stringent compliance with the conditions set out will be necessary to comply with policy ES14 and ameliorate any risk to human health or to controlled waters. The final views of the EA were received on 16.03.2011 and there is no objection subject to conditions.

(x) Drainage and Flood Risk

Policy ES2 of the BDLP states that development will not normally be permitted on lands where there is a known risk of flooding. Members should note that many of the representations from Third Parties related to the issue of drainage, in particular.

Part of the site falls within Flood Zone 3 and the EA have been consulted on the application. The applicant presented a FRA and the EA initially objected to the proposal on 01.11.2010 requesting additional information on three points in order to ensure that the proposal would comply in full with the requirements of PPS25.

The applicant provided a Flood Risk Addendum letter (Ref: SG.CD.LUK14-15895-FRA) on 16.11.2010. This sought to address River Section Chainage Labels, Finished Floor Levels and Maintenance of the Water Features. The EA withdrew its objection on the grounds of flood risk since the letter provided resolves the three outstanding issues.

In terms of drainage, the Council's Drainage Engineer has raised no objections. There will need to be a landfill report on the site, which then inform the drainage options which may be either soakaway systems or a direct attenuated discharge to the watercourse.

(xi) Trees Ecology and Biodiversity

The site consists of mature trees, hedgerows, pasture, standing and running water. The River Cole is designated as a Special Wildlife Site (SWS). Regulation 3 (4) of the Habitats Regulations (from the Habitats Directive) for European Protected Species places a duty on Local Planning Authorities to have regard to the requirements of the Directive.

The application is accompanied by a Tree Survey, Landscape and Visual Appraisal and Ecological Scoping Survey. The survey concluded that there was no evidence of reptiles, bats, water voles, otters or protected amphibians and that the site had an insignificant ecological value. There are a number of recommendations made in respect of birds and badgers. There is no objection to the proposal from Natural England subject to appropriate conditions to deliver ecological enhancement in accordance with PPS9 (Key Principle (iii)). The Tree Survey examined 84 trees on the site and identified the majority for retention and 8 for felling. The views of the Tree Officer are awaited.

Other Issues

The railway runs on the western boundary of the application site. In accordance with the requirements of PPG24 and policy ES14A of the BDLP, noise sensitive developments need to be located away from significant sources of noise. A survey of the proposed noise and vibration levels on the application site has been conducted. There is no objection raised by the EHM in respect of noise.

In terms of the requirements for new developments to demonstrate adaptations to mitigate climate change (outlined in the Climate Change Supplement to PPS1), there are details of this presented in the Design and Access Statement (Section 4). The development will follow the Code for Sustainable Homes. Sustainable Urban Drainage Systems (SUDS) will be used to reduce surface water runoff using the existing balancing ponds. The scheme also proposes the use of renewable technology for water conservation, etc.

There is a duty on the LPA to promote development which seeks to reduce the risk of crime in the neighbourhood. These principles are outlined in para 38 of PPS1 and under Section 17 of the Crime and Disorder Act 1998. Members should note the comments of the West Mercia Police Crime Risk Manager. It is recommended that the development is built to the Secure by Design standard. The position of the proposed car park for the station in the scheme is considered isolated and vulnerable. The pedestrian access from the car park to Norton Lane is acceptable if it is adequately lit.

In terms of educational and social infrastructure, Worcestershire County Council Education Services have requested a contribution from the applicant towards the provision of local education facilities. This amounts to £245,881. A large amount of open space is being provided on site and it is understood that the applicant wishes to establish a management company to look after this. The applicant will provide 40% Affordable Housing in accordance with the tenure requirements of Strategic Housing outlined above. A draft S106 Agreement has been prepared and Members will be updated on this matter. I am satisfied that the proposal accords with the requirements of policy DS11 of the BDLP in respect of providing contributions towards the provision of physical and social infrastructure to serve the development.

Conclusion

The proposed development comprises 65 dwellings on a Green Belt site to the north of Norton Lane, Wythall. The development also proposed a new car park with 50 spaces to serve Wythall Station. There is a pedestrian link to Norton Lane proposed from the car park and a vehicular access further to the east at the end of the existing run of development on Norton Lane. The applicant has presented comprehensive technical information with the application which successfully addresses the physical constraints on the site including contamination and flood risk. The issues of ecology, drainage, trees and community involvement have also been addressed in the application. The views of the Urban Designer are noted. I consider that the information presented in the form of the detailed drawings and Design and Access Statement would accord with the requirement of the recent Government Guidance on Information Requirements and Validation and would allow for a development of an appropriate design for the site.

In terms of fundamental planning principles, the proposal is located in the Green Belt where there is a strong presumption against new housing development. The applicant has presented a case for very special circumstances in the Planning Statement but this is notably more concise compared with the details provided to address the physical constraints above. The views of Strategic Planning should be noted. It is clear that there is sufficient capacity in the identified Areas of Development Restraint (ADR)s to meet the housing needs of the District and in the case of Wythall, there are ADR sites at Bleakhouse Farm and Selsdon Close. The applicant has not demonstrated why these sites will not provide adequate housing such that there is a need to release a site in the Green Belt. Whilst the need for a car park for Wythall Station is identified under policy WYT10 of the BDLP, the policy makes no provision for a large housing development. The applicant has failed to demonstrate that the housing is either an acceptable or appropriate enabling development for the car park, if it is required as an enabling development at all. The provision of affordable housing and public open space are not unique requirements and obviously not very special circumstances. Members should note the comments of Network Rail above that there is no detail provided in respect of the long term management of the car park. The applicant has presented an indicative plan of proposed platform extensions to commence in June 2011 (Ref.: T10153-R-002). There is still no definite link proposed from the proposed car park to the platform. The representations received from Third Parties raised concerns about the merging of the settlements as a result of the development of the site. This concurs with the view of the Inspector at the BDLP (Proposed Modifications) Inquiry 2001 in respect of the site:

"In simple terms, this gap of open countryside consists of a shallow valley between the built-up areas on higher ground. It is wide enough to maintain a sense of the physical distinctiveness of Grimes Hill and Drakes Cross. Site A consists of virtually the whole of this gap. If it were entirely removed from the Green Belt, to facilitate house building, the sense of physical separation would be lost, contrary to the objective of Policy GB.1(b). That would be so, even if, as suggested by the objector, an open corridor were maintained along the stream. Such an open corridor, whilst no doubt a pleasant feature, would function more like an urban park than a stretch of open countryside. There would be material harm to an important Green Belt purpose." (para 1.6.93)

The identified priority sites in terms of housing provision in the District (namely the existing ADRs) form an important part of the current Local Plan and emerging Core Strategy for the District. The granting of planning permission for this application for residential development would not only amount to inappropriate development, harmful to the Green Belt, but also undermine the adopted and emerging strategies for housing delivery in the District.

RECOMMENDATION that planning permission be **REFUSED** for the following reason:

- (a) The proposal is inappropriate development in the Green Belt and would cause significant harm to the openness and visual amenities of the Green Belt in this location and would conflict with four of the five purposes of including land within the Green Belt as set out in Planning Policy Guidance Note 2. No very special circumstances have been put forward or exist that clearly outweigh the harm caused and therefore the proposal is contrary to policies SD.2, D.28, D.38, and D.39 of the Worcestershire County Structure Plan and policies DS2 and DS13 of the Bromsgrove District Local Plan and the provisions of PPG2 (Green Belts).

Agenda Item 6

| Name of Applicant Type of Certificate | Proposal | Map/Plan Policy | Plan Ref. Expiry Date |
|--|---|-----------------------|---------------------------------|
| Mr. M. Ali 'A' | Extend opening hours to 7.00 a.m. - 23.00 p.m. seven days a week: Variation of Condition 2 attached to B/2009/0353 - 33 Worcester Road, Bromsgrove, B61 7DN | CA LB SS TCZ | 11/0054-TC 05.04.2011 |

RECOMMENDATION: that **DELEGATED POWERS** be granted to the Head of Planning and Regeneration Services to determine the application following the expiry of the publicity period on 31st March 2011.

MINDED TO REFUSE

Consultations

| | |
|-------------------------|---|
| Worcestershire Highways | 10.03.2011 - no objection. |
| West Mercia Police | 11.03.2011 - no objection. |
| Environmental Health | 14.03.2011 - no objection. |
| Community Safety | Consulted 23.02.2011 expired 16.03.2011 - no comment. |
| Conservation Officer | 16.03.2011 no objections. |
| Publicity | Site notice posted 02.03.2011 expires 23.03.2011 no objections. Neighbour notification 7 letters posted 16.02.2011 expired 09.03.2011 no objections. Press Notice posted 10.03.2011 expires 31.03.2011 no objections. |

The site and its surroundings

The application is part of 33-35 Worcester Road which is a listed building. The listed building has a traditional design and shop front façade with a number of features including a decorative cornice, panelled pilaster, corbel, fanlight, mullion and base. The premises form the Elachi Indian Restaurant and Takeaway. The Bromsgrove Conservative Association is located at no 35 Worcester Road. Beyond this to the south is the Love 2 Love night club. A Hyundai Garage is situated to the north eastern boundary of the site.

The site is visible from the Worcester Road and is part of the secondary shopping street designation within Bromsgrove Town Centre. The site is within a designated conservation area of Bromsgrove within the town centre boundary.

Proposal

The proposal is to extend opening hours to 7.00 a.m. - 23.00 p.m. Monday - Sunday thus the applicant seeks to vary Condition 2 attached to B/2009/0353.

Condition 2 on B/2009/0353 states:

"The use hereby permitted shall operate between the hours of 16:00 hrs. and 23:30 hrs. on Monday to Friday between 12:00 hrs. and 23:30hrs. on Saturdays, and between 12:00hrs. on Sundays and Bank Holidays."

The reason for the Condition is stated as:

"In order to protect the amenities of the area in accordance with policies DS13 and S19 of the Bromsgrove District Local Plan January 2004."

Relevant Policies

WMRSS QE3
WCSP SD.2
BDLP DS13, S19
Others PPS1

Relevant Planning History

B/2009/0353 Change of Use of ground floor premises from retail shop (Class1) to restaurant (Class A3) - granted 15.07.2009.

Notes

The main issue relating to this application relate to whether the variation of Condition 2 on B/2009/0353 is acceptable given the implications for the amenities of the local area.

Circular 11/95 sets out a number of 'tests' which Conditions are required to comply with as part of their use in planning legislation. These are that Conditions must be:

1. Necessary
2. Relevant to planning
3. Relevant to the development permitted
4. Enforceable
5. Precise
6. And reasonable in all other aspects.

With respect to the current application, Paragraph 15 of this Circular states that in dealing with an application to remove a condition, that a condition should not be retained, unless there are sound and clear cut reasons for doing so.

In addition it will be important to determine whether varying the condition complies with Policy DS13 and S19 of the Bromsgrove Local Plan and whether proposed timings would impact the amenities of the area.

The applicant seeks to extend the opening hours from 7.00am-23.00pm Monday to Sunday. The applicant believes the extended opening hours would be beneficial for the business in the current economic climate. The business wishes to provide free of charge cookery classes for enthusiasts in South Asian Cuisine, this would only be possible if daytime hours are allowed. The applicant is of the view that current opening hours are too restrictive for trade. The applicant also aims to provide a healthier alternative to the traditional takeaway during the day by providing breakfast for early morning workers/commuters.

Under previous application B/2009/0353 the condition was imposed partly following comments from West Mercia Constabulary which stated the premises should not be open beyond midnight (02.07.2009).

I consider that the proposed variation of condition 2, on application B/2009/0353 to 7.00 a.m. - 23.00 p.m. on Monday to Sunday, would be difficult to restrict to cookery classes only. There would be no control if the business decided to change this strategy to opening the takeaway from 7.00 a.m.

In addition I consider that additional noise, cooking smells and odours would further impact the locality as a result from the extension of opening times.

Finally I note that other hot food takeaways in the locality along Worcester Road are restricted in terms of their morning opening times therefore I consider the scheme would set an unfortunate precedent for other local takeaway businesses to follow.

I therefore conclude that the variation of condition to be unacceptable and I am thus minded to refuse consent.

RECOMMENDATION: that **DELEGATED POWERS** be granted to the Head of Planning and Regeneration to determine the application following the expiry of the publicity period on 31st March 2011.

