



# Doncaster Council

## Agenda

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To all Members of the

## **PLANNING COMMITTEE**

Notice is given that a Meeting of the above Committee is to be held as follows:

**Venue:** Council Chamber - Civic Office Waterdale, Doncaster

**Date:** Tuesday, 2nd April, 2019

**Time:** 2.00 pm

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**Jo Miller**  
**Chief Executive**

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Issued on: Friday 22 March, 2019

**Governance Services Officer for this meeting**

Amber Torrington  
Tel: 01302 737462

**Doncaster Metropolitan Borough Council**  
**[www.doncaster.gov.uk](http://www.doncaster.gov.uk)**

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1. Apologies for Absence	
2. To consider the extent, if any, to which the public and press are to be excluded from the meeting.	
3. Declarations of Interest, if any.	
4. Minutes of the Planning Committee Meeting held on 5th March, 2019	1 - 10
<b>A. Reports where the Public and Press may not be excluded.</b>	
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5. Schedule of Applications	11 - 28
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Application to modify terms of Section 106 Agreement relating to the timing, details of works, implementation programme and safety measures associated with the Railway Crossing Improvement Scheme, in connection with Planning Application 01/01201/P (mixed use development at Manor Farm, Bessacarr) - Application Reference 18/00717/DOV.	
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8. Enforcement Cases Received and Closed for the Period of 20/02/19 to 18/03/19.	61 - 74

### **Members of the Planning Committee**

Chair – Councillor Iris Beech  
Vice-Chair – Councillor Sue McGuinness

Councillors Duncan Anderson, Mick Cooper, Susan Durant, John Healy, David Hughes, Eva Hughes, Andy Pickering, Dave Shaw and Jonathan Wood.

# Agenda Item 4.

## DONCASTER METROPOLITAN BOROUGH COUNCIL

### PLANNING COMMITTEE

TUESDAY, 5TH MARCH, 2019

A MEETING of the PLANNING COMMITTEE was held at the COUNCIL CHAMBER - CIVIC OFFICE on TUESDAY, 5TH MARCH, 2019, at 2.00 pm.

#### PRESENT:

Chair - Councillor Iris Beech  
Vice-Chair - Councillor Sue McGuinness

Councillors Duncan Anderson, Mick Cooper, Susan Durant, John Healy, David Hughes, Eva Hughes, Dave Shaw and Jonathan Wood

#### APOLOGIES:

An apology for absence was received from Councillor Andy Pickering

#### 72 DECLARATIONS OF INTEREST, IF ANY.

No declarations were reported at the meeting.

#### 73 MINUTES OF THE PLANNING COMMITTEE MEETING HELD ON 5TH FEBRUARY, 2019.

RESOLVED that the minutes of the meeting held on 5th February, 2019, be approved as a correct record and signed by the Chair.

#### 74 SCHEDULE OF APPLICATIONS.

RESOLVED that upon consideration of a Schedule of Planning and Other Applications received, together with the recommendations in respect thereof, the recommendations be approved in accordance with Schedule and marked Appendix 'A'.

#### 75 TOWN AND COUNTRY PLANNING ACT 1990, SECTION 106 AGREEMENT

RESOLVED that prior to the issue of planning permission in respect of the following planning application, which is included in the Schedule of Planning and Other Applications marked Appendix 'A' and attached hereto, the applicant be required to enter into an Agreement under Section 106 of the Town and Country Planning Act 1990, regulating the development:-

<b>Application No.</b>	<b>Description and Location.</b>
18/01748/OUTM	Outline application for erection of up to 140 dwellings, including scale and

	means of access at land on the North Side of Hayfield Lane, Auckley, Doncaster.
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76 ADJOURNMENT OF MEETING

RESOLVED that in accordance with Council Procedure Rule 18.11(f), the meeting stand adjourned at 3.39 p.m. to be reconvened on this day at 3.45 p.m.

77 RECONVENING OF MEETING

The meeting reconvened at 3.45 p.m.

78 APPLICATION TO MODIFY TERMS OF SECTION 106 AGREEMENT RELATING TO THE TIMING, DETAILS OF WORKS, IMPLEMENTATION PROGRAMME AND SAFETY MEASURES ASSOCIATED WITH THE RAILWAY CROSSING IMPROVEMENT SCHEME, IN CONNECTION WITH PLANNING APPLICATION 01/1201/P (MIXED USE DEVELOPMENT AT MANOR FARM, BESSACARR) - APPLICATION REFERENCE 18/00717/DOV.

The Committee considered a report which detailed an Application submitted by Persimmon Homes for the modification of the terms of a Section 106 agreement in order to allow further homes to be occupied on the Manor Farm development before the Railway Crossing Scheme (an underpass) is provided.

Members were advised that during the consideration of the first Reserved Matters application, Network Rail and Persimmon agreed a Heads of Terms document whereby up to 150 dwellings could be occupied, and if the underpass was still not in place, then more than 150 dwellings could be occupied with additional safety measures.

It was reported that the Heads of Terms document was not formalised, despite the parties working within the perimeters of the agreement, and the original Section 106 agreement was not at that time varied. However, a condition was imposed, following consultation with Network Rail, that no more than 150 dwellings were to be occupied prior to 31 December 2015 and the completion of the improvement works (upgrading of the crossing) set out in the Section 106 agreement. This condition was added at the request of Network Rail. A further condition was imposed for a 1.8m high fence running North-South across the site to prevent occupants from phase one of the development being able to access Carr Lane Crossing until the railway crossing scheme (underpass) was in place and open to the public.

Members were advised that a fence was in place and Network Rail were satisfied that this measure was effective. Network Rail had assessed the risk of allowing up to 250 homes to be occupied without a railway crossing scheme in place and had produced a report 'House Occupations at Manor Farm Development: Risk/Mitigation of Risk to Rail Crossing Users' dated February 2018. It was noted that the report sets out that the statutory consultee, Network Rail was satisfied that at the current time sufficient measures were in place to allow a further 100 number of houses to be occupied, giving a total of 250 occupancy.

It was advised that Persimmon must still fulfil their requirement to provide an underpass as part of the legal agreement to support the Manor Farm Development.

Officers reported that since the submission of the Deed of Variation, the 150 dwelling limit had been exceeded up to 187 by February 2019. Network Rail were aware of this and this follows their reassessment of occupancy to 250. It was noted that Network Rail had supported Persimmon at a Level Crossing Safety Event on the 5th February 2019, which is one of the soft measures outlined in the report that should be in place to support the increased number. As such, the authority had not considered taking enforcement action because the application to vary the agreement had been submitted and was determined and Network Rail were aware of the increased occupancy and raised no objection.

It was reported that a number of representations had been made as a result of the advertisement of the Deed of Variation application. Councillor Neil Gethin had requested that the proposal be decided by the Planning Committee and Councillor Richard Allan Jones had objected to the proposal.

In accordance with Planning Guidance 'Having Your Say at Planning Committee', Mr Robin McGinn, Persimmon Homes (the applicant), spoke in support of the application for the duration of up to 5 minutes.

In accordance with Planning Guidance 'Having Your Say at Planning Committee', Mr Phil Midgely, spoke in opposition to the application for the duration of up to 5 minutes.

In accordance with Planning Guidance 'Having Your Say at Planning Committee', Councillor Majid Khan (on behalf of Councillor Neil Gethin) spoke in opposition to the application for the duration of up to 5 minutes.

A representative from Network Rail was also present at the meeting to answer any questions.

Subsequently, it was MOVED by the Chair, Councillor Iris Beech and seconded by the Vice-Chair, Councillor Sue McGuinness that the Deed of Variation to the Section 106 agreement to allow up to 250 dwellings to be occupied be approved prior to the underpass being in place.

A vote was taken on the proposal made by the Chair, Councillor Iris Beech which was declared as follows:-

For	-	2
Against	-	4
Abstain	-	0

On being put to the meeting, the motion proposed by the Chair, Councillor Iris Beech FELL.

Subsequently, an amendment to the MOTION was MOVED by Councillor Mick Cooper and seconded by Councillor John Healy that the Deed of Variation be

deferred for further clarification on the contractual arrangements and timescales for delivery of the underpass, for further clarification on the points raised by Mr Midgely and for consideration of other pedestrian routes that could be used as an alternative to the underpass.

A vote was taken on the amended proposal made by the Councillor Mick Cooper which was declared as follows:-

For	-	6
Against	-	0
Abstain	-	0

On being put to the meeting, the amendment to the motion proposed by the Chair, Councillor Mick Cooper was declared CARRIED.

RESOLVED that the Deed of Variation be deferred for further clarification on the contractual arrangements and timescales for delivery of the underpass, for further clarification on the points raised by Mr Midgely and for consideration of other pedestrian routes that could be used as an alternative to the underpass.

79 DURATION OF MEETING.

RESOLVED that in accordance with Council Procedure Rule 33.1, the Committee, having sat continuously for 3 hours, continue to consider the items of business on the agenda.

80 APPEAL DECISIONS.

RESOLVED that the following decisions of the Secretary of State and/or his inspector, in respect of the under-mentioned Planning Appeals against the decision of the Council, be noted:-

<b>Application No</b>	<b>Application Description and Location</b>	<b>Appeal Decision</b>
15/01278/OUTM	Outline application for residential development with open space, landscaping and associated access (Approval being sought for access) at Land to the east, Mere Lane, Edenthorpe, Doncaster	Appeal Allowed 05/02/2019
18/00794/OUT	Outline application to create dwelling following demolition of existing barn at Cherry Tree Farm, Stone Hill, Hatfield Woodhouse, Doncaster.	Appeal Dismissed 30/01/2019

18/02123/FUL	Erection of a dwelling. (Re-submission) at 66 Crookes Broom Lane, Hatfield, Doncaster DN7 6LD	Appeal Dismissed 18/02/2019
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81 EXCLUSION OF PUBLIC AND PRESS.

RESOLVED that the public and press be excluded from the remaining proceedings of the meeting, in accordance with Section 100(A)(4) of the Local Government Act, 1972, as amended, on the grounds that exempt information as defined in Paragraph 6 of Schedule 12A to the Act, is likely to be disclosed.

82 ENFORCEMENT CASES RECEIVED AND CLOSED FOR THE PERIOD OF 23/01/19 TO 19/02/19 (EXCLUSION PARAGRAPH 6).

The Committee considered a report which detailed all Planning Enforcement complaints and cases received, and closed during 23 January to 19 February, 2019.

Scott Forbes, Enforcement Manager wished to advise Members that future reporting on enforcement cases would be made in the public domain for the purposes of being open and transparent. Members welcomed this proposal.

RESOLVED that all Planning Enforcement Cases received and closed for the period 23 January to 19 February, 2019, be noted.

## DONCASTER METROPOLITAN BOROUGH COUNCIL

## PLANNING COMMITTEE – 5th March, 2019

<b>Application</b>	<b>1</b>
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<b>Application Number:</b>	18/01748/OUTM	<b>Application Expiry Date:</b>	17th October, 2018
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<b>Application Type:</b>	Outline Planning Major
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<b>Proposal Description:</b>	Outline application for erection of up to 140 dwellings, including scale and means of access.
<b>At:</b>	Land On the North Side of Hayfield Lane, Auckley, Doncaster

<b>For:</b>	Peel Land and Property Ltd – D Bailey
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<b>Third Party Reps:</b>	12	<b>Parish:</b>	Auckley Parish Council
		<b>Ward:</b>	Finningley

**A proposal was made to grant the application subject to a Section 106 Agreement.**

**Proposed by: Councillor Eva Hughes**

**Seconded by: Councillor Sue McGuinness**

**For: 6    Against: 5    Abstain: 0**

**Upon the Chair declaring that there was an equal number of votes cast for and against the application, the Chair, Councillor Iris Beech, in accordance with Council Procedure Rule 21.2, exercised her right to use her casting vote and voted to grant the application.**

**Decision: Planning permission granted subject to the completion of an Agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) in relation to the following matters marked at (A) to (c) below, the replacement of Condition 17 to read as below and the Head of Planning be authorised to issue the Decision Notice upon completion of the Agreement:-**

- (A) 26% Affordable Housing to be provided onsite.**
- (B) A Travel Plan Bond required to mitigate any traffic in the event that targets within the Travel Plan are not met, based upon the No. of dwellings x the current cost of a 28 day SY Connect+ticket (currently £107.50).**
- (C) An education contribution towards providing additional secondary school places at Hayfield.**

**17. No development shall take place until a scheme for offsite ecological mitigation and enhancement for reptiles (including future monitoring and management) has been designed and implemented following agreement in writing by the Local Planning Authority. The offsite mitigation will be no less than 0.7ha in size and connected to the proposed development site such that it serves the same population of reptiles. The scheme shall contain details of habitat creation, monitoring and the ongoing management works that will be undertaken. The scheme will also detail the trigger point at which development can start once the newly created reptile habitat has become sufficiently established so that it provides substantially better habitat for reptiles that that which will be lost and the methods that will be used to ensure no harm to reptiles during site clearance.**

