



## AYLESBURY VALE DISTRICT COUNCIL

### Democratic Services

Please ask for: devcon@aylesburyvaledc.gov.uk;  
Switchboard: 01296 585858  
Text Relay Prefix your telephone number with 18001  
17 September 2019

### DEVELOPMENT MANAGEMENT COMMITTEE

A meeting of the **Development Management Committee** will be held at **1.00 pm on Friday 27 September 2019 in The Oculus, Aylesbury Vale District Council, The Gateway, Gatehouse Road, Aylesbury, HP19 8FF**, when your attendance is requested.

Contact Officer for meeting arrangements: devcon@aylesburyvaledc.gov.uk;

**Membership:** Councillors: T Mills (Chairman), A Bond (Vice-Chairman), J Brandis, M Collins, P Cooper, N Glover, R Khan, S Morgan, M Rand, Sir Beville Stanier Bt, D Town and P Strachan (ex-Officio)

### AGENDA

**1. APOLOGIES**

**2. TEMPORARY CHANGES TO MEMBERSHIP**

Any changes will be reported at the meeting.

**3. MINUTES (Pages 3 - 4)**

To approve as a correct record the Minutes of 5 September 2019 (Copy attached as an Appendix)

**4. DECLARATION OF INTEREST**

Members to declare any interests.

**5. 18/04264/APP - TITTERSHALL LODGE, KINGSWOOD LANE, WOTTON UNDERWOOD (Pages 5 - 32)**

Variation of condition 4 of planning permission 14/02604/APP to vary the wording of this condition to state that the building hereby approved shall only be used as a shooting lodge in connection with game shoots, simulated shoots and clay pigeon shoots operated on and from the land and the use of two rooms for overnight accommodation for clients attending shooting events, and no other purpose including, but not limited to, retail sales to members of the public other than those attending shooting events, or as a venue for hire.

Case officer: Diana Locking – [dlocking@aylesburyvaledc.gov.uk](mailto:dlocking@aylesburyvaledc.gov.uk)



**6. 18/04581/APP - EDISON POWER, LAND REAR OF PHOENIX HOUSE, RABANS LANE INDUSTRIAL AREA, SMEATON CLOSE, AYLESBURY (Pages 33 - 46)**

Construction and operation of an urban reserve 2x 2MW gas fired power plant and associated works

Case officer: Angela Brockett – [abrockett@aylesburyvaledc.gov.uk](mailto:abrockett@aylesburyvaledc.gov.uk)

**7. 19/00528/APP - 5 ROSEBERY MEWS, MENTMORE (Pages 47 - 56)**

Landscaping to replace steep clay bank, steps to access existing seating area, retaining wall to secure old yew tree roots, raised beds for planting and a sloping rose garden with steps for access (Retrospective)

Case officer: Jacqueline Stables – [jstables@aylesburyvaledc.gov.uk](mailto:jstables@aylesburyvaledc.gov.uk)

**8. SITE VISIT ARRANGEMENTS**

**9. HUMAN RIGHTS ACT (Pages 57 - 58)**

## DEVELOPMENT MANAGEMENT COMMITTEE

5 SEPTEMBER 2019

**PRESENT:** Councillor T Mills (Chairman); Councillors A Bond (Vice-Chairman), J Brandis, P Cooper, N Glover, S Morgan, Sir Beville Stanier Bt, P Strachan (in place of M Rand) and D Town. Councillor D Lyons attended also.

**APOLOGIES:** Councillors M Collins and R Khan and M Rand.

### 1. MINUTES

RESOLVED –

That the Minutes of the meetings held on 4 July, 2019, and 15 August, 2019 be approved as correct records.

### 2. DECLARATION OF INTEREST

**Minute 5 (Application 19/01281/APP)** – Councillor Bond declared a personal interest as Local Member.

**Minute 5 (Application 19/01281/APP)** – Councillor Mrs Glover declared a personal interest as the County Councillor for the Division that included Watermead.