MINDED TO REFUSE

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Agenda Item 7

| Name of Applicant Type of Certificate | Proposal | Map/Plan Policy | Plan Ref. Expiry Date |
|--|---|--------------------|---------------------------------|
| Mr. D. Jones 'A' | Side First Storey Bedroom and demolition of rear ground floor extension (resubmission of 10/1090) - 4 Brockhill Lane, Beoley, B98 9BU | GB | 11/0111-TC 14.03.2011 |

RECOMMENDATION: that permission be **REFUSED**

Councillor Mrs J. D. Luck has requested that this application be considered by the Committee, rather than being determined under delegated powers.

Consultations

Worcestershire Highways Consulted 21.02.2011 - no comments received.

Worcestershire Minerals Consulted 21.02.2011 - no comments received.

Beoley PC Consulted 21.02.2011 - no comments received.
Publicity 1 letters sent 09.02.2011 (expire 02.03.2011):

1 response received -
Happy with proposal and do not object.

1 site notice posted 23.02.11 (expires 16.03.11): no views received.

The site and its surroundings

The dwelling is a post war semi-detached and located in the Green Belt. The property is redbrick and located in a small strip of ribbon development in the countryside. There is an open field to the east of the site and Brockhill Lane is situated to the north of the site.

Proposal

The application relates to a first floor side extension to form a bedroom and en-suite. The scheme includes the demolition of a ground floor rear extension.

Relevant planning history

10/1090 Side first floor extension.

B/1995/0260 Garage extension and front canopy extension (as amended by plans received 31.5.95).

B/1976/2043 Temporary siting of 4 caravans for approx. 8 weeks during modernisation of houses.

Relevant policies

WMRSS: QE3

WCSP: CTC.1, D38, D39

BDLP: DS13, S11

Draft CS2: CP3, CP18, CP22

Others: PPS1, PPG2, SPG1, SPG7

Notes

This application relates to a resubmission following the refusal of a similar scheme under delegated powers in November 2010.

The crucial issue in the determination of this application is to ascertain whether the proposal adequately addresses the reasons for refusal in planning application B/2010/1090.

The reason for refusal on this application is as follows:

“The extension would create would create a disproportionate addition to the original dwellinghouse, would be harmful to the openness and visual amenity of the Green Belt and would not be subservient to the existing property contrary to Policy S11 and DS13 of the Bromsgrove Local Plan and the guidance in PPS1, PPG2, SPG1 the Council’s Residential Design Guide and SPG 7 Extensions to Dwellings in the Green Belt.”

The key issue is to ascertain whether the application for planning permission complies with Policy S11 of the Bromsgrove Local Plan and whether the first floor extension would affect the existing amenities of adjoining occupiers and design of the building.

As such policies DS2 and S11 of the BDLP, D39 of the WCSP and SPG1 are most relevant in determining the application.

Green Belt

Given the location of the site within the Green Belt the application raises the following issues:

Having regard to SPG7, a maximum extension of up to 40% of the original dwelling is regarded as a proportionate addition over and above the size of the original dwelling; unless there are very special circumstances.

| | |
|---|----------------------|
| Original dwelling | 86.9m ² |
| Existing additions (including proposed rear demolition) | 23.06m ² |
| Existing dwelling | 109.96m ² |
| Existing additions over original | 26.53% |
| | |
| Proposed extension | 19m ² |
| | |
| Total house as proposed | 128.96m ² |
| Proposed extension and existing additions | |
| % of proposed and existing additions above original | 48.4% |

This proposal together with the existing additions would create an increase in size of 48.4% over and above the original dwelling, with total floor space of 109.96m².

The proposed extension and existing additions are over the proportionate 40% addition and I do not consider there to be any special circumstances applicable. I note that the resubmission seeks to reduce the impact on the Green Belt by proposing to demolish the rear single storey extension. This would go some way to alleviate the impact on the

Green Belt however it is still over the recommended addition over and above the size limits advocated by SPG7. (The previous scheme equated to a 83.07% increase above and beyond the floor area of the original dwellinghouse.) I am concerned that permitting this development would give rise to a precedent for disproportionate additions along this stretch of Brockhill Lane. The proposed addition would create a disproportionate addition to the original dwellinghouse and would thus be harmful to the openness of the Green Belt. As such I consider the proposal would prejudice the purposes of Green Belt policy and I recommend refusal.

Design/ Street Scene

By virtue of its position at the end of the row of properties I do not consider the proposal would have a detrimental impact on the character of the streetscene. Giving permission for development in this location would not give rise to a precedent for infilling of gaps as the property is at the end of the row of dwellinghouses.

Development is permitted under DS2 if the proposals are for the limited extension, alteration or replacement of existing dwellings (subject to S11). To comply with Bromsgrove District Council's Residential Guidelines, it is suggested that proposed extensions are set down from the height of the roof and set back from the front of the original dwelling. The guidelines also refer to the need to set two-storey or first floor extensions at least one metre off the common boundary to ensure that semi-detached or detached houses do not become terraced. I will deal with these aspects of the application in turn:

Set down - the proposed roof would not be set down from the existing building by approximately 20 cm.

Set off - the extension is set of by approximately 1 metre to the site boundary which adjoins a field.

Set back - The proposed extension would be set by by approximately 40cm from the front of the dwellinghouse however the window to the front elevation would extend 70cm beyond the existing roofline.

The proposal would be set down and mostly set back from the original dwellinghouse, would be situated approximately 1 metre from the curtilage boundary. I am satisfied in this instance that proposal would be subservient to the existing building and would be acceptable in the streetscene.

Residential Amenity

I am content that the proposal would not cause material harm to the amenity of nearby occupiers. By virtue of the position of the extension to the west of the property there would be no harm caused to no 6 Brockhill Lane.

Conclusions

The proposal would be in keeping with the streetscene and would not adversely affect the amenity of adjoining occupiers. I consider the proposal addressed the design issues from previous application 10/1090 however it is considered that the application for a first storey side extension would create a disproportionate addition to the original dwellinghouse and

would thus be harmful to the openness of the Green Belt. In addition there are no very special circumstances for development and as such the proposal would not meet the criteria for extensions to dwellings in the Green Belt (BDLP S11) and SPG7. As such I recommend refusal to this planning application.

RECOMMENDATION: that permission be **REFUSED**

The extension would create would create a disproportionate addition to the original dwellinghouse, would be harmful to the openness and visual amenity of the Green Belt contrary to policies DS2, S11 and DS13 of the Bromsgrove Local Plan and the guidance in PPS1, PPG2 and SPG 7 *Extensions to dwellings in the Green Belt*.

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CONSTITUTIONAL AMENDMENTS TO SCHEME OF DELEGATION FOR PLANNING ENFORCEMENT AND DEVELOPMENT CONTROL

| | |
|------------------------------|---|
| Responsible Portfolio Holder | Councillor G. N. Denaro |
| Responsible Head of Service | Mrs. Claire Felton Head of Legal, Equalities and Democratic Services |
| Non-Key Decision | |

1. SUMMARY OF PROPOSALS

1.1. The purpose of this report is seek Member approval to a number of changes to the Scheme of Delegations insofar as it affects Development Control, Planning Enforcement and the arrangements for Calling in Planning Applications.

2. RECOMMENDATIONS

2.1. That Members recommend to full Council that the amendments to the Scheme of Delegations as set out in Appendices 1 to 3 of this report be adopted.

3. BACKGROUND

3.1. The Council as a local planning authority has powers and primary responsibilities for development control and planning enforcement action under various legislation including the Town and Country Planning Act 1990 ("TCPA") and the Planning (Listed Buildings and Conservation Areas) Act 1990 ("Listed Buildings Act"). The Council is also expected to carry out its duties expeditiously within a reasonable timeframe. In addition, there are statutory time limits within which applications should be determined. There are several areas within the planning service where powers can be delegated to officers to improve the efficiency and speed of the determining applications and dealing with enforcement issues.

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- 3.2. The aim of the scheme of delegation is to give more flexibility to officers to enable the Council to determine applications expeditiously in accordance with statutory deadlines and Government advice and to free the committee to deal with more serious matters. Also, it is to enable the Council as a whole to deal more quickly and efficiently with breaches of planning and any related complaints.
- 3.3. The changes have also been made to align the Council's scheme of delegation with that of Redditch Borough Council (RBC) in so far as is possible to assist the process of shared services. In RBC's scheme of delegation, all delegated powers for functions under the 'Planning and Associated Legislation' (as defined in RBC's constitution) are considered to fall within the delegated scheme. RBC's scheme then sets out the matters which must go to committee. The Council's scheme expressly sets out certain delegated powers although the introductory paragraphs to the scheme make it clear that the list of delegated powers is not an exhaustive one. In particular, officers make numerous decisions which are considered to be part of their day to day operational activities as set out in paragraph 3 of the introductory powers to the Scheme of Delegations.
- 3.4. The changes also aim to clarify what can be dealt with by planning officers and what must be reported to members. Members and officers, through the Head of Planning and Regeneration, will continue to be able to, regardless of the existence of delegated powers, refer any application to the Planning Committee. The amended documents are set out in Appendices 1 to 3.

4. KEY ISSUES

Scheme of Delegations (Appendix 1)

- 4.1. The main change relates to the procedure for calling-in applications as set out at paragraphs 6 and 7 of Appendix 1. Members have the right to call in applications, which would otherwise be delegated, to be determined by planning committee. The amendments set out a procedure for exercising that calling in power. The new procedure is to assist everyone involved in the process for deciding planning applications. In particular officers believe that the changes will:-
- give officers time to prepare and deal with any issues which members may have with the application or the officer's report,
 - give officers and the Chair of the Planning Committee sufficient notice of the call-in request and reasons

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- encourage members to deal timeously with any applications and ensure that they consider any relevant planning issues
- assist the applicant and members of the public by allowing officers to give sufficient notice of the calling-in of an application.

4.2. Members are sent a weekly list of planning applications either by e-mail or post. The intention is for members to decide whether or not to call-in applications within 21 days of receiving notification as set out in that list. Late applications for call-in will be considered by the chairman as set out in paragraph 7.2.

Development Control (Appendix2)

Applications and Appeals

- 4.3. The thresholds for applications to be determined by the Planning Committee have been amended (Page 3 of Appendix 2). The main change is that the need for applications on sites of 1 hectare or more (or in the case of residential development 0.5 hectare or more) to be determined by committee is removed. This will align the thresholds in BDC with the thresholds applied under the RBC scheme of delegations. The amendments also pull together other criteria, which are already contained in different places throughout the Council's constitution, for determination by committee so that they can appear in one place, for ease of reference.
- 4.4. Amendments are made to allow officers to impose conditions, after the Planning Committee meeting, when applications have been approved contrary to officer recommendation (page 3 Appendix 2). When members approve an application contrary to officer's advice they are usually asked to set out conditions that should apply to the permission, if they have not done so during their discussions. However it is possible that the need for a certain conditions may be overlooked by both the members and the planning officers attending the meeting. If the condition is in accordance with legislation and Government guidance, including the requirement for it to be necessary for the development and relevant to planning, the amendment makes it clear that planning officers have the power to impose conditions. This may also be seen as part of officers' day-to-day powers.
- 4.5. Amendments at page 4 of Appendix 2 (Appeals) make it clear that officers can take all necessary action to defend the Council's decision where there has been an appeal against a refusal to grant permission or consent or against a condition imposed on a consent or permission. This includes amending the Council's case, especially if advised to so by Counsel.

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Again, this is a matter of clarification since this can be seen to be part of the day to day powers of the officers. A similar delegation has also been added to the Planning Enforcement Scheme of Delegations.

- 4.6. With reference to declining planning applications (Page 5 Appendix 2), under sections 70A and 70B TCPA and 81A and 81B, the Council has the power to decline to determine an application if a similar application (meaning an application for essentially the same development on the same land) has in the last 2 years been refused by the Secretary of State or refused by the Council and either an appeal against the refusal has been dismissed by the Secretary of State or the applicant made no appeal against the refusal. The Council can also refuse to determine an application if a similar application has either been submitted at the same time or a similar application is still being determined by Council (before the statutory time limit) under appeal or where the application has been refused, where there is still time to appeal the refusal (so called "twin-tracking").
- 4.7. The Council can exercise the power to refuse to determine the later or duplicate application if there has been no significant change in the development plan or any other material planning consideration. The power can also be exercised in respect of an application for planning permission or listed building or Conservation Area consent. The power is discretionary and can be judicially reviewed. The amendments to the scheme give officers delegated powers to exercise this power. As notification to the applicant to exercise this power needs to be given within the statutory time period for determining the later application (to avoid an appeal against non-determination preventing use of this power), it would be useful for officers to have this delegated power to decline to determine applications.
- 4.8. Officers already have delegated powers to approve applications for minor amendments to approved schemes. The amendment is for clarification and replaces the word 'approve' with 'determine' as the latter is considered to be more accurate.