**REASON**

**To ensure the ecological interests of the site and surroundings are protected and enhanced.**

**In accordance with Planning Guidance 'Having Your Say at Planning Committee', Ms Delyse Bailey (applicant) spoke in support of the application for the duration of up to 5 minutes.**

**In accordance with Planning Guidance 'Having Your Say at Planning Committee' Councillors Richard Allan Jones and Steve Cox (Ward Members) spoke in opposition to the application for the duration of up to 5 minutes each.**

**(Clarification in relation to the S106 education contribution of £384,237.00 if 140 dwellings were provided on the site was reported at the meeting).**

**(To be noted that only matters of access are to be formally considered under this application – not scale as indicated by the application description was report at the meeting)**

**(A briefing note, which had been circulated separately to Committee Members by email on 1<sup>st</sup> March, 2019 was reported at the meeting).**

<b>Application</b>	<b>2</b>
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<b>Application Number:</b>	18/01984/FUL	<b>Application Expiry Date:</b>	Extended until 5 March 2019
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<b>Application Type:</b>	Full Application
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<b>Proposal Description:</b>	Erection of single storey aluminium framed marquee. (Retrospective).
<b>At:</b>	Harvey Arms, Old Bawtry Road, Finningley, DN9 3BY

<b>For:</b>	Mrs Sandra Kennedy – The Harvey Arms
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<b>Third Party Reps:</b>	17 representations	<b>Parish:</b>	Finningley Parish Council
		<b>Ward:</b>	Finningley

**A proposal was made to grant temporary Planning Permission in accordance with the Officer recommendation outlined within the report.**

Proposed by: **Councillor Susan Durant**

Seconded by: **Councillor David Hughes**

**For: 4 Against: 4 Abstain: 0**

**Upon the Chair declaring that there was an equal number of votes cast for and against the proposal, the Motion to grant temporary Planning Permission FELL**

**Subsequently, an amendment to the proposal was made to grant temporary Planning Permission subject to an additional condition.**

Proposed by: **Councillor Jonathan Wood**

Seconded by: **Councillor Iris Beech**

**For: 7 Against: 2 Abstain: 1**

**Decision: Temporary Planning Permission granted subject to the addition of the following condition:-**

- 09. The marquee shall not be used unless written notification has been given to Finningley Parish Council and advertisement via a Parish notice board no less than 2 weeks prior to the event taking place. A written record of**

**the notice shall be made available for inspection by the local planning authority with seven days' notice.**

**REASON**

**To protect the living conditions of adjacent residential occupiers from noise and disturbance in accordance with Policy PH12 of the UDP.**

**In accordance with Planning Guidance 'Having Your Say at Planning Committee', Mrs Angie Clegg and Mrs Sandra Kennedy (Events Manager and Applicant) spoke in support for the application for the duration of up to 5 minutes.**

**In accordance with Planning Guidance 'Having Your Say at Planning Committee' Mr Stephen Paramore spoke in opposition to the application for the duration of up to 5 minutes.**

**In accordance with Planning Guidance 'Having Your Say at Planning Committee' Councillor Steve Cox (Ward Member) spoke in opposition to the application for the duration of up to 5 minutes**

<b>Application</b>	<b>3</b>
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<b>Application Number:</b>	17/01955/FUL	<b>Application Expiry Date:</b>	Extension until 12 March 2019
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<b>Application Type:</b>	Full Application
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<b>Proposal Description:</b>	Erection of 5 dwellings with garages and associated works
<b>At:</b>	Land at Field Cottage, Main Street, Hatfield Woodhouse, Doncaster

<b>For:</b>	Dantom Homes (Development) Ltd – Mr Pete Thompson
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<b>Third Party Reps:</b>	9 representations	<b>Parish:</b>	Hatfield Parish Council
		<b>Ward:</b>	Hatfield

**A proposal was made to refuse the application.**

Proposed by: **Councillor Eva Hughes**

Seconded by: **Councillor Mick Cooper**

**For: 6 Against: 4 Abstain: 0**

**Decision: Planning Permission refused.**

**In accordance with Planning Guidance ‘Having Your Say at Planning Committee’ Mr Ken Knight and Mr Jim Lomas (agent) spoke in support of the application for the duration of up to 5 minutes.**

**In accordance with Planning Guidance ‘Having Your Say at Planning Committee’ Councillor Joe Blackham, Linda Curran and Derek Smith spoke in support of the application for the duration of up to 5 minutes each.**

## **DONCASTER METROPOLITAN BOROUGH COUNCIL**

Agenda Item No 5  
2nd April 2019

To the Chair and Members of the PLANNING COMMITTEE

### **PLANNING APPLICATIONS PROCESSING SYSTEM**

Purpose of the Report

1. A schedule of planning applications for consideration by Members is attached.
2. Each application comprises an individual report and recommendation to assist the determination process. Any pre-committee amendments will be detailed at the beginning of each item.

### **Human Rights Implications**

Member should take account of and protect the rights of individuals affected when making decisions on planning applications. In general Members should consider:-

1. Whether the activity for which consent is sought interferes with any Convention rights.
2. Whether the interference pursues a legitimate aim, such as economic well being or the rights of others to enjoy their property.
3. Whether restriction on one is proportionate to the benefit of the other.

### **Copyright Implications**

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**Scott Cardwell**  
**Assistant Director of Development**  
**Directorate of Regeneration and Environment**

Contact Officers: Mr R Sykes (Tel: 734555)

Background Papers: Planning Application reports refer to relevant background papers

## Summary List of Planning Committee Applications

NOTE:- Site Visited applications are marked 'SV' and Major Proposals are marked 'M'  
Any pre-committee amendments will be detailed at the beginning of each item.

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Application	Application No	Ward	Parish
1. M	18/01981/FULM	Rossington And Bawtry	Rossington Parish Council

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**DONCASTER METROPOLITAN BOROUGH COUNCIL**

**PLANNING COMMITTEE - 2nd April 2019**

**Application**      1

<b>Application Number:</b>	18/01981/FULM	<b>Application Expiry Date:</b>	29th November 2018
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<b>Application Type:</b>	Planning FULL Major
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<b>Proposal Description:</b>	Erection of a retail parade (for flexible use across Classes A1, A2, A3, A4, A5 and D2) with an associated bin store, outdoor seating area, car parking and landscaping
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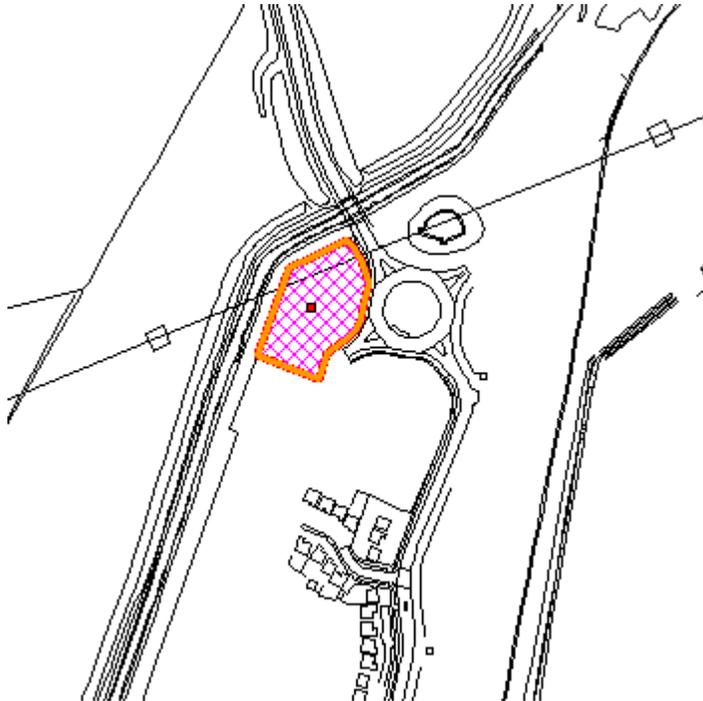
<b>At:</b>	Land At Torne Park West End Lane New Rossington Doncaster
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<b>For:</b>	Lidl UK GmbH
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<b>Third Party Reps:</b>	0	<b>Parish:</b>	Rossington Parish Council
		<b>Ward:</b>	Rossington And Bawtry

<b>Author of Report</b>	Mark Sewell
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<b>MAIN RECOMMENDATION:</b>	GRANT
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## 1.0 Reason for Report

1.1 The application is being presented to the Planning Committee due to it being a departure from the adopted Development Plan.

## 2.0 Proposal and Background

2.1 The submitted application seeks full planning permission for the erection of a retail parade (for flexible use across Classes A1(Shops), A2(Financial & Professional Services), A3(Restaurants and Cafes), A4(Drinking Establishments), A5(Hot Food Takeaways) and D2(Assembly and Leisure)) with an associated bin store, outdoor seating area, car parking and landscaping.

2.2 The application site is located at the northern end of the former Rossington Colliery, which now forms part of Torne Park, a mixed use redevelopment scheme of up to 1200 residential units alongside commercial development which received outline permission in 2013 (12/01107/OUTA). The site is served by the Heatherfields Crescent roundabout, and comprises cleared vacant land and a pumping station. The site measures approximately 0.37 hectares. The application site is currently allocated as an existing colliery under Policy M15 of the Unitary Development Plan, however this small part of the former colliery land is also washed over by a Green Belt allocation.

2.3 The land to the south of the application site houses a newly constructed Lidl foodstore and associated carparking, permission for which was granted under the mixed use outline consent, and by way of a reserved matters application in April 2018 (17/02379/REMM).

2.4 Further to the south are residential properties approved as part of the mixed use permission, the first 2 phases of which are now occupied. To the west of the application site on the other side of the River Torne is the iPort, an intermodal logistics park.

2.5 The original outline permission for the mixed use development across the whole of the former colliery site showed the commercial elements to be located to the northern end of the site. The indicative submitted details showed fast food use with drive through facility (500m<sup>2</sup>), a petrol filling station with 225m<sup>2</sup> retail kiosk, a foodstore (2200m<sup>2</sup>) and 60 bed lodge hotel. The range of uses approved across the commercial area are A1, A3, A4 and A5, as well as the filling station and hotel. Thus far, only the food superstore has been constructed within the commercial area, its floorspace of 2125m<sup>2</sup> sitting within the parameters of the outline consent.

2.6 This planning application also proposes A2 and D2 uses within the Commercial Area, which are not consented by the original outline permission, which is the reason the application has been submitted for full planning permission, rather than as a reserved matters application under the outline consent. Given that this is a new separate planning application, for a use technically inappropriate within the Green Belt. It is on this basis that the application is being presented to the planning committee.

## 3.0 Relevant Planning History

12/01107/OUTA - Hybrid planning application comprising:

1. Outline application for the redevelopment of the former Rossington Colliery for a mixed use development comprising up to 1200 residential units (Use Class C3), local

superstore (Use Class A1), hotel, (Use Class C1), restaurant (Use Class A3/A4), fast food outlet (Use Class A3/A5), petrol filling station with ancillary retail (Sui Generis), community building (Use Class D1) and land for new primary school.

2. Full Planning Permission for the engineering operations related to remediation and associated earthworks and bunding to create development platforms at former Rossington Colliery, West End Lane, Rossington.

14/02683/REMM - Details of Access, Appearance, Landscaping, Layout and Scale of design for the erection of 70 dwellings and associated infrastructure (being matters reserved in outline application previously granted permission under 12/01107/OUTA on 01.10.2013)

15/00008/REMM - Details of Access, Appearance, Landscaping, Layout and Scale of design for the erection of 96 dwellings and associated infrastructure (being matters reserved in outline application previously granted permission under ref: 12/01107/OUTA on 01/10/2013).

16/00871/REMM - Details of Access, Appearance, Landscaping, Layout and Scale of design for the erection of 96 dwellings and associated infrastructure (being matters reserved in outline application previously granted permission under ref: 12/01107/OUTA on 01/10/2013) (without compliance with conditions 1 and 4 of planning application 15/00008/REMM, granted on 27.04.2015 - submission of revised details)

17/02379/REMM - Details of Appearance, Landscaping, Layout and Scale for the erection of A1 foodstore with car parking, servicing, landscaping and other associated works.

18/01701/REMM - Details of Access, Appearance, Landscaping, Layout and Scale for the erection of 190 dwellings and associated infrastructure (being matters reserved in outline application previously granted permission 17/02958/FULM on 27/07/2018).

18/02006/REMM - Details of appearance, landscaping, layout and scale for the erection of 184 dwellings (being matters reserved in previously approved application 12/01107/OUTA)

## **4.0 Representations**

4.1 The application has been publicised by way of site notice and notice in the press. No representations have been received.