**Minute 6 (Application 19/01900/APP)** – Councillor Cooper declared a personal interest as Local Member.

### 3. QUARTERLY PERFORMANCE REPORT - QUARTER 1

Members received a report which detailed workload and performance review for the Quarter April – June 2019. The report focussed on the following areas:

- Applications received and determined (which formed the basis for performance measured against the Government performance target NI157.)
- NI157 – Speed of determination of applications.
- Appeals against refusal of planning permission.
- Enforcement.
- Other workload.

RESOLVED –

That the report and update be noted.

### 4. 19/02250/APP - 2 AYLESWATER, WATERMEAD, AYLESBURY (WITHDRAWN)

This application was withdrawn from Committee as Watermead Parish Council had written withdrawing their objection to the application.

### 5. 19/01281/APP - 5 CURLEW, WATERMEAD

RESOLVED –

That the application be **Approved** as per the Officers' report.

**6. 19/01900/APP - 16A CRAFTON LODGE ROAD, CRAFTON**

RESOLVED –

That the application be **Deferred** to a future meeting of the committee in order to seek further clarification on the scope of the application and the permission sought.

**7. 18/04377/APP - LAND WEST OF WHADDON ROAD, NEWTON LONGVILLE**

RESOLVED –

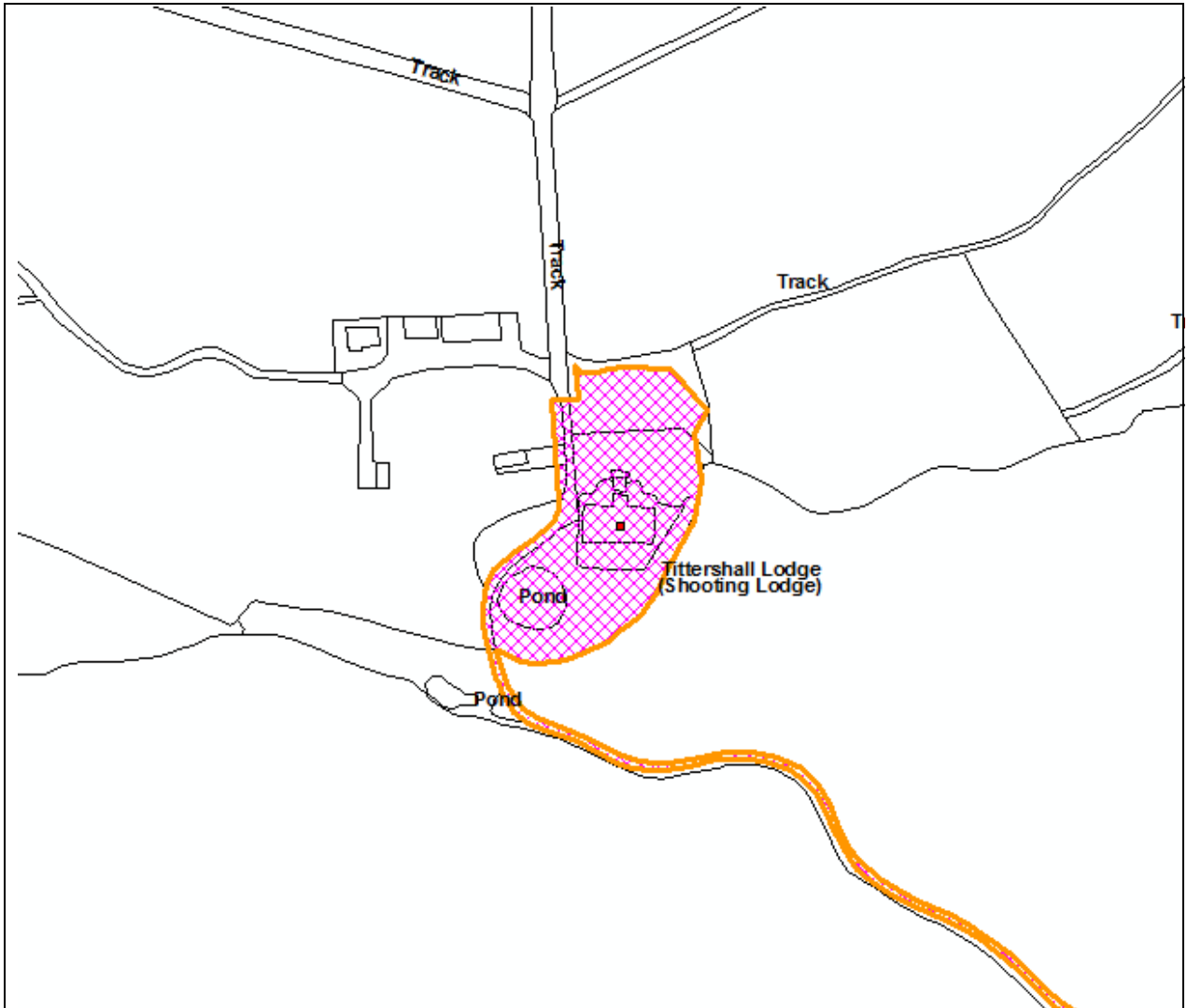
That the application be **Approved** as per the Officers' report, subject to Condition 7 referring to "East West Rail Alliance Phase 2 Construction Traffic Management Plan Compound B5" and not "East West Rail Alliance Phase 2 Construction Traffic Management Plan Compound B6".