Section 106 Obligations

- 4.9. Amendments are also made to the parts of the scheme that relate to section 106 obligations (Page 2 Appendix 2). Firstly the amendments make it clear that the delegated powers relate to both Agreements and

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Unilateral Undertakings. Both documents contain planning obligations and are delivered as deeds. The difference is the Council is a party to the agreement, which can be useful if there are mutual negotiations or the Council needs to give any covenants, while the undertaking is a unilateral offer by the landowner and/or developer, which does not need to be signed by the Council. Both types of documents are equally enforceable by the Council.

- 4.10. In addition to the delegated powers that already exist the amendments give officers delegated powers to deal with applications or requests for the modification or discharge of planning obligations. The delegated power does not relate to the amendment of any heads of term approved by the Planning Committee, a significant change in financial contribution, any restriction, the overall area of land to be transferred to the authority or any positive obligation by the land owner. It is intended to allow officers to deal with minor variations required by the practicalities of the scheme.
- 4.11 The amendments also allow officers to take action to enforce planning obligations. This would usually be by court action. The amendments also make it clear that the Head of Planning Regeneration is responsible for negotiating all substantive planning matters such as financial contributions, affordable housing, open space etc while the Senior Solicitor is responsible for the drafting and execution of the document.

Other Powers and Minor Amendments

- 4.12 The amendments also cover a number of other powers which are not expressly dealt with in the current Scheme of Delegations. Members are referred to page 5 of Appendix 2 as follows:

4.13 Advertisements

The amendments give delegated powers to officers through the Head of Service to determine applications for advertisement consent, where one is required. There are other categories of advertisements that either do not require consent or are granted deemed consent under the Town and Country Planning (Control of Advertisements) Regulations 2007 ("Advertisement Regulations").

4.14 Revocation or modification

This introduces a delegation to Head of Planning and Regeneration to revoke or modify a planning permission that has already been granted.

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Local planning authorities can exercise these powers if it appears expedient for them to do so having regard to the development plan and other material considerations. Use of the powers involve a formal procedure and the relevant land owner (or indeed anyone with an interest in the land) would have a right to claim compensation from planning authority. The powers are exercisable in respect of planning permissions, listed building consents and conservation area consents.

It is not possible to revoke a permission or consent once the permitted building has been completed and any order revoking a permission or consent will not apply to any work that has been carried out before making of the order. For building works that have already been carried out, it is also possible to require a developer to remove buildings or works via a discontinuance order under section 102 TCPA. A discontinuance order also attracts a claim of compensation. The amendments to the scheme do not include delegated powers to issue a discontinuance order.

Although the use of these powers are potentially controversial, occasionally a developer either requests or is agreeable to revocation of a permission where it would facilitate a more up to date development scheme. An example is where the possibility of the implementation of a previous permission would justify the refusal of an application. In these cases, it is useful for officers, through the Head of Service, to be able to deal with such requests via delegated powers.

4.15 Completion Notice

This introduces a delegation to Head of Planning and Environment to serve a completion notice. A completion notice can be served by a local planning authority, under section 94 of the TCPA, stating that if the development is not completed within a specified period, the planning permission will cease to have effect. It can only be served if the development has commenced within the period for implementation and the period for implementation (usually 3 years) has expired. It should only be served if the authority is of the opinion that the development will not be completed within a reasonable period.

- 4.16 Members are referred to the delegation for prior notification procedure on page 1 of Appendix 2. A minor amendment is made namely that the delegated power now includes telecommunications development as well as agricultural and forestry. The power relates to the permitted development rights for certain types of agricultural, forestry and

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telecommunication development. When the development reaches a certain threshold, the developer must, notwithstanding the permitted development rights, apply to the local planning authority for a determination as to whether prior approval will be required for the development to give the authority a chance to control certain aspects of the development. When such an application is received, the authority has the right to ask for further details.

- 4.17 There has also been a correction. The power to determine applications for a Certificate of Lawfulness, which currently appears in both the schemes of delegations for Development Control and Planning Enforcement, has been amended so it only appears in the Development Control scheme. The power is delegated to the Head of Planning and Regeneration.

Planning Enforcement (Appendix 3)

- 4.18 One of the aims of the amendments to the Planning Enforcement Scheme of Delegation is to give officers greater flexibility in the way they work by allowing more breaches of planning control to be actioned without the need for prior referral to Planning Committee. The current system of referral to Planning Committee can cause delay to formal enforcement action being commenced. One of the main changes is the addition of delegated powers to issue Enforcement Notices and Breach of Condition Notices. One difference between the two types of notices is that there is no right of appeal against a Breach of Condition Notice. It is possible to issue Enforcement Notices in response to breaches of condition as well as unauthorised development.
- 4.19 In the current scheme, such notices can only be issued by officers in cases of urgency when reporting to the Planning Committee is impractical. It is considered that the present arrangement can delay enforcement and can also burden the committee with matters that can be adequately dealt with by officers. Controversial or complicated cases can continue to be reported to committee and the greater use delegated powers will be complimented by regular quarterly updates to members of enforcement matters.
- 4.20 Separate files are opened when a complaint is received about a potential breach of planning control and officers frequently decide without reference to the committee that it is not expedient to take enforcement action. It is not considered that a separate power of delegation is required for this as it falls under officers' day to day operational activities

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in dealing with complaints. However from time to time, officers may decide to report controversial or high profile matters to members even if they are of the opinion that it is not expedient to take enforcement action.

- 4.21 The amendments also include delegated powers to seek an injunction against the breach of planning control (page 1 of Appendix 3) and to serve a section 215 notice (page 3 of Appendix 3). In relation to injunctions, the current scheme only contains a delegated power where the matter is urgent. In relation to section 215 Notices, Local planning authorities have the power to serve these notices to require proper maintenance of land when the condition of land is adversely affecting the amenity of the local area. Delegated powers will enable officers to deal efficiently and quickly with unsightly land. Even if a notice is not served, the existence of such powers can encourage a land owner to clean up the land and having to wait for a committee meeting can encourage delay and have adverse consequences for other members of the public. High profile, controversial or complicated matters can continue to be reported to the Planning Committee.

Advertisements

- 4.22 There are several actions that a planning authority can take against unauthorised advertisements including prosecution or removing or obliterating certain advertisements. Action must be taken in the interest of amenity and public safety. The amended scheme (Page 3 Appendix 3) proposes reserving the power to issue discontinuance notices against deemed advertisements to Members but includes delegated powers for officers to use other statutory powers to deal with unauthorised advertisements. This would reduce potential delays in dealing with unauthorised advertisements that are damaging to the planning environment.

Other Amendments

- 4.23 Finally the delegated power to issue Article 4 directions is widened to include all circumstances (Page 1 Appendix 3). The current scheme restricts the power to cases of sub-division of plots. There does not appear to be a current need for this distinction. Members will be aware that local planning authorities can make Article 4 directions to restrict permitted development in certain circumstances. Throughout the Appendices the name of the head of service for planning has been changed from the "Head of Planning and Environment Services" to the "Head of Planning of Regeneration".

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5. FINANCIAL IMPLICATIONS

- 5.1. There are no substantial financial implications for these proposals. There may be a small reduction in administration, particularly the writing of committee reports and the attending of committee meetings by officers, which would result in some staff time savings. It is however still necessary to keep a properly reasoned record when taking delegated decisions.
- 5.2. There may also be a reduction of the risk of appeals against non-determinations if officers are given delegated powers to determine more applications. However members will be aware that under the current system every effort is already being made to ensure that applications are being determined within statutory deadlines.

6. LEGAL IMPLICATIONS

- 6.1. The main legislation which are relevant to these changes are:
 - Section 101 of the Local Government Act 1972 whereby a local authority may arrange for discharge of any of its functions by an officer or a committee.
 - The Local Authorities' (Functions & Responsibilities) Regulations 2000 under which the Council's town and country planning functions are reserved to full Council.
 - The Town and Country Planning Act 1990
 - The Planning Listed Buildings and Conservation Areas) Act 1990. The above two Acts (as amended) contain the planning functions dealt with in the amendments to the Planning Enforcement and Development Control Scheme of Delegations.
 - Circular 11 of 1995: 'The Use of Conditions in Planning Permissions' is relevant to the amendments which deal with the imposition of conditions.
- 6.2. There are no perceived legal implications arising from these amendments over and above the normal legal implications of any Council decision, whether or not it is made under officers' delegated powers or by committee. Although not every planning action can be set out in the Scheme of Delegations and some actions must be considered to be part of officers' day to day operational activities, it is considered clearer to set out, as far as is possible, which major functions can be dealt with by officers and which must be sent to committee.

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7. POLICY IMPLICATIONS

7.1 The scheme of delegation, and the proposed amendments, exist alongside the implementation of planning policy, including the Local Plan, the supplementary planning guidance and the draft Core Strategy. A proposed enforcement policy is also being reported to Members at this meeting. The scheme assists in the delivery and implementation of the Council's strategic planning policy.

8. COUNCIL OBJECTIVES

8.1 The amendments would support the Council's objectives and the continuous improvement of development control and planning enforcement to the benefit of the Environment. In addition, it is considered that the amendments will have a positive effect on the Council's Improvement and Regeneration objectives by improving the efficiency of its response to applications for permission or consent and enforcement-related complaints.

9. RISK MANAGEMENT INCLUDING HEALTH & SAFETY CONSIDERATIONS

9.1 There are no risks identified above the usual issues involved in Council decision making. The full Council has the power to change the Scheme of Delegations and the proposed amendments are being reported to Council for noting and discussion.

10. CUSTOMER IMPLICATIONS

10.1. It is considered that the amendments to the Scheme of Delegations will have a positive effect on customer services. It will enable the Council to deal with applications and enforcement issues more speedily. It will also provide clarity to members of the public regarding decision making.

11. EQUALITIES AND DIVERSITY IMPLICATIONS

11.1 None identified

12. VALUE FOR MONEY IMPLICATIONS, PROCUREMENT AND ASSET MANAGEMENT

12.1 The amendments are unlikely to have significant implications in these respects. However it is considered that the attempts to align RBC and the Council's scheme of delegations will make it easier for planning officers to work across both Councils which have a positive effect on the

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above issues. It is also considered that delegated decisions where preferable would represent a better use of the officer's time than writing reports and attending committee and the committee's time in avoiding the need to deal with matters that could easily be dealt with by officers.

13. CLIMATE CHANGE, CARBON IMPLICATIONS AND BIODIVERSITY

13.1 The amendments will facilitate the implementation of the Council's strategic planning policies regarding these issues.

14. HUMAN RESOURCES IMPLICATIONS

14.1 As stated in 10 above, aligning RBC and the Council's scheme of delegations will make it easier for planning officers to work across both Councils and delegated decisions where preferable would represent a better use of the officers' and the committee's time.

15. GOVERNANCE/PERFORMANCE MANAGEMENT IMPLICATIONS

15.1 None Identified

16. COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF CRIME AND DISORDER ACT 1998

16.1 None identified

17. HEALTH INEQUALITIES IMPLICATIONS

17.1 None identified

18. LESSONS LEARNT

18.1 There are no significant lessons learnt. Three corrections have been made relating to the Prior Notification Procedures, Minor Amendments and Certificates of Lawfulness.

19. COMMUNITY AND STAKEHOLDER ENGAGEMENT

19.1 The proposed changes have been discussed with the portfolio holders for Planning and Regeneration and Resources and with various Council officers. There has been no consultation with the general public.