## **5.0 Parish Council**

5.1 Not received.

## **6.0 Relevant Consultations**

DMBC Highways - no objections following amendments to layout, suggested conditions

DMBC Transportation - no objections

Environment Agency - no objections

DMBC Internal Drainage - no objections, suggested conditions

DMBC Pollution Control -no objections, suggested conditions

DMBC Built Environment - no objections to the scheme, clarification required over site relationship to adjacent pedestrian link

## **7.0 Relevant Policy and Strategic Context**

7.1 The site is allocated as an existing colliery site under Policy M15 as defined by the Doncaster Unitary Development Plan 1998.

7.2 National Planning Policy Framework (NPPF):

Principle 6 Building a strong, competitive economy

Principle 7 Ensuring the vitality of town centres

Principle 12 Achieving well designed places

Principle 13 Protecting Green Belt land

Doncaster Core Strategy (CS):

Policy CS1 - Quality of Life

Policy CS2 - Growth and Regeneration Strategy

Policy CS3 - Countryside

Policy CS7 - Retail and Town Centres

Policy CS14 - Design and sustainable construction

Policy CS16 - Valuing our Natural Environment

The Rossington Neighbourhood Plan is currently at stage where only moderate weight can be applied to the consideration of its policies, having undertaken pre-submission consultation and publicity. Within section 8.2 of the plan (Shops Outside Rossington Village Centre) it does recognise that “a small shopping parade (potentially including a petrol filling station) is planned as part of a major one thousand plus new housing development on the site of the former Rossington Colliery”.

## **8.0 Planning Issues and Discussion**

### Principle of Development

8.1 The reason the application is being presented to the Planning Committee is because the application site, as well as being designated within the Doncaster Unitary Development Plan (UDP) (1998) as a Colliery, this part of the application site is also washed over by a Green Belt Designation. On this basis, in strict policy terms, the proposed commercial development would represent inappropriate development within the Green Belt as defined by para 145 of the NPPF.

8.2 In practice however, outline planning permission has already been granted and capable of being implemented for commercial uses on this site, under planning permission ref 12/01107/OUTA. This application seeks full planning permission for the erection of a retail parade for flexible uses across Classes A1, A2, A3, A4, A5 and D2.

8.3 As outlined earlier in the report, outline planning permission was granted for a mixed-use development at the site in October 2013 (application reference: 12/01107/OUTA), which included a commercial area defined on an approved Masterplan which permitted the development of A1, A3, A4 and A5 uses. The application site itself has been cleared ready for development, whilst the wider Rossington colliery mixed use development is substantially progressed, with over 150 houses, road infrastructure and a supermarket on the site.

8.4 As the current application proposes A2 and D2 uses which do not form part of the approved outline permission, a new full application was required rather than a reserved matters application under the existing outline consent. A2 uses include financial and professional services, whilst D2 uses include assembly and leisure. Both uses would normally be acceptable and found within commercial areas, and would serve as a complementary addition to the already approved use. Given the small size of the proposal,

there would have been no objections if these uses had been included within the original planning application.

- 8.5 Policy CS7 of the Core Strategy is concerned with Retail and Town Centres, and states that outside of recognised centres small shops within residential areas to serve the local area will be supported. Rossington itself is identified as a Potential Growth Town within the Core Strategy, and the supporting text of Policy CS2 (Growth and Regeneration Strategy) states that the provision of an improved range and quality of retail and community facilities will be supported in such locations.
- 8.6 The NPPF at para 86 states that local planning authority's should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered. Given that the site is sustainably located and the principle of development of the majority of the main town centre uses proposed has already been accepted by virtue of the outline planning permission, together with the small scale of the proposals, it is not considered necessary to apply the sequential test to the additional A2 and D2 uses. The overall floorspace of the parade also falls below the 2500m<sup>2</sup> threshold under which the Authority would require a retail impact assessment.
- 8.7 On this basis, whilst the application site is allocated a Green Belt and the proposed commercial use would normally be deemed to be inappropriate, subsequent planning permissions and the allocation of Rossington as a Potential Growth Town within the Core Strategy are strong material considerations. A range of commercial uses on this site has already been accepted and capable of being implemented without the need of referral to the Planning Committee. The additional A2 and D2 uses are considered to be complementary and small scale, and will provide the necessary flexibility in terms of potential mix of occupiers, which is particularly relevant given that the developers are bringing forward this scheme speculatively. On this basis, the principle of development is considered to be acceptable. The application would have to be referred to the National Planning Casework Unit, by virtue of its total floorspace and being located within the Green Belt.

### Design and Appearance

- 8.8 Policy CS14 of the Core Strategy is concerned with design and sustainable construction, and seeks to ensure that all proposals are of high quality design that contributes to local distinctiveness and reinforces the character of local building traditions, as well as responding positively to existing site features. All new non domestic buildings must meet BREEAM rating of at least Very Good, and secure at least 10% of their total energy from decentralised and renewable or low carbon sources.
- 8.9 The proposed retail parade is shown to be positioned to the rear of the site looking eastwards towards Heatherfield Crescent, with the building measuring 33m by 18m. The parade has a contemporary look with a mono pitched roof over standing to just over 7m at its tallest point, with a canopy overhanging the front entrances to the individual units. In terms of appearance, the building will be finished with a white render at lower level and dark grey cladding at upper level, with glazing and double doors to the front of each unit. Car parking is proposed to the front and northern side of the parade.

8.10 A Design Guide for the site was approved as part of the original planning permission for the wider colliery site, and notes that buildings in the Commercial Area will have a varying character and architectural form. Key built frontages and landscape frontages, as defined by the Guide, will face onto Heatherfields Crescent. These frontages will be generally active, with blank facades avoided. Storey heights within the Commercial Area will vary from one to four storeys and where building facades lack interest, bold planting schemes should be used to create a foil for the built form. Landscaped, planted areas are proposed to the site frontage and to the northern side of the parking area. Whilst this is a full application separate from the original outline permission, it is considered that the proposals have taken note of and are in accordance with the agreed Design Guide.

8.11 The Council's Built Environment Team have been consulted and raised no objections to the scheme, noting that the scheme will create an attractive parade and landscaping which complements the proposed Lidl store and will provide welcome facilities for the new neighbourhood on the colliery site. On this basis, the proposal is considered to be acceptable in terms of design and landscaping, and conditions will be imposed to agree the details of the external materials, and to ensure the landscaping scheme is carried out in accordance with the approved details.

### Highways and Parking

8.12 The application has been accompanied by a Transport Statement, which assesses the vehicle movements associated with the development and access to and from the site. The site will be accessed by private car and service vehicles via a right turning lane from Heatherfields Crescent roundabout.

8.13 Para 109 of the NPPF states that "development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe". Policy CS 9 of the Doncaster Council Core Strategy relates to the provision of travel choice and part (G) states that new developments will provide, as appropriate, transport assessments and travel plans to ensure the delivery of travel choice and sustainable opportunities for travel.

8.14 The Highways Development Control team have been consulted and following amendments to the site layout, raise no objections to the scheme. There was initially an objection to the proposed highways arrangement where the internal access road ties into the Heatherfields Crescent roundabout. The applicants have amended the layout in accordance with the comments received from highways, and the scheme is now deemed to be acceptable.

8.15 The site provides 39 parking spaces, including 3 disabled and 2 motorcycle parking spaces. The level of parking is considered to be appropriate for the scale of development.

8.16 The level of traffic generation has already been agreed under the Transport Assessment approved under the outline permission, and this full application does not proposed additional vehicle movements beyond what has already been assessed. The applicants have assessed the relevant junctions as agreed with the Councils Transportation Team, who have confirmed that these will continue to operate within capacity. As such, there are no objections from a transportation perspective.

### Other Issues

8.17 No objections have been received from other consultees to the proposals. The Councils Pollution Control team have recommended standard conditions relating to ground

contamination, whilst the Councils Drainage team have similarly recommended standard conditions to ensure appropriate drainage solutions are agreed and implemented. The Environment Agency have been consulted and raise no objections to the proposals.

## 9.0 Summary and Conclusion

- 9.1 On the basis of the above, the application is accordingly recommended for approval. Whilst the application site is located within allocated Green Belt, the main issues and principle of development have already been agreed under the original mixed use outline consent for the colliery site, and the additional uses proposed within the Commercial Area as part of this application are considered to be small scale and acceptable. Given that the application site is located within the Green Belt, and due to the overall floorspace proposed, the application will have to be referred to the National Planning Casework Unit to determine whether the Secretary of State requires it to be called in.

### RECOMMENDATION

**Planning Permission GRANTED subject to the following conditions and following referral to the National Planning Casework Unit.**

01. STAT1            The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of this permission.  
REASON  
Condition required to be imposed by Section 91(as amended) of the Town and Country Planning Act 1990.
02. MAT1A            Prior to the commencement of the relevant works, details of the proposed external materials shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials.  
REASON  
To ensure that the materials are appropriate to the area in accordance with policy CS14 of the Doncaster Core Strategy.
03. VS19             The scheme of landscaping which has been agreed as part of this application shall be begun during the first available planting season following the commencement of the development hereby granted. It shall thereafter be maintained by the site owner for a period of five years. Any tree or shrub planted in accordance with the scheme which becomes damaged or diseased, or dies or is removed within the five years shall be replaced during the next planting season. Any staking, tying, weeding, watering and other action deemed necessary by the Local Planning Authority shall be carried out by the owner in accordance with the Authority's publication 'Landscape Specification in Relation to Development Sites'.

REASON

To ensure the maintenance of a healthy planting scheme in the interests of amenity.

04. HIGH1 Before the development is brought into use, that part of the site to be used by vehicles shall be surfaced, drained and where necessary marked out in a manner to be approved in writing by the local planning authority.

REASON

To ensure adequate provision for the disposal of surface water and ensure that the use of the land will not give rise to mud hazards at entrance/exit points in the interests of public safety.

05. HIGH3 Before the development hereby permitted is brought into use, the parking as shown on the approved plans shall be provided. The parking area shall not be used otherwise than for the parking of private motor vehicles belonging to the occupants of and visitors to the development hereby approved.

REASON

To ensure that adequate parking provision is retained on site.

06. HIGH4 The development hereby permitted shall not be commenced until details of secure cycle parking facilities for the occupants of, and/or visitors to the development have been submitted to and approved in writing by the local planning authority. These facilities shall be fully implemented and made available for use prior to the occupation of the development hereby permitted and shall thereafter be retained for use at all times.

REASON

To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles and to comply with policy CS9 of the Doncaster Core Strategy.

07. U0068641 The development hereby permitted shall not be commenced until details of measures to be taken within the curtilage of the site during construction to prevent mud and debris being deposited on the public highway, has been submitted to and approved in writing by the Local Planning Authority.

REASON:

In the interests of road safety

08. ENVH13 Details of an extraction/ventilation system to control the emission of cooking smells and fumes shall be submitted to and approved by the local planning authority and shall be installed and be fully operational before the use commences. All equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the manufacturer's instructions.

REASON

To safeguard the amenities of the occupiers of adjacent properties.

09. CON1B No development approved by this permission shall be commenced prior to a contaminated land assessment and associated remedial strategy, together with a timetable of works, being accepted and

approved by the Local Planning Authority (LPA), unless otherwise approved in writing with the LPA.

a) The Phase I desktop study, site walkover and initial assessment must be submitted to the LPA for approval. Potential risks to human health, property (existing or proposed) including buildings, livestock, pets, crops, woodland, service lines and pipes, adjoining ground, groundwater, surface water, ecological systems, archaeological sites and ancient monuments must be considered. The Phase 1 shall include a full site history, details of a site walkover and initial risk assessment. The Phase 1 shall propose further Phase 2 site investigation and risk assessment works, if appropriate, based on the relevant information discovered during the initial Phase 1 assessment.

b) The Phase 2 site investigation and risk assessment, if appropriate, must be approved by the LPA prior to investigations commencing on site. The Phase 2 investigation shall include relevant soil, soil gas, surface and groundwater sampling and shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a quality assured sampling and analysis methodology and current best practice. All the investigative works and sampling on site, together with the results of analysis, and risk assessment to any receptors shall be submitted to the LPA for approval.

c) If as a consequence of the Phase 2 Site investigation a Phase 3 remediation report is required, then this shall be approved by the LPA prior to any remediation commencing on site. The works shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment including any controlled waters, the site must not qualify as contaminated land under Part 2A of the Environment Protection Act 1990 in relation to the intended use of the land after remediation.

d) The approved Phase 3 remediation works shall be carried out in full on site under a quality assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance. The LPA must be given two weeks written notification of commencement of the remediation scheme works. If during the works, contamination is encountered which has not previously been identified, then all associated works shall cease until the additional contamination is fully assessed and an appropriate remediation scheme approved by the LPA.

e) Upon completion of the Phase 3 works, a Phase 4 verification report shall be submitted to and approved by the LPA. The verification report shall include details of the remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology. Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the verification report together with the necessary documentation detailing what waste materials have been removed from the site. The site shall not be brought into use until such time as all verification data has been approved by the LPA.