**8. 19/00097/AOP - LAND ADJ. 38 EYTHROPE ROAD, STONE**

RESOLVED –

That the application be **Approved** as per the Officers' report.

18/04264/APP	
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REFERENCE NO	PARISH/WARD	DATE RECEIVED
18/04264/APP	<p data-bbox="651 340 1011 443">WOTTON UNDERWOOD The Local Member for this area is:</p> <p data-bbox="651 474 912 542">Councillor Cameron Branston</p>	29/11/18
<p data-bbox="146 443 619 1214">           VARIATION OF CONDITION 4 OF            PLANNING PERMISSION            14/02604/APP TO VARY THE            WORDING OF THIS CONDITION            TO STATE THAT THE BUILDING            HEREBY APPROVED SHALL            ONLY BE USED AS A SHOOTING            LODGE IN CONNECTION WITH            GAME SHOOTS, SIMULATED            SHOOTS AND CLAY PIGEON            SHOOTS OPERATED ON AND            FROM THE LAND AND THE USE            OF TWO ROOMS FOR            OVERNIGHT ACCOMMODATION            FOR CLIENTS ATTENDING            SHOOTING EVENTS, AND NO            OTHER PURPOSE INCLUDING,            BUT NOT LIMITED TO, RETAIL            SALES TO MEMBERS OF THE            PUBLIC OTHER THAN THOSE            ATTENDING SHOOTING            EVENTS, OR AS A VENUE FOR            HIRE.            TITTERSHALL LODGE            KINGSWOOD LANE            HP18 9FY            MS ROSA PIACQUADIO              STREET ATLAS PAGE NO.96         </p>		

## 1.0 The Key Issues in determining this application are:-

- a) The planning policy situation and the approach to be taken in determination of the application
- b) Whether the proposed variation of condition would constitute a sustainable form of development having development having regard to:
  - Building a strong competitive economy
  - Conserving and enhancing the natural environment
  - Conserving and enhancing the historic environment
  - Promoting sustainable transport
  - Impact upon the residential amenity

The recommendation is that permission be **GRANTED**, subject to conditions

## 2.0 BACKGROUND AND MAIN ISSUE

2.1 Retrospective Planning Permission was granted under reference 14/02604/APP on 5th January 2016 for the construction of the Shooting Lodge including the car park, patio and other incidental works at Tittershall Lodge, Kingswood Lane, Wotton Underwood.