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20. OTHERS CONSULTED ON THE REPORT

20.1 Please include the following table and indicate 'Yes' or 'No' as appropriate. Delete the words in italics.

| | |
|---|-----|
| Portfolio Holder | Yes |
| Chief Executive | No |
| Executive Director (S151 Officer) (must approve Financial Implications before report submitted to Leader's Group/Portfolio Holders Briefing) | No |
| Executive Director – Leisure, Cultural, Environmental and Community Services | No |
| Executive Director – Planning & Regeneration, Regulatory and Housing Services | No |
| Director of Policy, Performance and Partnerships | No |
| Head of Service (i.e. your own HoS) | No |
| Head of Resources (must approve significant HR Implications before report submitted to Leader's Group/Portfolio Holders Briefing) | No |
| Head of Legal, Equalities & Democratic Services (for approval of any significant Legal Implications) | No |
| Corporate Procurement Team (for approval of any procurement implications) | No |
| Senior Solicitor | Yes |
| Head of Planning and Regeneration | Yes |

21. WARDS AFFECTED

21.1 All

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22. APPENDICES

- 22.1 Appendix 1 – Amended Scheme of Delegation – Introductory Paragraphs
- 22.2 Appendix 2 – Amended Scheme of Delegation - Development Control
- 22.3 Appendix 3 – Amended Scheme of Delegation – Planning Enforcement

23. BACKGROUND PAPERS

- 23.1 Current Scheme of Delegations for Introductory Paragraphs, Development Control and Planning Enforcement

24. AUTHOR OF REPORT

- 24.1 Name: Tracy Lovejoy
- 24.2 E Mail: t.lovejoy@bromsgrove.gov.uk
- 24.3 Tel: 01527 881609

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Scheme of Delegation

1. This Scheme of Delegation will be updated regularly. However:
 - a) any reference to specific legislation or to statutory provisions shall be deemed to refer to any relevant aspects of any successive legislation or statutory provisions;
 - b) reference to post holder shall be deemed to refer to any successor post holder(s) who is/are charged with the same responsibilities following any reorganisation or reallocation of functions, save that where there is any ambiguity as to who shall exercise a particular delegation of authority, the delegation shall refer to the higher-ranking officer(s). For the avoidance of doubt, successor post holder(s) include officers placed at the disposal of the Council under secondment arrangements pursuant to s113 of the Local Government Act 1972 or any other enactment or power.

Delegations to Committees and Sub-Committees

2. This Scheme of Delegation is not an exhaustive list of matters delegated to Committees and Sub-Committees. The Scheme of Delegation must be read in conjunction with the Terms of Reference for each Committee and Sub-Committee.

Delegations to Officers

3. All powers, duties and responsibilities appropriate and necessary for day to day operational activities shall be deemed to be delegated to the relevant Head of Service with the responsibility for the discharge of that function or the exercise of that power unless otherwise specifically prescribed and shall include authority to incur normal revenue expenditure in the discharge of day to-day operational activities in accordance with Financial Regulations and where budgetary provision has been made unless the Cabinet or Section 151 Officer has placed a conditional approval on any such item. The Scheme of Delegations is not intended to be an exhaustive and complete list of delegations to officers.
4. Notwithstanding that functions are delegated to an officer, the relevant parent committee or other member body with decision-making powers will retain concurrent powers. An officer may decide not to exercise any function in relation to a particular matter and invite the relevant committee or member body with decision-making powers to do so instead.
5. Where an officer whose post is named under this Scheme is unable to act or is absent the powers delegated to him/her may be exercised by any officer authorised by him in writing or by any more senior officer in that officer's hierarchical line of management up to and including the

Chief Executive except where this is not permitted in law or is subject to other qualification. Any delegation to the Chief Executive may in his/her absence be exercised by the Executive Directors, Assistant Chief Executive, Monitoring Officer or Section 151 Officer as may be appropriate.

6. There are further delegations of powers which can be exercised by officers under Contract Procedure Rules.

Calling-In Procedure for Planning Committee

6. When a member wishes to call in an application to Planning Committee for consideration, they will, within 21 days of receipt of the notification of that application, contact the case officer and set out their reasons for wanting the application to be considered at committee rather than by officer delegation. The case officer will, in writing, record the request and reasons and send a written record to the Portfolio Holder, Chairman of the Planning Committee and the ward member for the area in which the application site is situated, of the request and reasons.

7. If a request is made after the deadline set out in paragraph 7 above, the Chairman of the Planning Committee shall make the final decision, taking into account all relevant matters, as to whether the application is considered by the Planning Committee, and will inform the case officer of his decision within 2 working days of receiving the request from the case officer. The Member who made the request will also be informed of the Chairman's decision.

Interpretation

8. The Monitoring Officer shall be the final arbiter in relation to the interpretation and application of the Scheme.

| Development Control | Detail | Delegated by: | Delegated to: |
|---|--|--------------------|-----------------------------------|
| Prior Notification Procedure | To require further details from the applicant when an application for prior determination is submitted in respect of permitted development for agricultural, forestry and telecommunications development. | Planning Committee | Head of Planning and Regeneration |
| Article 4 Directions | To make Directions under Article 4(1) of the Town & Country Planning (General Permitted Development) Order 1995. | Planning Committee | Head of Planning and Regeneration |
| Certificate of Lawfulness | To determine applications for Certificates of Lawfulness of Proposed Use of Development or Certificates of Existing Use of Development under sections 191 and 192 of the Town & Country Planning Act 1990 | Planning Committee | Head of Planning and Regeneration |
| Development Proposals by other Public Authorities | To comment on proposals for development submitted by Worcestershire County Council and other public authorities | Council | Head of Planning and Regeneration |
| Entry of Premises – Proper Officer | To be designated as the Proper Officer for the purposes of authorising persons to enter onto land in connections with the exercise of functions under sections 196A, 196B, 214B, 324 and 325 of the Town & Country Planning Act 1990 | Planning Committee | Head of Planning and Regeneration |
| Inspection Notices | To serve notices of intended inspection under sections 196A, 196B, 214B, 324 and 325 of the Town and Country Planning Act 1990 | Planning Committee | Senior Solicitor |
| Landscaping Schemes | To approve landscaping/tree planting schemes submitted as a result of planning permissions subject to such conditions as may be appropriate | Planning Committee | Head of Planning and Regeneration |
| Minor Amendments | To determine applications for minor amendments to approved plans | Planning Committee | Head of Planning and Regeneration |
| Planning | To negotiate with developers and to | Planning | Head of |

Deleted: Agricultural and Forestry Development

Deleted: To require certain details to be submitted for permitted agricultural and forestry development when determinations are submitted

Deleted: in circumstances involving the subdivision of plots and to determine the classes of development to which such Direction(s) may relate in the circumstances of each individual case

Deleted: approve

DEVELOPMENT CONTROL

| | | | | |
|--|--|---|--|--|
| | <u>Agreements and Unilateral Undertakings</u> | approve the amounts to be received by the Council as financial contributions in lieu of on-site provision of affordable housing or recreational facilities/open space and as contributions towards the costs of highways works, educational provision or any other kind of provision by the Council or County Council | Committee | <u>Planning and Regeneration</u> |
| | <u>Planning Agreements and Unilateral Undertakings</u> | <p><u>To negotiate the legal, drafting and all terms of the agreements and undertaking, except for those which involve planning gain, restriction of the development or use of the land, obligations relating to the land and financial contributions.</u></p> <p><u>To execute and complete planning agreements.</u></p> | <p><u>Planning Committee</u></p> <p><u>Planning Committee</u></p> | <p><u>Senior Solicitor</u></p> <p><u>Senior Solicitor</u></p> |
| | <u>Planning Agreements and Unilateral Undertakings</u> | <p><u>To determine applications or requests for discharge or modification of planning agreements or undertakings (whether by approval or further agreement) unless it includes the following:</u></p> <ul style="list-style-type: none"> a. <u>Deletion, addition or variation of one or more of the heads of terms originally approved by the Planning Committee</u> b. <u>Significant change in the overall area of land to transferred to the Council</u> c. <u>Significant change in financial contributions to be provided to the Council (except where this is as a result of a subsequent decision by the Planning Committee)</u> d. <u>Significant change in the any obligation to be performed by the developer or any restriction on the developer or the development or use in land.</u> e. <u>A member makes a written request for a case to be considered by the Planning Committee</u> | <u>Planning Committee</u> | <u>Head of Planning and Regeneration</u> |

DEVELOPMENT CONTROL

| | | | | |
|---|--|--|--------------------|--------------------------------------|
| | | <p>which have been approved by the Planning Committee contrary to the planning officer's recommendation where such conditions are:</p> <ul style="list-style-type: none"> a. necessary b. relevant to planning c. relevant to the development which has been applied for d. enforceable e. precise and; f. reasonable in all other aspects] | | |
| Listed Building and Conservation Area Consent | | <p>To determine applications for listed building consent and Conservation Area consent unless they are :</p> <ul style="list-style-type: none"> a. applications for dwelling houses where the number of houses to be provided is 10 or more,] b. applications for the provision of a building or buildings with a floor space of 1000 square metres or more] c. other applications which have been called-in by a member for determination by Planning Committee provided that the application has been called-in in accordance with the procedure set out in paragraphs 6 - 7 of the introductory paragraphs to the Scheme of Delegations d. applications by serving Officers and members e. applications by the Council or by Council Service Areas or Council departments f. The Head of Planning and Regeneration considers that the application should be considered by the Planning Committee | Planning Committee | Head of Planning and Regeneration |
| Appeals | | To take all action to defend the Council where there has been an appeal against a refusal to grant planning permission, listed | Planning Committee | Head of Planning and Regeneration in |

DEVELOPMENT CONTROL

| | | | |
|---------------------------------|---|-----------------------|--|
| | building consent or conservation area consent | | consultation with the Senior Solicitor |
| Revocation and modification | To revoke or modify planning permissions, listed building or conservation area consent under section 97 of the Town and Country Planning Act 1990 and sections 23 and 74 of the Planning (Listed Buildings & Conservation Area Acts) 1990 | Planning Committee | Head of Planning and Regeneration |
| Completion Notice | To authorise and serve a completion notices | Planning Committee | Head of Planning and Regeneration |
| Declining Planning Applications | To decide to decline to determine application on the grounds set out in sections 70A and 70B of the Town and Country Planning Act 1990 and sections 81A and 81B of the Planning (Listed Buildings & Conservation Area Acts) 1990 | Planning Committee | Head of Planning and Regeneration |
| Advertisements | 1. To determine applications for express advertisement consent | 1. Planning Committee | 1. Head of Planning and Regeneration |

Notes

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APPENDIX 3

| Planning Enforcement | Details | Delegated by: | Delegated to: |
|------------------------------------|---|--------------------|---|
| Article 4 Directions | To make Directions under Article 4(1) of the Town & Country Planning (General Permitted Development) Order 1995 ¹ | Planning Committee | Head of Planning and Regeneration |
| Breach of Condition Notices | To authorise the issue and service of Breach of Condition Notices under section 187A of the Town & Country Planning Act 1990 ² | Planning Committee | Head of Planning and Regeneration in consultation with the Senior Solicitor |
| Cautions | To administer formal cautions to offenders as an alternative to court proceedings | Planning Committee | Officers authorised in writing by the Head of Planning and Regeneration |
| Enforcement Notices | To authorise the issue and service of Enforcement Notices under section 172 of the Town & Country Planning Act 1990 | Planning Committee | Head of Planning and Regeneration |
| Entry of Premises – Proper Officer | To be designated as the Proper Officer for the purposes of authorising persons to enter onto land in connections with the exercise of functions under sections 196A and 196B, 214B, 324 and 325 of the Town & Country Planning Act 1990 | Planning Committee | Head of Planning and Regeneration |
| Inspection Notices | To serve notices of intended inspection under sections 196A, 196B, 214B, 324 and 325 of the Town and Country Planning Act 1990 | Planning Committee | Senior Solicitor |
| Injunctions | To seek injunctions in the High Court under Section 187B of the Town & Country Planning Act 1990 or any other relevant statutory power restraining breaches of planning control ³ | Planning Committee | Head of Legal, Equalities and Democratic Services or Senior Solicitor in consultation with, where practicable, the Chairman of Planning |

| | | | |
|--|---|--|---|
| | | | Committee |
| Listed Buildings – Enforcement Notices | <ol style="list-style-type: none"> To authorise the issue and service of Listed Building Enforcement Notices under section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 To authorise the issue and service of Listed Building Enforcement Notices under section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 in circumstances in cases of urgency when, in the opinion of Head of Planning & Environment Services, reporting to Planning Committee is impractical | <ol style="list-style-type: none"> Council Planning Committee | <ol style="list-style-type: none"> Planning Committee Head of Planning and Regeneration |
| Planning Contravention Notices | <ol style="list-style-type: none"> To serve Planning Contravention Notices under section 171C of the Town & Country Planning Act 1990 (and any other statutory power which enables the Council to require information about land) To respond to offers to apply for planning permission or to refrain from carrying out any operations or activities following the service of a Planning Contravention Notice. | <ol style="list-style-type: none"> Planning Committee Planning Committee | <ol style="list-style-type: none"> Head of Planning and Regeneration Head of Planning and Regeneration |
| Stop Notices | <ol style="list-style-type: none"> To authorise the issue and service of Stop Notices under section 183 of the Town & Country Planning Act 1990 To authorise the issue and service of Stop Notices under section 183 of the Town & Country Planning Act 1990 in cases of urgency when, in the opinion of Head of Planning & Environment Services, reporting to Planning Committee is impractical | <ol style="list-style-type: none"> Council Planning Committee | <ol style="list-style-type: none"> Planning Committee Head of Planning and Regeneration in consultation with the Senior Solicitor |
| Temporary Stop Notice | The issue and service Temporary Stop Notices under ss171E-H of the Town & Country Planning Act 1990 | Planning Committee | Head of Planning and Regeneration in |

| | | | |
|----------------------------|---|--|--|
| | | | consultation with the Senior Solicitor |
| Proper Maintenance of Land | To authorise the issue of notices under section 215 of the Town and Country Planning Act 1990 | Planning Committee | Head of Planning and Regeneration |
| | To serve notices under section 215 of the Town and Country Planning Act 1990 | Planning Committee | Senior Solicitor |
| Appeals | To take all action to defend the Council where there has been an appeal against a refusal to grant planning permission, listed building consent or conservation area consent | Planning Committee | Head of Planning and Regeneration in consultation with the Senior Solicitor |
| Advertisement Controls | <p>1. To authorise the service of an advertisement discontinuance notice</p> <p>2. To take action for the control of advertisements (but not including the service of a discontinuance notice) in the interest of amenity and public safety under the Town and Country Planning (Control of Advertisements) Regulations 2007.</p> | <p>1..Council</p> <p>2. Planning Committee</p> | <p>1. Planning Committee</p> <p>2. Head of Planning and Regeneration in consultation with the Senior Solicitor</p> |