REASON

To secure the satisfactory development of the site in terms of human health and the wider environment pursuant to the National Planning Policy Framework.

This has to be prior to commencement so that any risks are assessed before works begin to the ground whether this be demolition works or construction works and remediation in place before works begin.

10. CON3

Any soil or soil forming materials brought to site for use in garden areas, soft landscaping, filing and level raising shall be tested for contamination and suitability for use on site. Proposals for contamination testing including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment) and source material information shall be submitted to and be approved in writing by the LPA prior to any soil or soil forming materials being brought onto site. The approved contamination testing shall then be carried out and verification evidence submitted to and approved in writing by the LPA prior to any soil and soil forming material being brought on to site.

REASON

To secure the satisfactory development of the site in terms of human health and the wider environment and pursuant to guidance set out in the National Planning Policy Framework.

11. DA01

The development hereby granted shall not be begun until details of the foul, surface water and land drainage systems and all related works necessary to drain the site have been submitted to and approved by the Local Planning Authority. These works shall be carried out concurrently with the development and the drainage system shall be operating to the satisfaction of the Local Planning Authority prior to the occupation of the development.

REASON

To ensure that the site is connected to suitable drainage systems and to ensure that full details thereof are approved by the Local Planning Authority before any works begin.

12. GR20

No development shall take place in implementation of this permission until a report (the initial SAP report carried out as part of Building Regulations will be sufficient information in many cases) has been submitted to the local planning authority and approved in writing from them, explaining how CO2 emissions from the development will be reduced by providing at least 10 Percent of the development's energy through on-site renewable energy equipment or improvements to the fabric efficiency of the building. The carbon savings, which result from proposed measures, will be above and beyond what is required to comply with Part L of Building Regulations. Unless otherwise agreed in writing by the Local Planning Authority, the development shall then proceed in accordance with the approved report. Before any building is occupied or sold, the local planning authority shall be satisfied that the measures have been installed, which will enable the planning condition to be fully discharged.

REASON

In the interests of sustainability and to minimize the impact of the development on the effects of climate change. This condition is

required to be discharged prior to commencement as the approved detail may have an impact on the design and fabric of the building during construction or the appearance of the development.

13. ENVH4

No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:

- i) - the parking of vehicles of site operatives and visitors
- ii) - loading and unloading of plant and materials
- iii) - storage of plant and materials used in constructing the development
- iv) - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- v) - wheel washing facilities
- vi) - measures to control noise and the emission of dust and dirt during construction
- vii) - a scheme for recycling/disposing of waste resulting from demolition and construction works

**REASON**

To safeguard the living conditions of neighbouring residents and in the interests of highway safety.

14. ACC1

The development hereby permitted must be carried out and completed entirely in accordance with the terms of this permission and the details shown on the approved plans and specifications.

**REASON**

To ensure that the development is carried out in accordance with the application as approved.

01. U0013243

**INFORMATIVE**

Prior to preparing any reports in support of conditions relating to land contamination, the applicant is strongly advised to refer to the document entitled Development on land affected by contamination. Technical Guidance for Developers, Landowners and Consultants. Yorkshire and Humberside Pollution Advisory Council.

The document can be found at the following web address:

<http://www.doncaster.gov.uk/services/environmental/developing-on-contaminated-land>

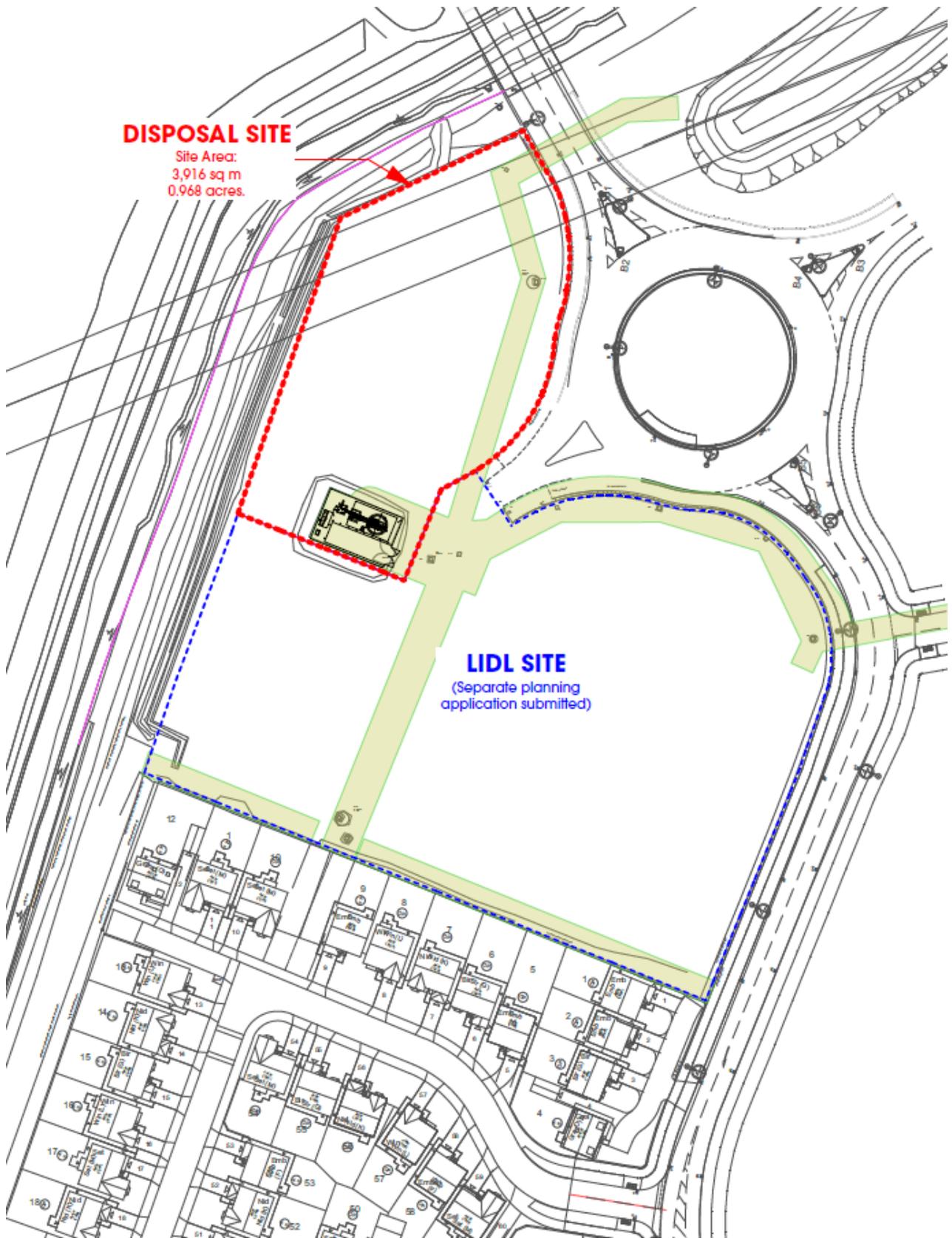
Or alternatively you can request a paper copy from the LPA.

02. U0013244

**INFORMATIVE**

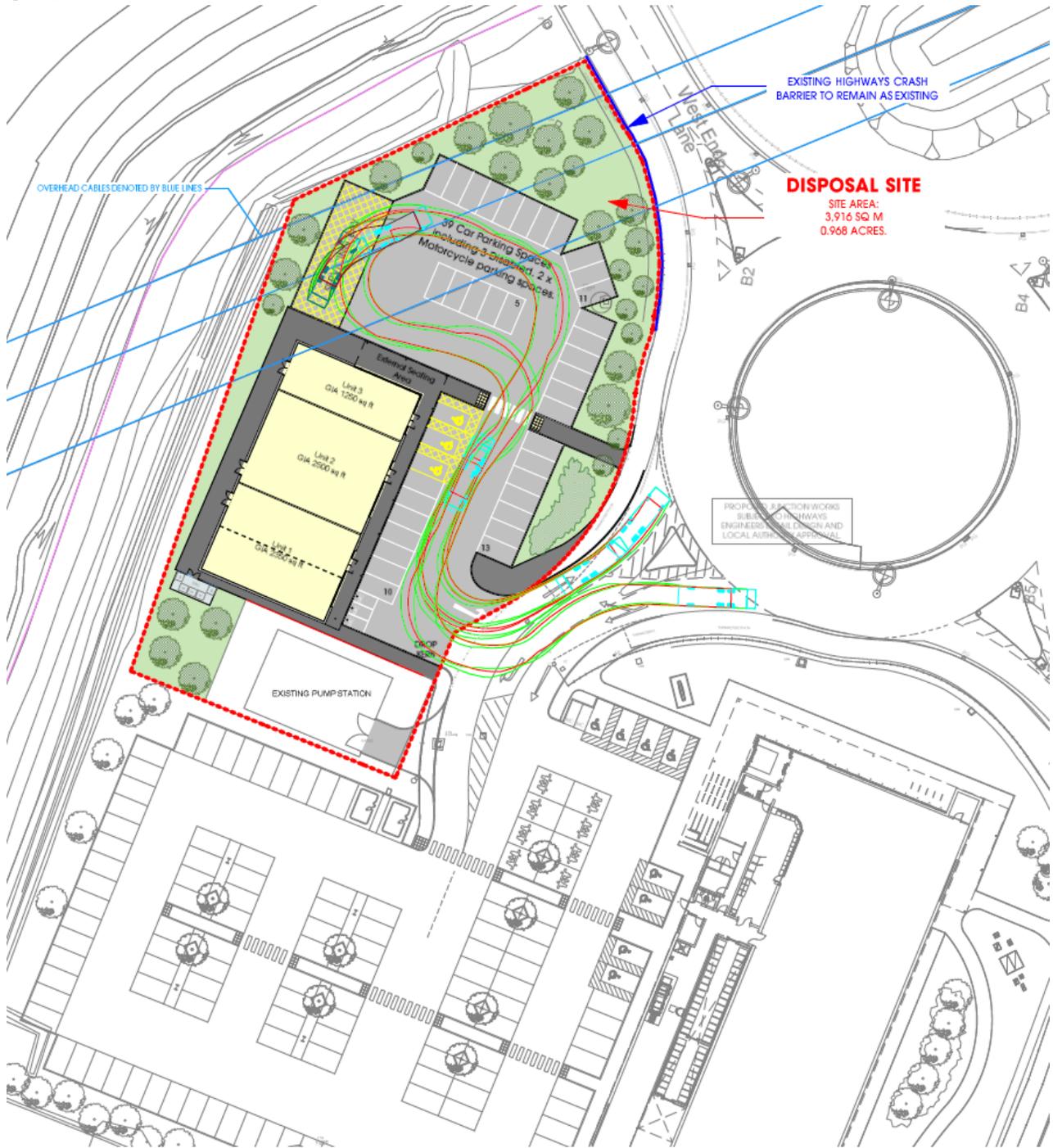
Works tying into or carried out on the public highway by a developer or anyone else other than the Highway Authority shall be under the provisions of Section 278 of the Highways Act 1980. The agreement must be in place before any works are commenced. There is a fee involved for the preparation of the agreement and for on-site inspection. The applicant should make contact with Malc Lucas - Tel 01302 735110 as soon as possible to arrange the setting up of the agreement. Doncaster Borough Council Permit Scheme (12th June 2012) - (Under section 34(2) of the Traffic Management Act 2004, the Secretary of State has approved the creation of the Doncaster Borough Council Permit Scheme for all works that take place or impact on streets specified as Traffic Sensitive or have a reinstatement category of 0, 1 or 2. Agreement under the Doncaster Borough Council Permit Scheme's provisions must be granted before works can take place. There is a fee involved for the coordination, noticing and agreement of the works. The applicant should make contact with Paul Evans - Email: p.evans@doncaster.gov.uk or Tel 01302 735162 as soon as possible to arrange the setting up of the permit agreement. The developer shall ensure that no vehicle leaving the development hereby permitted enter the public highway unless its wheels and chassis are clean. It should be noted that to deposit mud and debris on the highway is an offence under provisions of The Highways Act 1980.