2.2 The decision notice included a condition which restricted the use of the shooting lodge as follows (Condition 4):

The building hereby approved shall only be used as a shooting lodge in connection with game shoots operated on and from the land, and for no other purpose including overnight or residential accommodation, retail sales to visiting members of the public or as a venue for hire.

Reason: The building has been approved in the light of guidance in Para 17 of the NPPF because of the special needs of the game shoots operated on and from the land. This control is necessary to prevent inappropriate uses taking place and in the interests of highway safety given the substandard nature of the access to the site

2.3 The applicant has submitted a Section 73 Variation of Condition application which seeks to vary condition 4 as follows:

- to permit the use of the existing shooting lodge in connection with clay pigeon and simulated shooting
- to allow the existing shooting lodge to be used for the sales of goods to members of the public attending shooting events at the site
- to allow two existing storage rooms at first floor level within the shooting lodge to be used for overnight accommodation for clients attending shooting events.

## 3.0 CONCLUSION AND RECOMMENDATION

3.1 The application has been evaluated against the extant development plan and the NPPF. The shooting lodge is an existing building, and the principle of its use by visitors

participating in game bird shoots has previously been accepted under Planning Permission.

- 3.2 14/02604/APP. The variation of condition to enable the lodge to be used for clay pigeon and simulated shoots, which are existing lawful uses on the site under the 28 day rule, and to allow the sales of goods to members of the public attending shooting events, would accord with Para 83 of the NPPF which seeks to promote a strong rural economy and the sustainable growth and expansion of all types of business and enterprise in rural areas.
- 3.3 The use of two existing storage rooms for overnight accommodation would accord with policy GP72 of the AVDLP and Para 83 of the NPPF which also gives support given to sustainable rural tourism and leisure developments that have the potential to benefit businesses in rural areas. The support to a local business should be afforded positive weight in the planning balance.
- 3.4 It is considered that the proposed variation of condition 4 relating to the use of the existing shooting lodge would have no further impact upon the character and appearance of the countryside, sustainable transport or the amenity of residential properties. It is considered necessary to put two new conditions in place to limit the use of the overnight condition given that the local Planning Authority would not accept a new dwelling on the site given the open countryside location. With these conditions in place it is considered that the proposal would comply with policies GP8, GP24, GP35, GP72 and RA4 of the AVDLP and the NPPF
- 3.5 It is recommended that the application be approved subject to the following conditions:

- 1 Within 3 months from the date of this permission a scheme of landscaping shall be submitted for the approval in writing of the Local Planning Authority. The approved landscaping works shall be carried out in the first planting season following its approval.

Reason: In the interests of the visual amenities of the locality and to comply with policy GP38 of the Aylesbury Vale District Local Plan and the NPPF.

- 2 Any tree or shrub which forms part of the landscaping scheme approved under Planning Permission 14/02604/APP which within a period of five years from planting fails to become established, becomes seriously damaged or diseased, dies or for any reason is removed shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be approved by the Local Planning Authority.

Reason: In the interests of the visual amenities of the area and to comply with Policy GP38 of the AVDLP and the NPPF.

- 3 The area shown for parking and manoeuvring on the approved plan reference 218/2014/01, approved under Planning Permission 14/02604/APP, shall not be used for any other purpose

Reason: To enable vehicles to draw off, park and turn clear of the highway to minimise danger, obstruction and inconvenience to users of the adjoining highway and to comply with Policy GP24 in the Aylesbury Vale District Local Plan and to accord with the NPPF.

- 4 (Amended Condition) The building hereby approved shall only be used as a shooting lodge in connection with game shoots, simulated shoots, and clay pigeon shoots operated on and from the land and

for no other purpose including, but not limited to: 1) retail sales to members of the public other than those attending shooting events; or 2) as a venue for hire.