NOTES

Additional text is highlighted in blue

Deleted Text as follows:-

1. in circumstances involving the subdivision of plots and to determine the classes of development to which such Direction(s) may relate in the circumstances of each individual case
2. to authorise the issue and service of Breach of Condition Notices under section 187A of the Town and Country Planning Act 1990 in cases or urgency when, in the opinion of the Head of Planning and Environment Services reporting to the Planning Committee is impractical (*previously delegated to Head of Planning but no longer included as all Breach of Condition notices now delegated to officers*).
3. in cases of urgency when reporting to Planning Committee is impractical.

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BROMSGROVE DISTRICT COUNCIL

PLANNING COMMITTEE

28TH MARCH 2011

CONSTITUTIONAL AMENDMENT AND PROPOSED MEMBER PROTOCOL FOR INVOLVEMENT IN PRE-APPLICATION DISCUSSIONS FOR PROPOSED DEVELOPMENTS IN THE DISTRICT

| | |
|---------------------------|--|
| Relevant Portfolio Holder | Councillor Mrs. J. Dyer M.B.E. |
| Relevant Head of Service | Head of Planning and Regeneration Services |
| Non-Key Decision | |

1. Summary of Proposals

To adopt a protocol for the engagement of Members in pre-application planning discussions and to provide a clarity and fairness to the process, making it accountable. This would enable the Council operate in line with current good practice advice.

2. Recommendations

That Members recommend to Council:

- 1) That the Member Protocol for Involvement in Pre-Application Discussions for Proposed Development as set out at Appendix 1 be approved and be implemented from 01 October 2011;**
- 2) That any Member wishing to become involved in Pre-Application Discussions under the Member Protocol must have completed the appropriate training;**
- 3) That the implementation of the protocol be reviewed jointly by Officers and Members 12 months after it is implemented;**
- 4) That delegated authority be granted to the Head of Legal and Democratic Services to make the consequential amendments to the Council's constitution.**

3. BACKGROUND

- 3.1 Pre-application discussions are generally carried out between Officers and agents acting on behalf of developers/landowners etc. The discussions relate to the specific site and development proposal in question, and seek advice (given without prejudice to the outcome of any subsequently submitted application) on the planning framework for the site, the likely acceptable uses, styles, designs etc for the site and the likelihood of gaining a favourable Officer recommendation on any future application.

- 3.2 Members of the Council are currently not involved in these pre-application discussions, however pre-application discussions without Members is normal practice.
- 3.3 The pre-application process allows for detailed matters such as design features and planning obligation requirements to be discussed and negotiated outside the time constraints of a submitted planning application, and for proposals to be re-designed, amended or altered in order to arrive at what Officers perceive being the best possible solution for the site in the circumstances. Such discussions are led for the Council by the Development Control Case Officer, and usually there is a single point of contact in the planning agent for the developer, although other personnel are involved on both sides as appropriate. From a Council perspective, this can include colleagues from teams such as legal, leisure, environmental health and others, as well as County Council colleagues.
- 3.4 The information required in order to respond to requests for pre-application advice, and an indication of the service that this Council provides, can be found in the fees and charges leaflet available on the Council website. This is as agreed by Members at Cabinet in April 2009.
- 3.5 Good practice guidance states that more should be achieved at the pre-application stage of the planning process. Initially, this related to large scale major developments, but as time has progressed it has begun to encompass much smaller schemes too, as well as controversial or unusual proposals.
- 3.6 Guidance includes a drive towards more and better community involvement, especially early on in the process, and the inclusion of Members as community representatives. Member engagement in the pre-application stage of the planning process has generally been cautioned or avoided in the past, however the more recent guidance suggests that this view should be revisited and reconsidered as part of the engagement of people within the planning process at all levels and stages.
- 3.7 There may be some concern amongst some Members about the lack of involvement in and knowledge of the process of shaping their places, communities and spaces, at the pre-application stage. This includes concerns about lack of Member involvement in negotiations for Planning Obligation requirements.
- 3.8 There has also been a general concern amongst Members and planners relating to the perceived role of Members in the process, their matters of

Interest and prejudice, especially when Members sit on a determining committee such as Planning Committee.

- 3.9 Developers and those acting on their behalf have also often expressed concern that even where they have engaged with Officers on a proposed development, if there has been no Member involvement there is a possibility that their proposals might be thwarted at the seemingly final hurdle of the Planning Committee meeting, once time and money has been put into the process of designing a proposal. Often in such cases, issues are raised by Members that could easily have been resolved if identified early in the process. It is in response to these issues that this report has been compiled.

4. KEY ISSUES

Transparency and clarity in terms of process

- 4.1 It is important that if Members are to become more involved in the pre-application process, there is a clear framework for such involvement, so that there is accountability and fairness built in. This is necessary for all parties to the process, be they professionals, Officers, Members or other interested parties. The conduct of all those involved must also adhere to appropriate guidelines in order that the later stages of the process are not prejudiced.
- 4.2 It is intended that any protocol that is adopted would be for use by all Members, regardless of which ward they represent or on which committees they sit. It is also recommended that if a protocol is adopted, the Head of Planning and Regeneration Services arrange for a training session for Members and Officers to ensure that the process is clearly understood and to answer any Member queries. It is suggested by Officers that such training would be a necessary prerequisite to Member involvement in pre-application discussions.
- 4.3 Guidance for Members engaging in pre-application discussions is available in a number of sources, and the documents noted at section 5 of appendix 1 are useful to refer to. In particular, reference could be made to 'Positive Engagement', which includes some handy hints and tips for Councillors.

Proposed document for adoption

- 4.4 The protocol to be found at Appendix 1 is proposed for adoption and subsequent implementation by Members and Officers. Its adoption would result in it being included in the Constitution's associated documents, as a matter of public record. The Protocol contains guidance on Member conduct.

- 4.5 Section 1 of Appendix 1 details the proposed criteria for Member involvement in pre-application discussions, which would be used to determine whether an enquiry is one where Members should be involved in discussions. This criteria allows for Member involvement in a significant number of applications. However, to continue to have a manageable process it is pointed out that the threshold for Member involvement and other issues will need to be reviewed after the system has been running for 12 months. This is covered by Recommendation 3 of this report.
- 4.6 Section 2 of Appendix 1 sets out a stage by stage procedure giving a sequence of events to be followed when requests for pre-application advice are received, in order that they can be dealt with consistently and fairly. Section 2 points out that pre-application meetings cannot be arranged around the availability of Members because of deadlines and the needs of applicants who are paying for the Service.
- 4.7 If a Member is approached for pre-application advice, then the contact details should be passed to the Development Control Manager for the enquiry to be dealt with as appropriate. Otherwise, enquiries will reach the Development Control team directly for processing.
- 4.8 When the Development Control Case Officer receives a case, they will validate the proposal and will then identify parties to be involved in discussions.
- 4.9 Section 3 of Appendix 1 provides the key information for Members regarding the process, and how to engage within it. At Section 4 of Appendix 1, a list of reference material can also be found. Section 4 of Appendix 1 refers to useful reading.

Timescales for implementation and review and training

- 4.11 In view of the need for training, it is proposed at this stage that the new protocol comes into effect on 3rd October 2011. All members wishing to participate in pre-application discussions under the new protocol will have to have undergone the appropriate training.
- 4.12 It is suggested that the protocol be implemented for an initial trial period, and that it is then reviewed after 12 months, in order to allow for ongoing monitoring and improvement. The protocol will be incorporated into the Council's constitution.

5. FINANCIAL IMPLICATIONS

Minimal additional resources would be required as the proposed procedures are an extension of the current Officer practice. These can be absorbed from within the existing budgets.

6. LEGAL IMPLICATIONS

The proposals fall within the following legislative framework:

Town & Country Planning Act 1990 (as amended)
Planning & Compensation Act 1991 (as amended)
Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)

There are no significant legal implications arising from the introduction of the of the member protocol; as stated in the main body of the report the adoption of the new protocol will bring the Council into line with recognised good practice. Pre-application discussions with developers are not binding in terms of the final decision which will continue to be taken under the above legislation by either officers or Members as appropriate.

7. POLICY IMPLICATIONS

The Constitution would be altered and the protocol would be adopted as formal Council procedural policy, and would complement rather than conflict with any existing policy.

8. COUNCIL OBJECTIVES

- 8.1 The protocol would assist in the implementation of the One Community objective and priority of the Council by ensuring Members, as representatives of the local area, feed their comments in to the process at the earliest opportunity. The protocol would also support the environment and improvement objective by virtue of enhancing development proposals at the beginning of the design process.

9. RISK MANAGEMENT INCLUDING HEALTH & SAFETY CONSIDERATIONS

- 9.1 Providing that all advice to Members enshrined within the Constitution and Code of Conduct are adhered to, there are no additional risks perceived. Indeed the process could be improved by having Member involvement at an earlier stage.

Pre-application discussions include sustainability and environmental issues.

10. CUSTOMER IMPLICATIONS

10.1 Users of the pre-application advice service will welcome the broadening out of the parties involved in the process. It will enable the widest audience to express its views about a development proposal at a time of greatest flexibility from the developer's point of view. This will in turn add an element of increased confidence in the process when moving forward to the submission of a scheme.

10.2 The associated fees and charges leaflet which sets out the service customers can expect would require amendment to include the involvement of Members with respect to the sections relating to; benefits of the service, what happens next and the general information.

11. EQUALITIES AND DIVERSITY IMPLICATIONS

11.1 Elected Members in their role as community spokespeople would add value to the pre-application process with respect to the issues of equalities and diversity and where material to the submission, this could result in improvements in the relationship between the built environment and its local context.

12. VALUE FOR MONEY IMPLICATIONS, PROCUREMENT AND ASSET MANAGEMENT

12.1 A thorough understanding of all relevant issues at the outset will be beneficial to both developer and the Council with respect to the efficient use of Officer and Member time. This protocol will assist in supporting this objective. There are no procurement or asset management consequences.

13. CLIMATE CHANGE, CARBON IMPLICATIONS AND BIODIVERSITY

13.1 It is established that the benefits of the pre-application process include the front loading of matters such as climate change and biodiversity. These benefits will not be reduced as a result of this protocol.

14. HUMAN RESOURCES IMPLICATIONS

14.1 There are no additional HR implications as the minor alterations to back office systems that can be met from existing resources.

15. GOVERNANCE/PERFORMANCE MANAGEMENT IMPLICATIONS

15.1 Training for Members will be a prerequisite of their involvement in the pre-application process and this will fully address the issue of Member conduct.

16. COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF CRIME AND DISORDER ACT 1998

16.1 The impact of a development on crime and disorder is a material planning consideration to be taken into account in the determination of any proposal.

17. HEALTH INEQUALITIES IMPLICATIONS

17.1 None.

18. LESSONS LEARNT

This is a new procedure which follows the advice and case studies of others. Therefore, whilst learning some lessons others will come from the proposed review, after which the protocol can be evaluated and changed if it is considered necessary.

19. COMMUNITY AND STAKEHOLDER ENGAGEMENT

19.1 The potential for Members to discharge their community function by becoming involved in pre-application discussions was advocated through the Spatial Planning Peer Review of October 2009. As part of that process the views of stakeholders and customers were sort and the associated Action Plan reflects this fact.