## APPENDIX 1

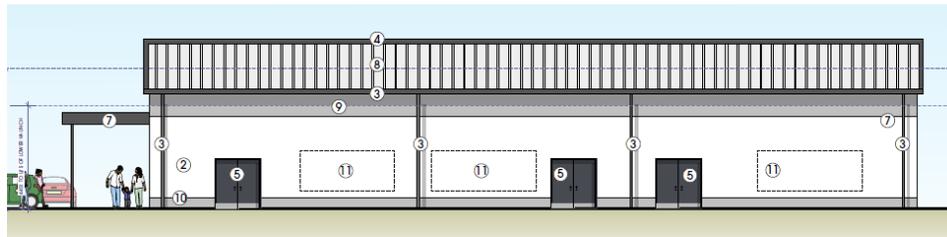
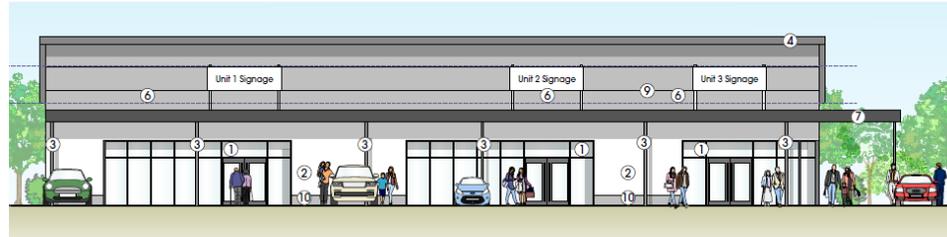
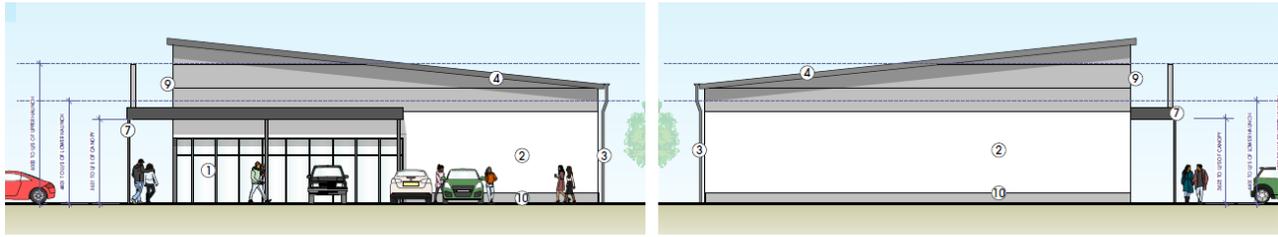


SITE LOCATION

# SITE



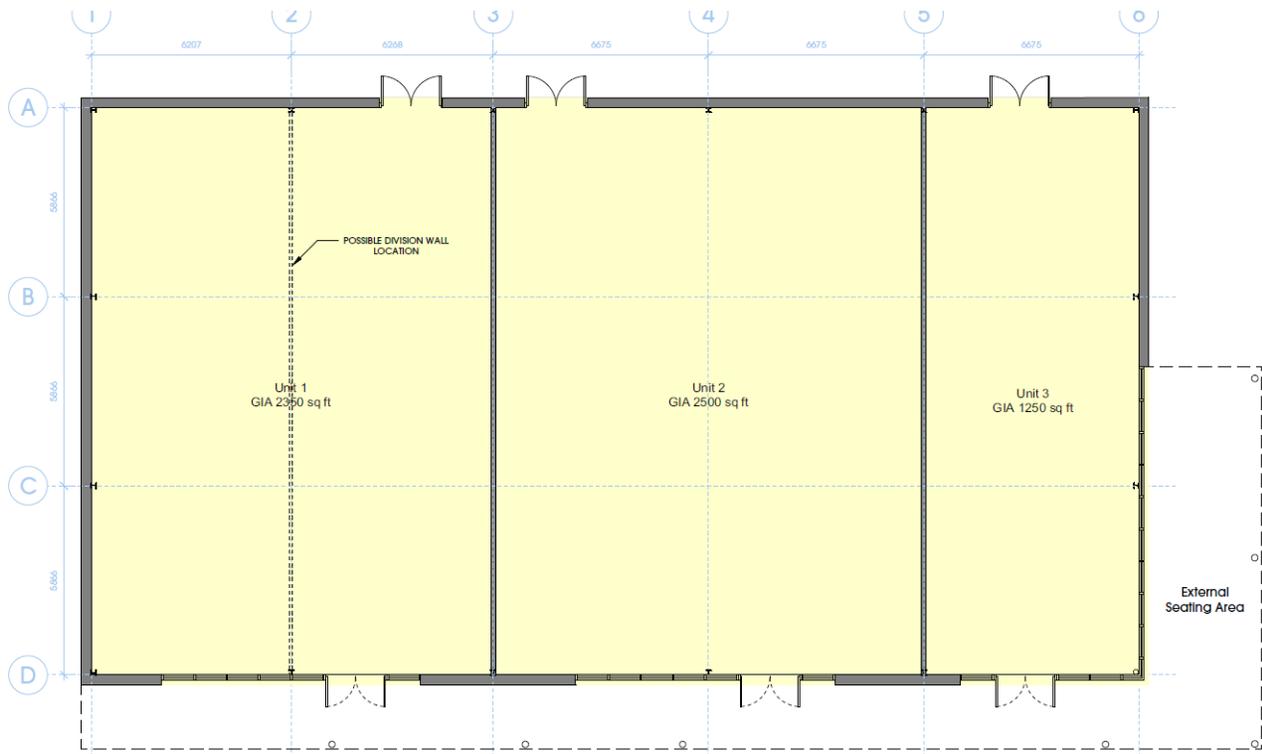
SITE LAYOUT



- MATERIALS**
1. POWDER COATED ALUMINUM FRAMED SHOP FRONT GLAZING, DOUBLE ENTRANCE DOORS WITH DOUBLE GLAZED UNITS. COLOUR - RAL 7024
  2. RENDERED WALL. COLOUR WHITE. RAL 9010.
  3. POWDER-COATED GUTTERS AND RNF. COLOUR - RAL 9006
  4. POWDER-COATED STEEL VERGES, FASCIALS, SOFFITS AND FLASHINGS. COLOUR - RAL 9006
  5. GALVANISED STEEL SERVICE / FIRE EXIT DOORS. COLOUR - RAL 7034
  6. SURFACE MOUNTED NON-ILLUMINATED SIGNAGE - SUBJECT TO SEPARATE APPLICATION BY COUNCIL
  7. OVERHANGING CANTILEVERED EXTERNAL GANGWAY
  8. POWDER-COATED PROFILED STEEL ROOF CLADDING. COLOUR - RAL 9006
  9. COMPOSITE CLADDING - COLOUR RAL 7038
  10. RENDERED PUNTS. COLOUR GREY - RAL 7038
  11. INDICATIVE LOCATION FOR MBE EQUIPMENT

**PROPOSED ELEVATIONS**

**APPENDIX 4**



**PROPOSED FLOOR PLAN**



## Doncaster Council

### Report

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Date: 02.04.2019

#### To the Chair and Members of the PLANNING COMMITTEE

**Application to modify terms of Section 106 Agreement relating to the timing, details of works, implementation programme and safety measures associated with the Railway Crossing Improvement Scheme, in connection with planning application 01/1201/P (mixed use development at Manor Farm, Bessacarr) – application reference 18/00717/DOV.**

Relevant Cabinet Member(s)	Wards Affected	Key Decision
Cllr C McGuiness	Finningley	No

#### EXECUTIVE SUMMARY

1. This agenda item was deferred from planning committee on the 5<sup>th</sup> of March 2019 as Members requested further clarification on the contractual arrangements and timescales for delivery of the underpass, for further clarification on the points raised by an objector and for consideration of other pedestrian routes that could be used as an alternative to the underpass. The objector, Network Rail and Persimmon have been requested to provide this information which will be summarised in a briefing note and circulated to Members of the Planning Committee prior to the meeting on the 2<sup>nd</sup> of April 2019.
2. Persimmon Homes have submitted an application to modify the terms of a Section 106 agreement in order to allow further homes to be occupied on the Manor Farm development before the railway crossing scheme (an underpass) is provided.
3. The original Section 106 agreement states that no more than 100 homes are to be occupied, or no dwellings on Phase 2 are to be constructed (whichever is the later), until a scheme to provide details of the proposed upgrading of the

level crossings at Bessacarr Lane and if applicable Carr Lane.

4. During the consideration of the first Reserved Matters application, Network Rail and Persimmon agreed a Heads of Terms document whereby up to 150 dwellings could be occupied, and if the underpass was still not in place, then more than 150 dwellings could be occupied with additional safety measures.
5. The Heads of Terms document was not formalised, despite the parties working within the perimeters of the agreement, and the original Section 106 agreement was not at this time varied. A condition was however imposed, following consultation with Network Rail, that no more than 150 dwellings were to be occupied prior to 31 December 2015 and the completion of the improvement works (upgrading of the crossing) set out in the Section 106 agreement. This condition was added at the request of Network Rail. A further condition was imposed for a 1.8m high fence running North – South across the site to prevent occupants from phase one of the development being able to access Carr Lane Crossing until the railway crossing scheme (underpass) is in place and open to the public.
6. The fence is in place and Network Rail is satisfied that this measure is effective.
7. Network Rail have assessed the risk of allowing up to 250 homes to be occupied without a railway crossing scheme in place and have produced a report 'House Occupations at Manor Farm Development: Risk/Mitigation of Risk to Rail Crossing Users' dated February 2018. This document considers the evidence and analysis with regard to the relationship of the Persimmon Homes house occupancy with the usage of the Bessacarr Halt Level Crossing. The report sets out that the statutory consultee, Network Rail is satisfied that at the current time sufficient measures are in place to allow a further 100 number of houses to be occupied, giving a total of 250 occupancy.
8. Persimmon must still fulfil their requirement to provide an underpass as part of the legal agreement to support the Manor Farm development.
9. Network Rail, as the statutory consultee, have no objection to the proposal. In considering whether the application is acceptable in principle, the local planning authority rely heavily on the advice and expertise provided by Network Rail on whether risk is acceptable.
10. Since the submission of the Deed of Variation, the 150 dwelling limit has been exceeded, and the occupation level in February 2019 was 187. Network Rail are aware of this and this follows their reassessment of occupancy to 250. Network Rail have supported Persimmon at a Level Crossing Safety Event on the 5<sup>th</sup> of February 2019, which is one of the soft measures outlined in the report that should be in place to support the increased number. As such, the authority has not considered it expedient to take enforcement action i) because the application to vary the agreement had been submitted and was being determined, and ii) Network Rail were aware of the increased occupancy and raised no objection to the increased occupancy level.

11. A number of representations have been made as a result of the advertisement of the Deed of Variation application. Councillor Neil Gethin has requested that the proposal be decided by the Planning Committee. Councillor Richard Allan Jones has objected to the proposal.

## **EXEMPT REPORT**

11. Not applicable.

## **RECOMMENDATIONS**

12. It is recommended that Members approve a Deed of Variation to the Section 106 agreement to allow up to 250 dwellings to be occupied prior to the underpass being in place.

## **WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?**

13. Until the two level crossings at Bessacarr Lane and Carr Lane are closed and the underpass is in place, there could be a slight increase in users crossing the railway line at the Manor farm development. As such, there remains a safety risk when crossing the railway line.
14. In terms of assessing what this risk will be, the authority have considered Network Rail's assessment which states that the occupation of 250 houses, with mitigation measures, would not pose a significant risk, as the risk level is considered to be as low as reasonably practicable.

## **BACKGROUND**

15. On the 14<sup>th</sup> of March 2018, Persimmon Homes Limited submitted a formal request to DMBC vary the section 106 agreement attached to application 01/1201/P which was signed 23<sup>rd</sup> September 2009 and approved on appeal by the Secretary of State on the 13<sup>th</sup> of January 2010.
16. The Secretary of State agreed with the Inspector appointed to the case that the proposed closure of both railway crossings (Carr Lane and Bessacarr Lane) and the provision of a grade-separated railway bridge at Bessacarr Lane would reduce the potential risks associated with crossing the railway.
17. As set out in the section 106 agreement, no dwellings are to be constructed in Phase 2 or no more than 100 dwellings are to be occupied (whichever is the later) until the developer has submitted, and had approved by the Council in consultation with Network Rail, a scheme to provide details for the proposed upgrading of the level crossings at Bessacarr Lane and if applicable Carr Lane. This scheme is to include details of the works proposed to upgrade the level crossing at Carr Lane and upgrade or replace by means of grade separation the level crossing at Bessacarr Lane. It must also to include an implementation programme for the timing of the works referred to in the

scheme.