20. OTHERS CONSULTED ON THE REPORT

| | |
|---|------------|
| Portfolio Holder | Yes |
| Chief Executive | Yes at CMT |
| Executive Director (S151 Officer) | Yes at CMT |
| Executive Director – Leisure, Cultural, Environmental and Community Services | Yes at CMT |
| Executive Director – Planning & Regeneration, Regulatory and Housing Services | Yes at CMT |

BROMSGROVE DISTRICT COUNCIL

PLANNING COMMITTEE

28TH MARCH 2011

| | |
|--|------------|
| Director of Policy, Performance and Partnerships | Yes at CMT |
| Head of Service | Yes |
| Head of Resources | Yes at CMT |
| Head of Legal, Equalities & Democratic Services | Yes at CMT |
| Corporate Procurement Team | Yes at CMT |

21. WARDS AFFECTED

All.

22. APPENDICES

Appendix 1 - Proposed document for inclusion as a Constitution Associated Document.

23. BACKGROUND PAPERS

See reference list at Section 4 of Appendix 1

AUTHOR OF REPORT

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APPENDIX 1

Member Protocol for Involvement in Pre-Application Discussions for Proposed Developments

Contents:

1. Criteria for Member involvement in pre-application discussions.
2. Protocol for Member engagement in pre-application discussions.
3. Guidance to Members on conduct.
4. List of references.

1. CRITERIA FOR MEMBER INVOLVEMENT IN PRE-APPLICATION PLANNING DISCUSSIONS

On sites where the following criteria apply, there will be an offer made to relevant Members of Bromsgrove District Council for involvement in pre-application discussions with Planning Officers in accordance with the protocol adopted by this Council, in accordance with the factors noted below:

Criteria for the site:

- 1) Large scale major application (i.e. 200+ dwellings or 4ha site or 10,000m²+ new floor area or 2ha+ site); or
- 2) Site allocated within adopted Local Plan as an ADR
- 3) Site allocated in emerging Core Strategy as a Development Site
- 4) Significant redevelopment opportunities in Town Centre, boundaries of which are defined by the Town Centre AAP
- 5) Site known to be controversial (to Head of Planning & Regeneration or Development Control Manager) by virtue of its planning history or the nature of the development now proposed, or
- 6) As directed by Chairman of Planning Committee or Planning Portfolio Holder, or
- 7) As directed by Head of Planning & Regeneration or Development Control Manager; or
- 8) At the request of a Member when reasons given in writing to Head of Planning & Regeneration or Development Control Manager.

In addition:

- Where criteria 2, 3 or 4 apply, the Chair and Vice-Chair of Planning Committee and the Leader of the Council will also be notified.
- Where criteria 8 applies, the Members' request should include any specific Members who they would like to be involved in discussions.

In general, where proposals fall below the thresholds noted above, Members will not be invited to participate in pre-application discussions.

Criteria for Members

Members will be notified by email with an associated link to the relevant documentation and invited to participate in discussions:

- Where any of the criteria above apply, all of the ward Members for the ward in which the site lies will be notified.
- If the site abuts a ward boundary, or if the site encompasses more than one ward, all ward Members for the adjacent ward/s shall also be notified and invited to participate in discussions. (Abuts is defined as where the red line of the application site, as drawn on the submission, touches another ward boundary)

2. MEMBER PROTOCOL FOR INVOLVEMENT IN PRE-APPLICATION DISCUSSIONS FOR PROPOSED DEVELOPMENTS IN THE DISTRICT

Either:

Officers receive pre-application enquiry and identify need for Member involvement (using criteria in Section One)

Or:

Members are approached and pass on enquiry to Development Control Manager. If they specifically wish to be involved in discussions, or wish other Members to be involved, this should be raised with the DC Manager at this stage

Then:

1. Development Control Manager allocates enquiry to an appropriate CASE OFFICER (CO)
2. CO validates pre-application submission and identifies and notifies all those who need to be involved in the discussion, having regard to criteria at Appendix
3. CO carries out site visit (it is recommended that Members to be involved in discussions also carry out a site visit. This should be co-coordinated with the case officer where ever possible)
4. CO arranges meeting between all relevant parties
5. CO chairs and records meeting, as well as coordinating relevant correspondence, responses, consultations etc.
8. Discussions continue, possibly supported by additional meetings until the developer is advised that it seems appropriate for a planning application to be submitted

3. GUIDANCE TO MEMBERS ON CONDUCT

Transparency and clarity in terms of process

1.1. It is important that if Members are to become more involved in the pre-application process, there is a clear framework for such involvement, so that there is accountability and fairness built in. This is necessary for all parties involved in the process, be they professionals, Officers, Members or other interested parties. The conduct of all those involved must also adhere to appropriate guidelines in order that the later stages of the process are not prejudiced.

1.2. It is intended that any protocol that is adopted would be for use by all Members, regardless of which ward they represent or on which committees they sit. It is also recommended that if a protocol is adopted, the Development Control Manager and Head of Planning and Regeneration arrange for suitable training for Members and Officers to ensure that the process is clearly understood and to answer any Member queries.

1.3. Guidance for Members engaging in pre-application discussions is available in a number of sources, and the documents noted at section 5 are useful to refer to. In particular, reference could be made to 'Positive Engagement', which includes some handy hints and tips for Councillors.

Member participation and conduct

Always have an Officer present

1.4. In terms of Member involvement, guidance is required in terms of how they may participate in the process, and what they may make comments upon. It is generally acceptable that they be party to pre-application discussions, providing that they ensure that an appropriate Planning Officer accompanies them, and that notes of the meeting are retained on the correct file. It is advisable for the Case Officer involved to chair meetings and lead discussions, allowing all parties, including Members, to participate as appropriate to the discussion.

Only make relevant, appropriate comments

1.5. When attending such discussions, Members should be careful to comment only on procedural matters, and general principles of acceptable or unacceptable development types and styles. Members should be fully acquainted with the contents of the Development Plan, in order that comments relating to broad principles of development are in accordance with the aims and objectives of the plan. It is also helpful for Members to be aware of any specific local issues and/or concerns, in order that they can be fed into the process early on. These matters

can then be taken into consideration by developers when designing development schemes, as well as all relevant policy issues raised by Members and/or Officers.

Avoid pre-disposition

1.6. Members should be careful to avoid comments relating to specific elements of a proposal, or to pass opinions on such things, especially if they are or could be Members of the Planning Committee that may subsequently determine a planning application for the proposed development.

Declare any prejudicial interests and do not participate

1.7. Members should be careful to declare at the outset of such discussions any interests that they may have, be it in relation to their capacity as ward member, or as a neighbour, or for other reasons. These should be documented on the file for future reference. Members should also be aware and take care of their comments in relation to both predisposition and pre-determination so as not to prejudice their position for the future.

Treat all discussions as confidential

1.8. Members should also have regard to the fact that pre-application planning discussions are always confidential (in order to preserve commercial confidentiality) and that information relating to proposed developments does not reach the public arena until either a planning application is submitted or the developers choose to engage the community in a consultation exercise. Therefore such matters should not be discussed openly or in public, and Officers will always take care to ensure that such records are kept in appropriate secure conditions.

Seek support from Officers if required

1.9. If in any doubt at any time regarding planning matters, Members should always contact the Head of Planning & Regeneration or the Development Control Manager to seek further advice and assistance. It is always recommended that Members enquire first, in order that constituents, developers or other parties are not misled at any stage in relation to the adopted processes and procedures adhered to by this Council. Members should also be aware that failure to comply with adopted procedures could leave them open to scrutiny if it becomes apparent later.

4. LIST OF REFERENCES

Killian-Pretty Review and government response thereto

<http://www.communities.gov.uk/publications/planningandbuilding/killianprettysummary>

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/killianprettyresponse.pdf>

Constructive Talk – investing in pre-application discussions

<http://www.pas.gov.uk/pas/aio/39020>

Positive engagement in planning decisions

http://www.acses.org.uk/public_file/filename/12/positive_engagement_v4_2.pdf

Councillor involvement in planning decisions

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/153569.pdf>

Bromsgrove District Council Statement of Community Involvement (SCI)

<http://www.bromsgrove.gov.uk/cms/environment-and-planning/planning/local-development-framework/community-involvement.aspx>

Open for business

<http://www.pas.gov.uk/pas/aio/41620>

Making your mind up – improving planning decision making

<http://www.pas.gov.uk/pas/aio/62452>

Probity in planning

ACSeS Model Members Planning Code

http://www.acses.org.uk/public_file/filename/8/ACSeS_Model_Members_Planning_Code_update_draft_07_07.pdf

Public involvement in development control process – a good practice guide

<http://www.lga.gov.uk/lga/aio/114364>

Member Code of Conduct

Constitution

ATLAS Guidance Note: Implementing PPAs

<http://www.atlasplanning.com/lib/libDownload/351/080404%20PPA%20Guidance%20Web%20Download.pdf?CFID=246636&CFTOKEN=99816479>

Fees leaflet:: Your planning services: how to make contact and what to expect

<http://www.bromsgrove.gov.uk/cms/environment-and-planning/planning/planning-advice-and-guidance.aspx>

Report to Cabinet April 2010 regarding fees and charges for planning functions

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BROMSGROVE DISTRICT COUNCIL

PLANNING COMMITTEE

28TH MARCH 2011

ADOPTION OF THE PLANNING ENFORCEMENT POLICY

| | |
|---------------------------|--|
| Relevant Portfolio Holder | Councillor Mrs. J. Dyer M.B.E. |
| Relevant Head of Service | Head of Planning and Regeneration Services |
| Non-Key Decision | |

1. **SUMMARY OF PROPOSALS**

- 1.1 In the move towards shared services with Redditch Borough Council, and in order to provide a consistent and uniformed approach between the two local authorities, and in the absence of an adopted customer charter for planning enforcement the Council seeks to adopt the Planning Enforcement Policy outlined in Appendix 1.

2. **RECOMMENDATION**

- 2.1 That Members of the Planning Committee RECOMMEND to the Council that the Planning Enforcement Policy is adopted.

3. **BACKGROUND**

- 3.1 Unacceptable and unlawful forms of development threaten the quality of the natural and built environment and the integrity of the planning system. Planning enforcement is, therefore, a crucial tool in maintaining the standards and regulations of development.
- 3.2 The Planning Enforcement Policy is a statement that outlines the Council's approach to enforcement matters; this includes identifying, investigating and monitoring breaches of planning control and delivering action to regularise and remediate unacceptable and unlawful forms of development. It also outlines the situations in which injunction, prosecution or exceptionally, direct action may be pursued.
- 3.3 The document sets out the practices and actions to be taken by the Council when an alleged breach is identified as well as setting out an approach for internal cross team working. This makes the enforcement process transparent to all service users as well as providing improved levels of information for our customers.
- 3.4 The Planning Enforcement Policy covers the following matters:
- Breaches of planning control – what constitutes a breach and a criminal offence

- Aims of enforcement policy and purpose of planning enforcement
- Investigating alleged breaches of planning control
- Informal enforcement procedures, including negotiation, persuasion and retrospective planning applications
- Formal enforcement procedures
- Procedures following enforcement action
- The Council's commitment to complainants including expectations and service standards
- Contact details

3.5 Although Bromsgrove District Council and Redditch Borough Council work towards the same principles and guidelines for planning enforcement and are governed by the same legislation, at present they do not possess a unified enforcement policy. As the two Councils continue to develop their working relationships there is a need to develop a consistency of process across the Councils to improve customer understanding and to create a coherent system.

4. **KEY ISSUES**

- 4.1 To develop a consistent and uniformed system of planning enforcement across the service.
- 4.2 To make transparent and understandable to the general public the nature of planning breaches and the enforcement process.
- 4.3 To bring unauthorised activity under control to ensure the credibility of the planning system is not undermined.
- 4.4 To remedy and prevent unauthorised activity to protect the natural and built environment.
- 4.5 To promote lawful and acceptable forms of development and, where necessary, planning permission.

5. **FINANCIAL IMPLICATIONS**

- 5.1 None identified.

6. **LEGAL IMPLICATIONS**

- 6.1 The main powers available to the Council in relation to planning enforcement are set out in the Town and Country Planning Act 1990 (as

amended) and the Planning (Listed Buildings and Conservation Areas) Act 1990. All action taken under the new Planning Enforcement Policy as a result of this procedure would be in compliance with the relevant legislation and associated good practice guidance.

7. POLICY IMPLICATIONS

7.1 The adoption of this policy would have no perceived negative impacts on the enforcement process itself, or the systems that are currently used.