18. During the consideration of the first Reserved Matters application (11/00719/REMM), Network Rail raised an objection in relation to the increase in risk to pedestrian safety. This objection which was subsequently withdrawn subject to conditions and the requirement of a deed of covenant. One such condition was that no more than 150 dwellings shall be occupied until such time as the underpass has been implemented.
19. Despite not being formally signed, both Persimmon and Network Rail continued to work to an agreed set of Heads of Terms. As part of this agreement, no more than 150 dwellings were to be occupied until the railway improvement scheme was completed.
20. As part of the Heads of Terms, other provisions were set out in the event that the crossing was not completed by 31<sup>st</sup> December 2015 and Persimmon wished to allow occupation of more than 150 dwellings. In these circumstances, it was set out that additional safety controls would be agreed between Network Rail and Persimmon and implemented to address any net increased use of the level crossings over that recorded in the full census undertaken in 2009.
21. Whilst the Railway Crossing Improvement Scheme has been agreed in the form of an underpass under reference number 15/02914/PRIOR, the underpass is not yet in place.
22. Before reaching the 150 dwelling trigger, Persimmon Homes asked Network Rail whether any additional safety measures were necessary for more than 150 dwellings to be occupied. Network Rail produced the report 'House Occupations at Manor Farm Development: Risk/Mitigation of Risk to Rail Crossing Users', dated February 2018, and this has been submitted with the Deed of Variation.
23. The report looked at census survey data (pre and post development commencement), considering the population projections and made assumptions about source and destination in considering rail crossing usage, and made an assessment of risk and recommendations for additional safety controls.
24. Network Rail consider that there is scope to increase housing numbers subject to mitigation. It is recognised that in the short term there may be a slight increase in users crossing the railway line, but the measures outlined below are considered sufficient to address the increased number of users and mitigate the increase in risk;
25. Mitigation will include:
  - An agreed plan to move the miniature warning lights to a better position for visibility
  - Awareness days to be undertaken in line with the rate of home

occupancy

- Materials to brief residents regarding level crossing safety
  - In addition to the above, Network Rail will continue to monitor the usage at the crossings during the period until the underpass is in situ.
26. Network Rail summarise that they have considered the evidence and analysis with regard to the relationship of the Persimmon Homes house occupancy with the usage of the Bessacarr Halt Level Crossing and, it is satisfied that sufficient measures are in place to allow a further 100 number of houses to be occupied, giving a total of 250 occupancy. Persimmon must however, still fulfil their requirement to provide an underpass.
27. Network Rail also state that it was agreed that the developer should implement a steel palisade barrier running North-South across the site to prevent occupants from phase one of the development being able to access Carr Lane Crossing until such times as an underpass is in place, Network Rail is satisfied that this measure is effective in its position. This fence is to discourage new occupants from using the Bessacarr Lane crossing and to stop them from using Carr Lane crossing, and according to Network Rail, has proved to be more effective than originally envisaged,
28. As stated earlier in this report Network Rail have already supported Persimmon at a Level Crossing Safety Event on the 5th of February 2019 which is one of the soft measures outlined in the report that should be in place to support the increased number.
29. The local planning authority have requested that trigger points are inserted into the deed of variation for the developer to inform the council at different levels of occupancy to ensure that the figure cannot be further exceeded. This would be at the 210th dwelling and 240th dwelling which enables sufficient monitoring.

## **OPTIONS CONSIDERED**

30. Option 1 (Preferred Option): To approve the Deed of Variation and allow Persimmon Homes to occupy up to 250 homes prior to the underpass being in place and open to use by the public, subject to the mitigation measures set out in the Network Rail Report.
31. Option 2: Refuse the Deed of Variation and serve an enforcement notice to prevent further homes being occupied prior to the underpass being in place. Construction could still however continue.

## **REASONS FOR RECOMMENDED OPTION**

32. The statutory consultee, Network Rail do not object to the proposal. They

are comfortable with the proposed occupancy level of up to 250 dwellings subject to the mitigation measures set out in the report.

33. Network Rail are the experts on rail safety, and have provided the local authority with robust supporting information in the form of a report with added mitigation measures.
34. Network Rail are aware that the 150 dwelling trigger has been exceeded and that current levels are at 187 dwellings occupied. As this is within the 250 limit which has been risk assessed, and mitigation is in place, they remain satisfied with this.
35. The proposed trigger points would ensure that the occupancy levels on site are closely monitored.

### IMPACT ON THE COUNCIL'S KEY OUTCOMES

	<b>Outcomes</b>	<b>Implications</b>
	<p><b>Doncaster Working:</b> Our vision is for more people to be able to pursue their ambitions through work that gives them and Doncaster a brighter and prosperous future;</p> <ul style="list-style-type: none"> <li>• Better access to good fulfilling work</li> <li>• Doncaster businesses are supported to flourish</li> <li>• Inward Investment</li> </ul>	<p>This outcome is likely to be unaffected.</p>
	<p><b>Doncaster Living:</b> Our vision is for Doncaster's people to live in a borough that is vibrant and full of opportunity, where people enjoy spending time;</p> <ul style="list-style-type: none"> <li>• The town centres are the beating heart of Doncaster</li> <li>• More people can live in a good quality, affordable home</li> <li>• Healthy and Vibrant Communities through Physical Activity and Sport</li> <li>• Everyone takes responsibility for keeping Doncaster Clean</li> <li>• Building on our cultural, artistic and sporting heritage</li> </ul>	<p>Network Rail are satisfied with the risk to public safety given the mitigation measures outlined.</p>
	<p><b>Doncaster Learning:</b> Our vision is for learning that prepares all children,</p>	<p>This outcome is likely to be unaffected.</p>

	<p>young people and adults for a life that is fulfilling;</p> <ul style="list-style-type: none"> <li>• Every child has life-changing learning experiences within and beyond school</li> <li>• Many more great teachers work in Doncaster Schools that are good or better</li> <li>• Learning in Doncaster prepares young people for the world of work</li> </ul>	
	<p><b>Doncaster Caring:</b> Our vision is for a borough that cares together for its most vulnerable residents;</p> <ul style="list-style-type: none"> <li>• Children have the best start in life</li> <li>• Vulnerable families and individuals have support from someone they trust</li> <li>• Older people can live well and independently in their own homes</li> </ul>	<p>The assessment report written by Network Rail shows that the occupation of 250 houses would not pose significant risk, as the risk level is considered to be as low as reasonably practicable. Network Rail is also satisfied with the existing and proposed mitigation.</p>
	<p><b>Connected Council:</b></p> <ul style="list-style-type: none"> <li>• A modern, efficient and flexible workforce</li> <li>• Modern, accessible customer interactions</li> <li>• Operating within our resources and delivering value for money</li> <li>• A co-ordinated, whole person, whole life focus on the needs and aspirations of residents</li> <li>• Building community resilience and self-reliance by connecting community assets and strengths</li> <li>• Working with our partners and residents to provide effective leadership and governance</li> </ul>	<p>This outcome is likely to be unaffected.</p>

## RISKS AND ASSUMPTIONS

36. Should the Deed of Variation not be approved, the decision could be appealed and the local authority susceptible to costs. Network Rail would likely be an expert witness for the appellant.

#### **LEGAL IMPLICATIONS [HL 22.09.2019]**

Where an application is made to modify or discharge a planning contribution made under the Town and Country Planning Act 1990, the LPA may decide to either:

- (a) continue the planning contribution without modification
- (b) discharge it, if it no longer serves a useful purpose; or
- (c) if it continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications applied for, then allow the modifications, provided it does not place any burden on a third party.

Where the LPA decides not to allow a modification or change, and the agreement has been in existence for 5 years or more the applicant may appeal the determination to the Secretary of State, pursuant to section 106B of the Town and Country Planning Act 1990 (as amended).

#### **FINANCIAL IMPLICATIONS [Officer Initials: DR; 22<sup>nd</sup> February 2019]**

37. The proposed Deed of Variation is not expected to give rise to any direct financial implications for the Council.

#### **HUMAN RESOURCES IMPLICATIONS [Officer Initials: AC: 22/02/2019]**

38. There are no HR implications.

#### **TECHNOLOGY IMPLICATIONS [Officer Initials: NE: 21/02/2019]**

39. There are no technology implications.

#### **HEALTH IMPLICATIONS [Officer Initials: RS; 24.02.2019]**

40. There is a potential risk that increasing the number of occupied homes on the Manor Farm development could lead to increased safety concerns at the Bessacarr Halt Level Crossing.
41. However, the mitigations put in place by Network Rail appear sufficient for decision makers to approve the recommendation.

#### **EQUALITY IMPLICATIONS [Officer Initials: NE: 22/02/2019]**

42. There are no equality implications.

## CONSULTATION

43. The proposal was advertised by means of site notice posted in 6 locations on the 6<sup>th</sup> of April 2018. The locations included both sides of each level crossing, Bawtry Road and within the Manor Farm development.
44. Objections have been received from three individuals and highlight the following concerns, officer comments are in italics;
- Allowing more residents poses a greater safety risk (*Network Rail are satisfied with the increase in risk and the mitigation measures, Network Rail are the experts on rail safety*)
  - The proposed construction of the underpass has been going on too long, no date has been fixed for its installation (*Commencement of the works is not within the local planning authority's control. However it is understood that Persimmon Homes committed to delivery of the underpass*)
  - Objection to the construction of the underpass at Kelsey Gardens (*this is not the subject of this Deed of Variation*)
  - The Deed of Variation cannot be discussed without referring to the proposed Public Right of Way (PROW) diversion request (*Does not affect the ability to consider an increase in occupancy, whilst this will need to be agreed before the underpass is in use, in legislation terms, they are separate processes*)
  - Assumption by Network Rail and Persimmon that the Deed of Variation and PROW applications are going to be approved (*The decision whether to allow the Deed of Variation rests with the Planning Committee. The diversion of a PROW cannot be assumed. If objections to a PROW Diversion Order are received within the specified time limit and are not withdrawn, the Council must refer the Order to the Secretary of State who will take the decision on whether or not to confirm the Order to divert a PROW*)
  - Network Rail confirm that the proposal increases the risk to users of Bessacarr Halt (*They have confirmed that the risk level is as low as reasonably practicable and have no objections*)
  - In paragraphs 3.3 to 3.6 of the above Network Rail's "House Occupation.." document is a claim that the current ALCRM risk figure (i.e., 2018) has reduced despite increased usage. In other words the building site conditions have resulted in a safer crossing than the original farmer's field. (*Network Rail state that in the short term there may be an increase in users as a result of the housing development, for which mitigation measures are in place to address*).

- Concern that Network Rail's monitoring is after the event (*Mitigation is in place, Network Rail will continue to monitor the situation*).
- Concern that there will be a further request for an extension (*This would be subject to further consideration under a separate application for a Deed of Variation, should this be the case*).
- Network Rail are not an impartial consultee (*Network Rail are a statutory consultee for development affecting the railway and are the experts on rail safety issues*).
- Network Rail clearly have an internal issue relating to the safety at Bessacarr Halt. This is evidenced by the April 2014 submission to close that level crossing. There is now a notice attached to the level crossing gates which stated:  
"This crossing is closed to vehicular use until the construction of the nearby housing estate is completed."
- Heads of Terms do not mention an underpass at Kelsey Gardens (*Does not affect the ability to consider an increase in occupancy*)
- Road not delivered through the development site to allow maintenance to the East Coast line. (*Does not affect the ability to consider an increase in occupancy*)
- Still outstanding issues with the underpass (final footpath design, PROW not approved) (*Does not affect the ability to consider at increase in occupancy, although the PROW will need to be diverted before the underpass is constructed and brought into use*)
- There is a Stopping Up Order for the Bessacarr Halt B.O.A.T. which was issued in June 2011. It still has not been activated. If Network Rail or Persimmon were genuinely concerned about safety surely they could have activated the Order. (*Not relevant to the increase in occupancy*)

45. Ward Members in both the Finningley and Bessacarr wards have been consulted and the following comments have been received;

- Cllr Gethin objects on safety grounds and convenience given the only current safe walking to local shops is via Warren Lane. There will remain the Public Right of Way across Carr Lane and Bessacarr Lane crossings, at least for now. I am surprised that Network Rail are in agreement with this proposal given their desire to close Level crossings along their rail lines. I also understand there is an expected increase in freight traffic along the line hence increasing the probability of an incident. I also have concerns that the figures using the crossings may be artificially low given that the people of Manor

Farm are denied access to the Public Right of Way across the Carr Lane.

- Cllr Jones objects to the proposal and considers that the underpass needs to progress and should have timescales and other requirements written into the variation as a clear understanding of when the underpass will be completed.

46. Further consultation includes;

- Network Rail – An initial limit of 150 homes was set. As envisaged by the HOTS at para 6.2, this figure has now been reviewed based on an up to date survey and risk assessment. The proposal to extend the limit of occupations at this stage to 250 dwellings is considered acceptable in light of the assessment of risk. Subject to a satisfactory wording of the S106 Network Rail has no objection to the proposal.
- Finningley and Cantley Parish Council – No comments received.
- Safer Communities Manager – No comments received.
- Health and Safety Executive - HSE does not advise, on safety grounds, against the granting of planning permission in this case (*their concern is the gas pipeline and comments provided from them relate to this*)
- Public Rights of Way – No comments received in respect of the increase in numbers.
- Area Manager – No comments received.

## **BACKGROUND PAPERS**

- Documents submitted in support of application reference 18/00717/DOV.

## **REPORT AUTHOR & CONTRIBUTORS**

Nicola Elliott, Principal Planning Officer, Development Management  
01302 734860; nicola.elliott@doncaster.gov.uk

**Peter Dale**  
**Director of Regeneration and Environment**

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2 April, 2019

**To the Chair and Members of the Planning Committee**

**APPEAL DECISIONS**

**EXECUTIVE SUMMARY**

1. The purpose of this report is to inform members of appeal decisions received from the planning inspectorate. Copies of the relevant decision letters are attached for information.

**RECOMMENDATIONS**

2. That the report together with the appeal decisions be noted.

**WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?**

3. It demonstrates the ability applicants have to appeal against decisions of the Local Planning Authority and how those appeals have been assessed by the planning inspectorate.

**BACKGROUND**

4. Each decision has arisen from appeals made to the Planning Inspectorate.

**OPTIONS CONSIDERED**

5. It is helpful for the Planning Committee to be made aware of decisions made on appeals lodged against its decisions.

**REASONS FOR RECOMMENDED OPTION**

6. To make the public aware of these decisions.

**IMPACT ON THE COUNCIL'S KEY OUTCOMES**

7.

	<b>Outcomes</b>	<b>Implications</b>
	Working with our partners we will provide strong leadership and governance.	Demonstrating good governance.

**RISKS AND ASSUMPTIONS**

8. N/A

### **LEGAL IMPLICATIONS [Officer Initials HL Date 20/03/19]**

9. Sections 288 and 289 of the Town and Country Planning Act 1990, provides that a decision of the Secretary of State or his Inspector may be challenged in the High Court. Broadly, a decision can only be challenged on one or more of the following grounds:
- a) a material breach of the Inquiries Procedure Rules;
  - b) a breach of principles of natural justice;
  - c) the Secretary of State or his Inspector in coming to his decision took into account matters which were irrelevant to that decision;
  - d) the Secretary of State or his Inspector in coming to his decision failed to take into account matters relevant to that decision;
  - e) the Secretary of State or his Inspector acted perversely in that no reasonable person in their position properly directing themselves on the relevant material, could have reached the conclusion he did;  
a material error of law.

### **FINANCIAL IMPLICATIONS [Officer Initials BC Date 20/03/19]**

10. There are no direct financial implications as a result of the recommendation of this report, however Financial Management should be consulted should financial implications arise as a result of an individual appeal.

### **HUMAN RESOURCES IMPLICATIONS [Officer Initials CR Date 20/03/19]**

11. There are no Human Resource implications arising from the report.

### **TECHNOLOGY IMPLICATIONS [Officer Initials PW Date 20/03/19]**

12. There are no technology implications arising from the report

### **HEALTH IMPLICATIONS [Officer Initials RS Date 20/03/19]**

13. It is considered that there are no direct health implications although health should be considered on all decisions.

### **EQUALITY IMPLICATIONS [Officer Initials IH Date 20/03/19]**

14. There are no Equalities implications arising from the report.

### **CONSULTATION**

15. N/A

### **BACKGROUND PAPERS**

16. N/A

### **CONCLUSIONS**

17. Decisions on the under-mentioned applications have been notified as follows:-

<b>Application No.</b>	<b>Application Description &amp; Location</b>	<b>Appeal Decision</b>	<b>Ward</b>	<b>Decision Type</b>	<b>Overturned</b>
15/00878/FULM	Erection of 23 dwellings on approx 0.53ha of land with associated garages and car parking (AMENDED PLANS) at Land Off Marshland Road, Moorends, Doncaster, DN8 4TP	Appeal Allowed 01/03/2019	(Historic) Stainforth And Moorends	Committee	Yes
18/01994/FUL	Erection of garden wall to front of property (retrospective) as well as the addition of railings and gates at 6 Brookfield Mews, Arksey, Doncaster, DN5 0UB	Appeal Dismissed 13/03/2019	Bentley	Delegated	No

#### **REPORT AUTHOR & CONTRIBUTORS**

Mr I Harris  
01302 734926

TSI Officer  
ian.harris@doncaster.gov.uk

**PETER DALE**  
**Director of Regeneration and Environment**

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## Appeal Decision

Site visit made on 10 January 2019

by **D Guiver LLB (Hons) Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 1 March 2019

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**Appeal Ref: APP/F4410/W/18/3213666**

**Land off Marshland Road/Bloomhill Court, Moorends, Doncaster DN8 4PF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by D Noble Limited against the decision of Doncaster Metropolitan Borough Council.
  - The application Ref 15/00878/FULM, dated 13 April 2015, was refused by notice dated 4 July 2018.
  - The development proposed is construction of 23 no. 2, 3 and 4-bed dwellings and associated car parking.
- 

### Decision

1. The appeal is allowed and planning permission is granted for construction of 23 no. 2, 3 and 4-bed dwellings and associated car parking at Land off Marshland Road/Bloomhill Court, Moorends, Doncaster DN8 4PF in accordance with the terms of the application, Ref 15/00878/FULM, dated 13 April 2015, subject to the conditions in the attached Schedule.

### Application for costs

2. An application for costs was made by D Noble Limited against Doncaster Metropolitan Borough Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. Since the date of the Council's decision, the National Planning Policy Framework (the Framework) has been published and has effect. The parties have had the opportunity to make representations on the effect of the Framework on the application and I have taken all comments into consideration in this decision.
4. The Council has identified contributions normally required for the provision of affordable housing, public open space and school places. Such provision would normally be secured by a planning obligation pursuant to Section 106 of the Town and Country Planning Act 1990. I deal with this matter below.

### Main Issues

5. The main issues are the effect of the proposed development on:
  - a) highway safety; and

- b) the living conditions of the occupiers of neighbouring dwellings.

### **Reasons**

6. The appeal site comprises an area of open land surrounded by buildings on Marshland Road, Bloomhill Court and Darlington Grove. The area is largely residential in character with a small shop located close to the north-eastern corner of the site. The proposal is for the erection of 23 dwellings, with associated garages and car parking. Three properties would front and take vehicular access from Marshland Road, while the remainder would be accessed off Bloomhill Court, mainly from a new estate road.

#### *Highway Safety*

7. Bloomhill Court is a small estate of 100 or so houses arranged into a number of smaller culs de sac and a longer main estate road running through the centre. The estate is within a 20mph speed zone. The culs de sac vary in size but typically have housing on both sides of the road. However, the street leading to the Bloomhill Court entrance to the site has dwellings only on one side of the road, save for a few near the entrance to the road. The culs de sac are characteristically short but some have a slight bend in the road or are 'T' shaped. It is unlikely that any traffic would be able to travel at excessive speeds in any of the culs de sac due to their respective lengths and designs.
8. The 20 or so dwellings that in the scheme would require access through Bloomhill Court would inevitably increase the number of traffic movements on the road. However, given the bends in the road and the overall 20mph speed restriction, I consider that increased vehicle and pedestrian traffic would not lead to any unacceptable risk to highway safety from collisions. I note that the Council's Highway Development Control Officer did not raise any object to the scheme.
9. Therefore, the proposal accords with Policies CS1 and CS14 of the Doncaster Council Core Strategy 2012 (the Core Strategy) which seek to ensure that developments secure the safety of the highway.

#### *Living Conditions of Occupiers of Neighbouring Dwellings*

10. The Council describes the character of the road off which the main access would be taken as a quiet cul de sac but does not appear to provide any compelling evidence to substantiate the description. However, it is reasonable to assume that traffic noise would be limited by the low speeds attainable and that the relatively small number of properties in the area would result in limited domestic noise.
11. The Council states that, by their very nature, the additional vehicular and pedestrian trips could harm the amenity of existing residents but does not state exactly how that harm would occur or that any harm would be unacceptable. The proposed development would inevitably add to the traffic volume in the cul de sac, but this would be similarly slow moving. The additional noise of engines starting and doors closing, and other domestic disturbance, would probably be restricted to the houses in the proposed development and in any event the likely journey numbers would remain small. It is therefore unlikely that the proposal would result in any significant or unacceptable disturbance to existing residential occupiers.

12. The Council also refers to interested parties' objections that there is a problem with vehicles queuing to leave Bloomhill Court at the junction with Marshland Road and states that the scheme would exacerbate the problem. However, there is no clear evidence of a specific problem and the additional dwellings proposed would not necessarily result in an unacceptable increase in vehicle journeys at peak times.
13. Moreover, any increase in traffic volumes should be measured against the 100 or so dwellings in Bloomhill Court as a whole. Presumably the road between Bloomhill Court and Marshland Road is adequate for anticipated traffic from the whole estate and the small probable overall rise would be unlikely to result in any unacceptable impact on the junction. As above, I note that the Council's Highway Development Control Officer did not raise any objection to the scheme.
14. Therefore, the proposal accords with Policies CS1 and CS14 of the Core Strategy which seek to ensure that developments protect local amenity.

#### *Planning Obligation*

15. Planning obligations should only be sought where they meet the tests in paragraph 56 of the Framework. The Council's Education Team has identified the potential requirement for three additional secondary school places likely to arise from the scheme. Policy CS12 of the Core Strategy provides that developments of 15 or more houses should secure the provision of affordable housing, either on site or through payment of a commuted sum. Policy CS17 seeks to ensure that schemes contribute to sport and recreation by providing appropriate on-site open space or a commuted sum towards equivalent off-site provision. The Council has calculated commuted sums of £54,891 to fund educational places and £21,750 to fund off-site open space.
16. There is no planning obligation before me to secure affordable housing or any commuted sum for education and open space provision. However, viability appraisals for the proposed development concluded that an open-market scheme with an affordable housing provision would not be viable. An additional appraisal of the scheme based on a 100% affordable housing scheme that also required commuted sums for education and open space provision would also not be viable. It is common ground that the viability appraisals are an accurate reflection of current market conditions and consequently no planning obligation should be sought.

#### **Other Matters**

17. There is a dispute between the parties over whether an assessment was agreed of the likely number of additional trips the development would generate. It does not appear to be in dispute that the scheme is below threshold at which any assessment of traffic movements would be required. However, even if the highest projected traffic estimate of traffic movements in the evidence before me is correct it would not alter my conclusion on the main issues. It is therefore unnecessary for me to reach a conclusion on this area dispute between the parties.
18. Interested parties have objected to the proposal for a number of reasons including: flooding; overshadowing, overlooking and loss of privacy; impact on

- wildlife; loss of vehicle turning space; loss of greenfield; anti-social behaviour; and underground electrical cables.
19. The appeal site is in Flood Zone 3 but it is common ground between the parties that both the sequential test and the exception test are met. The appellant has provided a Flood Risk Assessment (FRA) which identifies appropriate mitigation measures, and this has been accepted by the Environment Agency. The proposed mitigation measures and drainage systems should not have a detrimental impact on the occupiers of neighbouring dwellings.
  20. The application plans show dormer bungalows on two plots which have been included to address potential areas of overshadowing and overlooking of properties on Marshland Road. Other buildings would be constructed at oblique angles to neighbouring properties to reduce any risk of overlooking to an acceptable level. The separation distances of the majority of the proposed houses would exceed 20 metres and would meet the Council's recommended ten metres of separation between buildings and rear garden boundaries.
  21. There is no evidence before me of any high value habitats on the appeal site and while there might be some impact on local wildlife from the loss of vegetation, this could be mitigated with nesting boxes and bat boxes or bricks. I note that the Council's Ecologist agrees, and that Natural England does not object to the proposal.
  22. The existing part of the cul de sac road described as a vehicle turning point forms part of the carriageway and appears to be adopted highway. The use of this part of the road for turning would not be precluded by the proposed development in the same way that any similar turning could be used. While the site is greenfield, it is also allocated for housing within the local development plan so development is anticipated and acceptable in principle. Alternative sites were investigated and discounted when considering the sequential test for the FRA.
  23. There is no evidence before me to demonstrate that future occupiers of the site would be any more likely than the general population to cause or commits acts of anti-social behaviour and I therefore attach very little weight to this argument. The question of electrical cables beneath the surface of the appeal site is a matter that any developer would have to address with the relevant statutory undertaker and is a private law matter, not a planning matter.

### **Conditions**

24. The conditions set out in the accompanying Schedule are based on those suggested by the Council. Where necessary I have amended the wording of these in the interests of precision and clarity in order to comply with the advice in the Planning Practice Guidance. In the interests of proper planning I have imposed the standard condition in respect of time limits. For certainty I have imposed a condition requiring compliance with the relevant application plans.
25. To reduce the risk from flooding I have imposed conditions requiring compliance with the mitigation measures identified in the FRA and for an approved Flood Evacuation Plan. To ensure that the site is adequately drained I have also imposed a condition requiring the approval and implementation of foul and surface water drainage systems.

26. In the interests of highway safety I have imposed a condition requiring the access road to be completed before first occupation. To ensure that the amenity of neighbouring occupiers is not unnecessarily disrupted I have imposed a condition requiring the submission and approval of a construction method statement.
27. To protect the character and appearance of the area I have imposed conditions requiring approval of external facing materials and approval of a landscaping plan. To protect the ecology of the area I have imposed a condition requiring the installation of nesting and roosting sites for birds and bats. To ensure that the site is free of any contamination I have imposed conditions requiring an assessment and mitigation measures and the testing of materials brought onto the site.
28. To protect the living conditions of neighbouring occupiers with particular regard to privacy and to ensure that potential alterations to dwellings do not have a detrimental impact on flood risks, I have removed permitted development rights for the installation of additional windows and other alterations.