7.2 Some minor changes to current working practices resulting in a more aligned and consistent approach both within and across the Councils would be required. The use of the policy will provide clarity to customers as to how the council will treat enforcement matters and so will improve customer service and quality. The Policy will be reviewed and monitored by Officers to ensure that it continues to provide a thorough, clear and coherent statement.

8. COUNCIL OBJECTIVES

8.1 The adoption of a policy to set out the Council's approach to Enforcement matters will have an impact on many of the Council's objectives, most notably Environment, Regeneration and Improvement objectives.

9. RISK MANAGEMENT INCLUDING HEALTH AND SAFETY CONSIDERATIONS

9.1 None identified beyond current working practices.

10. CUSTOMER IMPLICATIONS

10.1 It is intended that the adoption of a planning enforcement policy will improve consistency and uniformity across the Councils making development and enforcement process more transparent.

10.2 The Planning Enforcement Policy will improve customer understanding of the nature of planning breaches and the process of enforcement, as well as the process for reporting an alleged breach for complainants and the process for investigating an alleged breach for contraveners.

11. EQUALITIES AND DIVERSITY IMPLICATIONS

11.1 None identified.

PLANNING COMMITTEE

28TH MARCH 2011

12. VALUE FOR MONEY IMPLICATIONS, PROCUREMENT AND ASSET MANAGEMENT

- 12.1 The adoption of the Policy by Bromsgrove District Council is unlikely to have any material effects on value for money, procurement or asset management. However, the principle of shared services between Bromsgrove District Council and Redditch Borough Council which supports the decision to deliver one Planning Enforcement Policy for both Councils is based, serves to develop value for money and best practices.

13. CLIMATE CHANGE, CARBON IMPLICATIONS AND BIODIVERSITY

- 13.1 It is intended that the adoption of a joint planning enforcement policy will have only positive effects on the environment through clarifying the nature of planning breaches, thereby reducing the number of unlawful or unacceptable developments that may negatively impact on the natural and built environment and increasing the speed and effectiveness of rectifying breaches.

14. HUMAN RESOURCES IMPLICATIONS

- 14.1 None identified.

15. GOVERNANCE / PERFORMANCE MANAGEMENT IMPLICATIONS

- 15.1 The policy sets out a clear framework against which decisions relating to enforcement matters can be made and this will inform and support Members when carrying out that role.
- 15.2 Performance management of the enforcement team would be improved as a result of the adoption of the policy. It provides timescales for complainants as well as setting out the councils approach to enforcement with respect to informal and formal approaches. This will ensure proportionate action is taken in a timely manner.

16. COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF THE CRIME AND DISORDER ACT 1998

- 16.1 The Planning Enforcement Policy will help to ensure that community safety is maximised by promoting lawful and acceptable developments and preventing, or remediating, unlawful and dangerous developments or uses which have a negative impact on the District.

PLANNING COMMITTEE

28TH MARCH 2011

17. HEALTH INEQUALITIES IMPLICATIONS

17.1 None identified.

18. LESSONS LEARNT

18.1 None identified as this would introduce a new framework, but this should be kept under regular review and amendment as appropriate.

19. COMMUNITY AND STAKEHOLDER ENGAGEMENT

19.1 It is common place for Councils to have an enforcement policy or charter to set out to their customers their approach to planning enforcement. The Council has not carried out any specific consultation on this document; it does however reflect the policy in use at Redditch Borough Council and will therefore be familiar to some of our customers.

20. OTHERS CONSULTED ON THE REPORT

| | | |
|------|---|------------|
| 20.1 | Portfolio Holder | Yes |
| | Chief Executive | Yes at CMT |
| | Executive Director (S.151 Officer) | Yes at CMT |
| | Executive Director - Leisure, Cultural, Environmental and Community Services | Yes at CMT |
| | Executive Director - Planning and Regeneration, Regulatory and Housing Services | Yes at CMT |
| | Director of Policy, Performance and Partnerships | Yes at CMT |
| | Head of Planning and Regeneration Services | Yes |
| | Head of Resources | Yes at CMT |
| | Head of Legal, Equalities and Democratic Services | Yes at CMT |

BROMSGROVE DISTRICT COUNCIL

PLANNING COMMITTEE

28TH MARCH 2011

| | | |
|--|----------------------------|---------------|
| | Corporate Procurement Team | Yes at CMT |
|--|----------------------------|---------------|

21. **WARDS AFFECTED**

21.1 All wards.

22. **APPENDICES**

22.1 Appendix 1 – Planning Enforcement Policy.

23. **BACKGROUND PAPERS**

23.1 None.

AUTHOR OF REPORT

Name: Helena Plant
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Tel.: 01527 881335

1. Introduction

1.1 Under the provisions of The Town and Country Planning Act 1990, planning permission is required for the carrying out of any development on land. The definition of development includes the carrying out of building, engineering, mining or other operations in, on, over or under land and also the material change of use of land and buildings.

1.2 A breach of planning control occurs when:

- Development takes place without the relevant planning permission.
- There has been a failure to comply with a condition on a planning permission.

Any breach of planning control is unlawful. However, it is not illegal, even in those cases where planning permission has been applied for and refused. It is not until the breach is in defiance of a confirmed Enforcement Notice that a criminal offence is committed. The situation is different in such cases as unauthorised works to a listed building, the felling of a protected tree or the display of unauthorised advertisements. In these circumstances, criminal liability can arise directly from the unauthorised action.

1.3 The processing of planning and other applications, subsequent monitoring of approved development and the investigation of breaches of planning control is carried out by officers within the Council's Planning and Regeneration Services.

2. Aims and purpose of the Enforcement Policy

2.1 The main aims of the policy are:

- To set out realistic, achievable objectives on planning enforcement.
- To define the range of options available to achieve objectives, having regard to statutory and non-statutory advice from Government.
- To provide a clear and accountable audit trail of decision-making processes.
- To adhere to and implement best practice in terms of planning enforcement.

2.2 The policy has been published having regard to planning policy advice provided by the Government and The Royal Town Planning Institute.

2.3. The main objectives of the planning enforcement process are:

- To remedy undesirable effects of unauthorised development.
- To bring unauthorised activity under control to ensure the credibility of the planning system is not undermined.

3. Investigating alleged breaches of Planning Control

- 3.1 Complaints received by the Council regarding alleged breaches of planning control can be split into two broad categories; complaints about unauthorised developments or changes of use of land and complaints about possible breaches of planning conditions where this Council has granted permission.
- 3.2 The Council investigates all alleged breaches of planning control whether they are reported by third parties or found as part of the Council's own monitoring procedures. The Planning Enforcement Officer, who is supported by other relevant officers when required, carries out these investigations. In addition, the Council's Building Control Officers monitor developments for which they are responsible under the Building Regulations. All Council Officers undertaking investigations of any kind are required to do so in a professional, accountable, fair and consistent manner.
- 3.3 All incidences of alleged breaches of planning control are thoroughly investigated with particular regard to the Town and Country Planning Act 1990 (as amended) and relevant Government guidance. Many factors have to be assessed before commencing formal enforcement action. These include:
- The case specific facts unique to each investigation.
 - The amount of actual or potential harm resulting from or caused by the development.
 - The policies in the Local Development Framework and any other material considerations.
 - Full consideration of the prospect of success of different enforcement procedures.
- 3.4 A small proportion of all investigations result in some formal enforcement action. The Council exercises discretion in relation to enforcement matters and seeks to ensure that any action is appropriate and in proportion to the seriousness of the breach. In some cases it may decide to take no formal action. For example, when there is insignificant or no harm caused by a 'technical' breach of a planning condition, time-consuming and costly legal procedures would not be justified if there would be no clear benefit to the environment or local amenity.
- 3.5 In cases where the Council's planning powers overlap with those of other regulatory agencies or other Council services, it may be more appropriate for those other agencies to take action, particularly if such action is likely to be quicker and more effective. In some cases a combination of powers may be used. Worcestershire County Council is likely to take the lead in respect of any enforcement action concerning mineral undertakings and the deposit/ tipping of waste materials.

4. Enforcement Procedures (Informal)

- 4.1 The Council will initially seek to ensure that breaches of planning control are resolved without having to resort to formal enforcement action. Relevant information will be made available to those involved in enforcement issues and appropriate guidance given to try and secure a satisfactory outcome for all concerned. The needs/difficulties of individuals, small firms and organisations will be taken into account with regard to compliance with Council requirements and to prevent any undue hardship or unnecessary expense.
- 4.2 Breaches often occur where a person is genuinely unaware that planning permission is required for works they are undertaking. Negotiation and persuasion are therefore the 'tools' most often used in dealing with many breaches. This not only saves time and resources but can also achieve immediate cessation of any unauthorised development and/or remedial works to rectify damage. Remedial works could involve alterations to the development to make it more acceptable or in some cases, the complete removal of an unauthorised development. Where a breach has been satisfactorily resolved in this way, then the Council will not usually initiate formal enforcement action, unless the breach recurs.
- 4.3 Where an activity or development has taken place without planning permission, the Town & Country Planning Act 1990 allows for the submission of an application for retrospective planning permission. However, the Council would only encourage this where it appears that the use or development is appropriate or can be adequately controlled by planning conditions¹. In such cases, the application is treated on its merits. Property sales are often delayed or fall through because searches reveal householders have not obtained planning permission for extensions they believed did not require permission. It is therefore in everyone's interests that unauthorised development is properly regularised.

5. Enforcement Procedures Available (Formal)

5.1 Should negotiation and persuasion fail then formal enforcement action may be necessary. There are a number of options available and the choice of procedures is carefully considered before commencing action.

5.2 Planning Contravention Notice

This Notice can be used to obtain information from landowners/developers where it appears that a breach of planning control has taken place. The Notice will seek information regarding the development or activities being carried out and ask about anyone who has an interest in the land. A period of 21 days is given in which to respond. Failure to provide the information or to knowingly provide false information is an offence and on summary conviction at a magistrates court could result in a fine if the Council decides to pursue a prosecution.

5.3 Breach of Condition Notice

Where planning permission has been granted subject to conditions and one or more of those conditions has not been complied with, a Breach of Condition Notice can be served on all interested parties. The Notice will specify the steps that need to be taken to ensure full compliance with the condition and why they are necessary. Although the recipient of such a Notice has to be given at least 28 days for compliance, service of the notice can secure an immediate effect e.g. cessation of work outside the permitted hours. There is no right of appeal against such a Notice and failure to comply with its requirements may result in prosecution in a Magistrates' Court.

5.4 Enforcement Notice

Where it is expedient to do so and there is clear evidence of a breach of planning control, an Enforcement Notice may be used. This Notice is served on all interested parties where harm to the environment or the local amenity has been caused by a breach of planning control. Such a notice will specify the works to which it refers, what steps are required to be taken, or what activities are to cease, to remedy the breach and also the time period within which these steps need to be taken. An Enforcement Notice does not take effect for 28 days and within this period there is a right of appeal by the recipient of such a Notice. If there is an appeal, then the requirements of the Notice are suspended until the Secretary of State confirms the Notice. An appeal is made to the Planning Inspectorate and will be decided by an independent Inspector.

5.5 The Inspectorate set out that an appeal can be made on the following grounds:

1. Planning permission should be granted for the development or change of use.
2. The development does not require planning permission.
3. No breach of planning control has taken place.

4. Sufficient time has elapsed since the development took place (4 years for development, 10 years for change of use) so that enforcement action cannot now be taken.
5. The Enforcement Notice has not been properly served.
6. The requirements of the Enforcement Notice are excessive.
7. The period for compliance stated in the Notice is too short.

In the case of an appeal on ground 1), a fee would be payable equivalent to the normal planning application fee for the development involved. Fees are not applicable in the other cases.

Once the Notice takes effect, its requirements must be met and failure to comply constitutes a criminal offence. The Council may decide to prosecute in certain cases. If an appeal is allowed, the Notice is quashed and in appropriate cases, planning permission granted.

5.6 Stop Notice

Stop Notices may only be issued accompanying or following the issue of an Enforcement Notice. Stop Notices normally take effect after three days and are used where there is significant or irreversible harm taking place through an unauthorised activity that needs to be controlled within a short timescale.

5.7 Temporary Stop Notices

Temporary Stop Notices were introduced in 2005 to allow local planning authorities to bring a halt to unauthorised activities where it is in the interests of the amenity of the area to do so. A Temporary Stop Notice does not require the issue of an Enforcement Notice and its effect is immediate. The Council has due processes in place to address these instances if they happen out of hours, including over Statutory holiday periods.