**Conclusion**

29. For the reasons given and taking account of all other material considerations, I conclude that the appeal should succeed.

*D Guiver*

INSPECTOR

## Schedule

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3996-00 Rev B; 3996-01 Rev N; 3996-03 Rev B; 3996-05 Rev B; 3996-06 Rev C; 3996-07 Rev B; 3996-09 Rev A; 3996-10 Rev C; 3996-12 Rev B; 3996-13 Rev E; 3996-14 Rev C; 3996-15 Rev E; 3996-16 Rev D; 3996-17 Rev B; 3996-18 Rev A.
- 3) The development hereby permitted shall be carried out in accordance with the mitigation measures identified in the Flood Risk Assessment compiled by AAH Planning Consultants (Ref AAH/0805/14FRA) dated February 2015 (amended March 2018). The mitigation measures shall be fully implemented prior to first occupation of any dwelling unless otherwise agreed in writing by the local planning authority.
- 4) Before first occupation of any part of the development hereby permitted, a Flood Evacuation Plan shall be submitted to and approved in writing by the local planning authority. The Flood Evacuation Plan shall include the following details:
  - i) flood warning procedures;
  - ii) safe points of extraction and evacuation;
  - iii) the areas of responsibility for those participating in the Plan;
  - iv) implementation procedures;
  - v) communication strategies for occupiers; and
  - vi) details of a scheme to update the Plan.The Flood Evacuation Plan shall thereafter be maintained and adhered to.
- 5) Development shall not commence until a scheme for foul and surface water drainage shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme before any part of the development is first occupied.
- 6) The building shall not be occupied until a means of access for vehicles, pedestrians and cyclists shall have been constructed in accordance with the approved plans. The access shall be retained thereafter.
- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - v) wheel washing facilities;
  - vi) measures to control the emission of dust and dirt during construction;
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - viii) delivery, demolition and construction working hours;
  - ix) details of any external security lighting installation; and

x) the routing of contractors vehicles.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 8) No development shall take place until details of the materials to be used in the construction of the external surfaces shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 9) Before any part of the development is first occupied details of soft landscape works shall have been submitted to and approved in writing by the local planning authority. These details shall include:
- i) a statement setting out the design objectives and how these will be delivered;
  - ii) a schedule of the species and nursery stock specification in accordance with British Standard 3936: 1992 Nursery Stock Part One and planting distances of trees and shrubs;
  - iii) details of planting and staking/guying;
  - iv) boundary treatments;
  - v) an implementation programme, including phasing of work where relevant.

The landscaping works shall be carried out in accordance with the approved details and in accordance with the agreed implementation programme, and the local planning authority shall be notified within seven working days of practical completion. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance.

- 10) Before any part of the development is first occupied, five bird-nesting boxes and three bat boxes or bat bricks shall be provided on the site in accordance with a scheme submitted to and approved in writing by the local planning authority.
- 11) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
- i) a survey of the extent, scale and nature of contamination;
  - ii) the potential risks to:
    - human health;
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
    - adjoining land;
    - ground waters and surface waters;
    - ecological systems; and
    - archaeological sites and ancient monuments.

- 12) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 13) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 14) Any soil or soil forming materials brought onto site for use in garden areas, soft landscaping, filling and level-raising shall be tested for contamination and suitability for use on site. Proposals for contamination testing including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment) and source material information shall be submitted to the local planning authority and be approved in writing prior to any soil or soil forming materials being brought onto site. The approved contamination testing shall then be carried out and verification evidence submitted to and approved in writing by the local planning authority prior to any soil or soil forming materials being brought onto site.
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows other than those expressly authorised by this permission shall be constructed.
- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement, addition or extension shall be made other than those expressly authorised by this permission.

**END OF SCHEDULE**



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## Costs Decision

Site visit made on 10 January 2019

**by D Guiver LLB (Hons) Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 1 March 2019**

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### **Costs application in relation to Appeal Ref: APP/F4410/W/18/3213666 Land off Marshland Road/Bloomhill Court, Moorends, Doncaster DN8 4PF**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by D Noble Limited for a full award of costs against Doncaster Metropolitan Borough Council.
  - The appeal was against the refusal of planning permission for construction of 23 no. 2, 3 and 4-bed dwellings and associated car parking.
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### **Decision**

1. The application for an award of costs is allowed, in part, in the terms set out below.

### **Reasons**

2. The applicant submits that the Council has acted unreasonably in that it failed to substantiate the reasons for refusal and that the applicant was misled during the application process on the likelihood that the scheme would be approved. The applicant also submits that a narrative element of the decision notice in relation to officers working with the applicant was unjustified. Refusal was on the grounds that the access at the proposed development would not provide for 'a safe place for current residents to live' and would have an unacceptable negative impact on the amenity of neighbouring occupiers.
3. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG makes it clear that a local planning authority is at risk of an award of costs if it behaves unreasonably with respect to the substance of the matter under appeal by failing to produce evidence to substantiate each reason for refusal and introducing vague, generalised or inaccurate assertions about a proposal's impact that were unsupported by any objective analysis.

#### *Safe Place for Current Residents*

4. The reference to a 'safe place' is clearly a reference to the impact of the proposed development on highway safety and Members were entitled to take account of the concerns of residents about the increase in traffic. However, the Council describes highway safety concerns as a 'potential harm' arising from additional vehicle trips but provides no compelling evidence to show any actual risk and substantiate the reason for refusal.

5. Such a statement could be made of any proposal and in the absence of evidence of an actual risk to highway safety the reason for refusal was hypothetical and therefore unreasonable. Accordingly, the applicant incurred the unnecessary and wasted costs of an appeal to address this matter.

*Negative Impact on the Amenity of Neighbouring Occupiers*

6. The Council describes the area from which access would be taken as 'a quiet cul de sac' and identifies the impact of additional vehicular and pedestrian traffic as a potential source of harm the amenity of existing residents. It is reasonable to assume that additional dwellings would result in an increase in vehicle journeys. However, other than stating that the proposal could result in three times as many journeys, the Council does not offer any cogent evidence to show that the increase would result in unacceptable harm.
7. The majority of additional journeys would presumably occur at peak times when the existing occupiers are also undertaking the majority of their journeys and the likely result would still be a very small number. Moreover, the main sources of noise from doors closing and vehicles starting would be likely to occur on the appeal site and would cause no more disturbance to the occupiers of the cul de sac than similar noises elsewhere in Bloomhill Court.
8. In the absence of any compelling evidence to show a likely, rather than potential, negative impact on the living conditions of neighbouring occupiers, this reason for refusal was also hypothetical and therefore unreasonable. Accordingly, the applicant incurred the unnecessary and wasted costs of an appeal to address this matter.

*Misleading Indications*

9. There was clearly a significant period between submission of the application and the Council's final determination. It is common ground that during this time the parties were involved in extensive discussions and several modifications were made to the scheme. Each modification by the applicant was clearly designed to address issues that officers had raised and eventually the matter was referred to committee with a recommendation for approval.
10. The applicant accepts that Members are not bound to accept the recommendations of their officers and therefore cannot have been misled into thinking that the application was bound to be approved. Notwithstanding my conclusions above on the veracity of the reasons given, refusal *per se* would not on its own be unreasonable behaviour just because officers supported a proposal. I therefore conclude that the applicant was not misled.
11. The narrative paragraph in the decision notice accurately records the fact that extensive discussions occurred between the applicant and the Council. While the paragraph might be unnecessary and the word 'despite' at the beginning could be considered slightly self-serving, the words are factually accurate and do not introduce any unsustainable reason for refusal. I therefore conclude that the statement is not unjustified.

**Costs Order**

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that

Doncaster Metropolitan Borough Council shall pay to D Noble Limited the costs of the appeal proceedings described in the heading of this decision, those costs being limited to the costs incurred in addressing the highway safety implications and impact of the access on the living conditions of neighbouring occupiers, such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to Doncaster Metropolitan Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*D Guiver*

**INSPECTOR**

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# Appeal Decision

Site visit undertaken on 3 January 2019

**by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC**

An Inspector appointed by the Secretary of State

Decision Date: 13 March 2019

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**Appeal Ref: APP/F4410/D/18/3217405.**

**6 Brookfield Mews, Arksey, Doncaster, DN5 0UB**

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr. Martin Cartwright against the decision of Doncaster Council
  - The application, ref. 18/01994/FUL, dated 9 August 2018, was refused by notice dated 25 October 2018.
  - The development proposed is the erection of a garden wall to front of property (retrospective) as well as the addition of railings and gates.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. I have taken the description of development from the Decision Notice rather than the application form as this is more concise.
3. The Appellant has requested that the railings and gate be removed from the appeal decision and that the appeal be determined solely on the brick piers and the wall.
4. Given that this Appeal predominantly revolves around the principle of such a wall being constructed on the service margin, I have applied the 'Wheatcroft Principles'<sup>1</sup> and conclude that the acceptance of this amendment would not deprive those who should have been consulted on the changed development or the opportunity of such consultation. Consequently, I see no prejudice in basing my decision upon solely the wall and piers, without the railings or gates.

## Main issue

5. The main issue is the effect of the development upon highway safety in terms of visibility, use, access, parking and manoeuvrability.

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<sup>1</sup> Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

## Reasons

6. The appeal property lies to the end of a cul-de-sac where a 1.8 metre service margin is placed from the road edge on both sides of the road. This land is classed as public highway irrespective of land ownership.
7. The Appellant has erected a brick boundary wall alongside the road edge which encloses the service margin, so the effects of the development are already appreciable. Whilst no actual footpath has been constructed to the front of the appeal property, there is a clear service margin extending around the edges of the properties that front this particular cul-de-sac and which includes the appeal property. This is intended to act as a pedestrian refuge; to allow for the installation of utilities and services; and to ensure that the emergency services and other large vehicles are able to access and manoeuvre within the cul-de-sac.
8. Whilst I don't doubt that the Appellant has acted in good faith in the construction of the wall, and that the Appellant maintains ownership of the entire plot, the wall projects forward to the road edge and is not set back within the service margin to the extent of the remaining dwellinghouses within this cul-de-sac. I note comments in the Appellant's Statement with regards to ownership, however this will be the same scenario as each of the other residents within the cul-de-sac who also own all of the property, but maintain the service margin, even though there may be no physical marker to delineate the space.
9. Although the wall is 84 centimetres tall, the piers (excluding coping stones) reach a height of 1.32 metres and are of quite thickset and solid construction. I note comments that the Appellant believes that there is 'no material change to the access road,' however, in my mind, the loss of the service margin is significant. Given the curvature of the road at the point of the Appeal property, the piers would be seen together to present a more solid screening and further restrict and erode the current level of visibility splays of both pedestrians and vehicles entering and exiting the end of the cul-de-sac.
10. Although I acknowledge the Appellant's comments with regards to the low speed in which vehicles will be travelling along the cul-de-sac, and the slight widening of the road at this point, the further erosion of visibility has the potential to increase the likelihood of accidents to both pedestrians and vehicles. This situation is also accentuated by the parking of vehicles on the roadway which will further decrease the visibility.
11. In the recent short time that the wall has been constructed, it may not have been struck or resulted in an accident as yet, however a wall in this position does increase the likelihood of this occurring and associated accidents and injuries as a result. Emergency vehicles, delivery vehicles and refuse vehicles, some of which may not be used to manoeuvring within this space, may require this service margin to facilitate their entry and exit from the cul-de-sac, increasing the likelihood of a collision with the wall due to the narrowing of this space.

12. The Appellant has submitted letters from utility companies that state that the area to the front of the property does not contain any service infrastructure. However, this does not preclude the area being used for the installation of utilities in the future.
13. The Appellant states that the Ordinance Survey (OS) Master Map layer does not show the service margin and that the Land Registry Title Plan has a dotted line to the front of the property. However, whilst the OS Master Map is based upon land registry data, they are not land registry plans and should not be used in this way.
14. Whilst I note comments from the Appellant's Statement that the neighbouring cul-de-sac of Chadwick Gardens does not have service margins, this is not a comparable situation as the appeal property which is placed within a mews type development with curved cul-de-sacs which increases the need for appropriate visibility splays and service margins.
15. Consequently, I find that the development is detrimental to highway safety and the safe use, visibility, access, parking and manoeuvrability of vehicles. As such the application is in conflict with Policy CS14 of the Doncaster Council *Core Strategy* (which seeks high quality design, permeability and legibility) and relevant sections of the National Planning Policy Framework.

### **Conclusion**

16. For the reasons given above, the appeal is dismissed.

*J Somers*

INSPECTOR

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# Agenda Item 8.

By virtue of paragraph(s) 6 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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