5.8 Court Injunction

Where action is necessary to curb or prevent a serious breach of planning control, the Council may apply to the High Court or County Court for an Injunction. Such an application can be made even if the Council has not used other enforcement powers. The advantages of this are that failure to comply constitutes a penal offence.

6. Procedure Following Service of an Enforcement/ Stop Notice/ Injunction

The length of time for compliance with notices is case specific and depends on a number of factors. An appeal lodged against an Enforcement Notice may delay the enforcement process unless a Stop Notice has also been issued.

6.1 Compliance with Notice(s)

Following the Service of a Notice the Council visits the site on a frequent basis to monitor compliance. Landowners/operators are advised of the possible consequences should the rate of progress appear to be slow or inadequate to meet the requirements of the Notice. Once the Notice has been complied with then the Council will resume its normal monitoring procedures for that site.

6.2 Injunction

Where an injunction has been granted, breach of it is a contempt of court and the Council may apply to the court for committal of the person in breach of the injunction. This may lead to fines or imprisonment.

6.3 Prosecution

Where the requirements of a particular Notice are not met, then the Council may decide to prosecute for non-compliance. The Council's main aim in all its enforcement activities is not primarily to penalise or punish, but to prevent further harm to the environment and the local amenity, and also to act as a deterrent to other potential offenders. Prosecution is very serious, expensive and time-consuming and will only be initiated after full consideration of all relevant facts, including:

- The harm caused by the offence.
- The intent and personal circumstances of the offender.
- The history of the offender.
- The deterrent effect of a prosecution.
- The likely chance of securing a conviction – availability of reliable evidence/ 3rd party witnesses etc.
- The benefit to the local community/Public interest.

6.4 Direct Action

Exceptionally, the Council may decide to enter land and carry out remedial measures or emergency works to ameliorate the effects of a significant breach of planning control. Prior to this a full cost/benefit analysis will be undertaken. The Council will seek to recover the costs involved in such direct works from the relevant persons in these cases.

7. Council's Commitment to Complainants

The Council's response to those persons reporting alleged breaches of planning control is set out below:

- All alleged breaches of planning control within the Council's jurisdiction will be recorded on receipt and given a unique investigation number.
- Complaints about matters outside the Council's area of jurisdiction will be passed on to the relevant person/authority and the complainant informed.
- The confidentiality of those reporting incidents will be maintained.
- Investigations into alleged breaches will normally start within 24 hours of a complaint being received and where appropriate an initial site visit to assess the situation will be carried out within 3 – 5 working days.
- Within 7 working days of the complaint being received, the Council, will formally acknowledge receipt of the complaint.
- Within 10 – 15 working days of the complaint being received, the complainant will be advised of action taken and/or proposed.
- Within 10 working days of the investigation being formally closed, the Council will write, if requested to do so, to complainants detailing the outcome.
- Should an investigation be complex and/or lengthy then the Council will provide regular feedback to the complainant(s) if requested to do so.
- Where no formal action is taken the Council will provide an explanation of the reason, if so requested.

Where there is the possibility of Court proceedings resulting from any investigations, detailed feedback may not always be possible to ensure that any subsequent legal action is not compromised.

8.0 Conclusion

- 8.1 Bromsgrove District Council is fully committed to protecting and enhancing the environment and the local amenity through the effective discharge of planning enforcement duties. All alleged breaches of planning control will be recorded and thoroughly investigated, if appropriate and the Council will be accountable for all decisions, actions and service delivery relating to planning enforcement.
- 8.2 In the majority of cases, negotiation and persuasion should be enough to remedy breaches but the Council will not hesitate to use formal enforcement powers should the need arise. These powers will be used in a manner proportional to the amount of harm caused by a breach.
- 8.3 This policy is intended to provide a general framework for the Council to control unauthorised development effectively, to target its resources efficiently and to ensure that the residents of the District are not subjected to unacceptable harm as a result of breaches in planning control. The policy will be reviewed on a regular basis.

Should you require any further information on planning enforcement matters visit our Website at Bromsgrove.gov.uk

ⁱ Government policy on planning enforcement is provided by Planning Policy Guidance Note 18 (issued December 1991), Department of the Environment Circular10/97 (issued July 1997) and Good Practice Guide for Local Planning Authorities (DETR 1997).

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BROMSGROVE DISTRICT COUNCIL

PLANNING COMMITTEE

28TH MARCH 2011

APPEAL DECISIONS

| | |
|---------------------------|--|
| Relevant Portfolio Holder | Councillor Mrs. J. Dyer M.B.E. |
| Relevant Head of Service | Head of Planning and Regeneration Services |
| Non-Key Decision | |

1. **SUMMARY OF PROPOSALS**

- 1.1 To note a planning appeal decision which had been received since the last meeting of the Committee.

2. **RECOMMENDATION**

- 2.1 Members are requested to note the report and accompanying appendix.

3. **BACKGROUND**

| | Name of Appellant | Plan Ref. / Proposal / Decision |
|-----|--|---|
| 3.1 | West Mercia Housing Group / Clent Parish Council | 10/0632-HLP - Proposed erection of 10 no. affordable dwellings - Land off Holy Cross Green, Holy Cross, Clent, DY0 0HG - See APPENDIX 1 Appeal against the failure to give notice within the prescribed period of a decision. Appeal decision: dismissed - 23rd February 2011 |

4. **KEY ISSUES**

- 4.1 N/A

5. **FINANCIAL IMPLICATIONS**

- 5.1 There are no financial implications arising from this report.

6. **LEGAL IMPLICATIONS**

- 6.1 There are no legal implications arising from this report.

7. **POLICY IMPLICATIONS**

- 7.1 There are no policy implications arising from this report.

PLANNING COMMITTEE

28TH MARCH 2011

8. COUNCIL OBJECTIVES

8.1 This report is for information only and, therefore, does not directly relate to the Council's Objectives.

9. RISK MANAGEMENT INCLUDING HEALTH AND SAFETY CONSIDERATIONS

9.1 N/A

10. CUSTOMER IMPLICATIONS

10.1 There are no customer implications arising from this report.

11. EQUALITIES AND DIVERSITY IMPLICATIONS

11.1 There are no equalities or diversity implications arising from this report.

12. VALUE FOR MONEY IMPLICATIONS, PROCUREMENT AND ASSET MANAGEMENT

12.1 N/A

13. CLIMATE CHANGE, CARBON IMPLICATIONS AND BIODIVERSITY

13.1 N/A

14. HUMAN RESOURCES IMPLICATIONS

14.1 N/A

15. GOVERNANCE / PERFORMANCE MANAGEMENT IMPLICATIONS

15.1 N/A

16. COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF THE CRIME AND DISORDER ACT 1998

16.1 N/A

17. HEALTH INEQUALITIES IMPLICATIONS

17.1 N/A

BROMSGROVE DISTRICT COUNCIL

PLANNING COMMITTEE

28TH MARCH 2011

18. **LESSONS LEARNT**

18.1 N/A

19. **COMMUNITY AND STAKEHOLDER ENGAGEMENT**

19.1 N/A

20. **OTHERS CONSULTED ON THE REPORT**

| | | |
|------|---|-----|
| 20.1 | Portfolio Holder | No |
| | Chief Executive | No |
| | Executive Director (S.151 Officer) | No |
| | Executive Director - Leisure, Cultural, Environmental and Community Services | No |
| | Executive Director - Planning and Regeneration, Regulatory and Housing Services | No |
| | Director of Policy, Performance and Partnerships | No |
| | Head of Planning and Regeneration Services | Yes |
| | Head of Resources | No |
| | Head of Legal, Equalities and Democratic Services | No |
| | Corporate Procurement Team | No |

21. **WARDS AFFECTED**

21.1 Furlongs

22. **APPENDICES**

Appendix 1 - Appeal report for land off Holy Cross Green, Holy Cross, Clent, DY9 0HG

PLANNING COMMITTEE

28TH MARCH 2011

23. **BACKGROUND PAPERS**

23.1 Appeal decision letter received from the Planning Inspectorate, dated 23rd February 2011.

24. **KEY**

24.1 N/A

AUTHOR OF REPORT

Name: Andy C. Stephens

email: a.stephens@bromsgrove.gov.uk

Tel.: 01527 881410

Appeal made against the refusal of planning permission

| | |
|-----------------------------|--|
| Appeal reference | APP/P1805/A/10/2138853 |
| Planning application | 10/0632 |
| Proposal | Erection of 10 no. affordable dwellings |
| Location | Land off Holy Cross Green, Holy Cross, Clent |
| Ward | Clent |
| Decision | Non-determination |

The author of this report is Ruth Lambert who can be contacted on 01527 881373 (e-mail: r.lambert@bromsgrove.gov.uk) for more information.

Discussion

The proposal related to the erection of 10 no. affordable dwellings ranging from two to three bedrooms with associated parking and access.

The application was not determined by the Council but putative reasons for refusal were issued subsequent to the lodging of the appeal following consideration by the Planning Committee on 6 December 2010. The putative reasons for refusal relate to:-

- (i) that the proposal would relate to an inappropriate form of development in the Green Belt and cause harm to its openness. No very special circumstances have been put forward to outweigh this harm;
- (ii) that by virtue of the loss of woodland and its design the development would not preserve and enhance the character and appearance of the Conservation Area;
- (iii) that the development fails to incorporate a safe means of access and egress and would thereby have a detrimental impact on highway safety.

Main issues

The site is situated in the Green Belt and the Holy Cross Conservation Area. The main issues are:-

- (i) Whether the development would amount to inappropriate development in the Green Belt having regard to the provisions of the development plan and national planning policy advice in Planning Policy Guidance Note 2: *Green Belts*. Taken in the round the issue also requires consideration of:
 - a. The effect of the proposed development on the character and appearance of the Holy Cross Conservation Area;
 - b. The effect of the proposal on highway safety; and,

- (ii) Whether the benefits of the scheme would clearly outweigh any harm resulting from the above issues and any other harm, and thus justify the development on the basis of very special circumstances.

Paragraph 3.1 of PPG2 states that inappropriate development should not be approved except in very special circumstances. Paragraph 3.2 of PPG2 states that "*Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.*" This sets the framework for consideration of the issues which provide the basis for an overall assessment of balance.

The harm by reason of inappropriateness attracts substantial weight in its own right.

Harm to openness

Paragraph 1.4 of PPG2 says that openness is the most important attribute of Green Belts. The proposed development would result in built development taking place on open Green Belt land. The fact that the site is heavily wooded has no bearing on its importance in terms of the purposes of Green Belt designation. The appearance of the land would undoubtedly change and there would be a significant loss of openness as built development replaces woodland. The Inspector considered that the harm to openness is a matter which adds substantial weight to the harm by reason of inappropriateness. The special circumstances to justify such harm to the Green Belt and the conservation area therefore need to be compelling.

Other harm

The impact of the development on the visual qualities of the Green Belt and the adverse effects upon the character and appearance of the Holy Cross Conservation Area, including trees protected by a TPO, amounts, in this case, to much the same thing. They are factors which should be given great weight. The proposed landscaping, including the retention of a limited number of existing trees would offer little mitigation for the harm caused. This harm conflicts with related development plan policies.

The very special circumstances to be weighed against the identified harm include the need for affordable housing in Bromsgrove and the lack of alternative available sites. The Inspector stated that he appreciated that other appeal decisions referred to by the appellant (for example, Land adj. Bromley Common, Bromley & Land East and West of Melton Road, Edwalton, Notts.) indicate that the provision of affordable housing is capable of being a very special circumstance. The Inspector's judgment of whether very special circumstances exist must, of course, have regard to the circumstances of the particular case before him. Moreover, the fact that this site may well be the only one available to the appellants for affordable housing provision does not necessarily mean that it is suitable. Whilst the Inspector found that concerns about the highway safety implications of the proposal could not be supported, this as a neutral consideration which does not add material weight to the appellant's case in the overall balancing exercise.

The other considerations in favour of the proposal i.e. housing need and lack of alternative sites are considerable but, whether viewed individually or collectively, they do not outweigh, let alone clearly outweigh, the combined harm arising from the proposed development. Very special circumstances therefore do not exist to justify inappropriate development in the Green Belt. The appeal conflicts with BLP Policies S9 and S16 and with national policy in PPG2 to protect the Green Belt and with BLP Policy 35A and Structure Plan Policy CTC20 in respect of the harm to the character and appearance of the conservation area.

This appeal was therefore dismissed.

Costs application

No application for costs was made.

Appeal outcome

The appeal was **DISMISSED**.

Recommendation

The Committee is asked to RESOLVE that the item of information be noted.

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