- 5 (New Condition) The guest accommodation shown on drawing no. 184/2012/01A shall only be used as short term overnight accommodation for guests attending shooting



events and for no other purpose (including any other purpose within Class C of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order with or without

modification).

Reason: For the avoidance of doubt as to what is being permitted and because the Local Planning Authority would not accept an independent dwelling on this site due to the open countryside location and to accord with the NPPF.

- 6 (New Condition) The guest accommodation hereby permitted shall not be occupied by the same person or persons for more than 28 days in any six month period.

Reason: For the avoidance of doubt and in the interests of tourism and economic vitality of the countryside and to comply with Policy GP72 of the AVDLP and the NPPF.

## 4.0 INTRODUCTION

- 4.1 This application is being brought back to the Development Management Committee following decision by Members to defer the application at the meeting that took place on 16<sup>th</sup> May 2019. Members deferred the application to enable officers to seek additional information before a decision can be reached. Specifically, members asked for further clarification as to: 1) whether the use of the site for clay pigeon shooting would result in an intensification of the use such that there would be unacceptable Environmental Health impacts in relation to noise; and 2) whether the use of lodge for clay pigeon events would create unacceptable highways impacts. Members also requested clarification on the wording of conditions. A copy of the original committee report is appended for Members reference.

*Update on planning history*

- 4.2 Whilst there is no record of any formal planning permission for the use of the land, the rearing of game birds is accepted as the primary activity at Tittershall Woods and consequently, a shooting hospitality lodge has long been accepted as necessary to serve the game bird rearing enterprise at the site. Notably, a retrospective application for the erection of a shooting lodge was granted in 1999 (Planning reference 99/01977/APP). In 2010, consent was granted for the erection of replacement two story shooting lodge with associated access to highways and parking. And, a further consent was issued in 2010 under planning reference 10/02206/APP for the erection of an agricultural worker's dwelling for a gamekeeper in connection with the commercial shoot enterprise (game birds).
- 4.3 The existing shooting lodge on the site, which replaced a smaller lodge, was subject to Condition 4 of planning permission 14/02604/APP for the construction of the shooting lodge including the car park, patio and other incidental works at Tittershall Lodge. The decision notice for Planning Permission 14/02604/APP included a condition (Condition 4) which restricted the use of the shooting lodge as follows:

*The building hereby approved shall only be used as shooting lodge in connection with game shoots operated on and from the land and for no other purpose including overnight and residential accommodation, retail uses to visiting members of the public or as a venue for hire*

*Reason: The building has been approved in the light of guidance in Para 17 of the NPPF because of the special needs of the game shoots operated on and from the*

*land. This control is necessary to prevent inappropriate uses taking place and in the interests of highway safety given the substandard nature of the access to the site*

4.4 When considering the initial application for the replacement shooting lodge in 2011, the County Highway Officer initially expressed concern that the larger shooting lodge could lead to an increase in highway movements through an existing access with substandard vision. However following confirmation that the size of the site dictates the number of people attending shoots and that the lodge restricts the number of attendees to shooting events to 40-60 visitors, Thus, the applicant would simply offer improved facilities to the existing visitors (capped at 60) attending events. In view of this, the Highways Officer did not consider that the larger shooting lodge would result in a material increase in vehicle movements through the access BCC highways officers had already considered acceptable.

4.5 It is acknowledged that when permission was granted for the lodge in 2011 (10/01141/APP), the agent stated that the site would not be used for clay shoots. However, in recent years circumstances have changed and clay pigeon and simulated shooting events have been added to activities on the site under the 28 day permitted development rule.

4.6 Part 4 of Town & Country Planning General Permitted Development Order Class B (2015) states that permitted development is as follows:

The use of any land for any purpose for not more than 28 days in total in any calendar year of which not more than 14 days in total may be for the purposes of

- (a) The holding of a market:
- (b) Motor car and motorcycle racing including trials of speed and practising for these activities

and the provision on land of any moveable structure for the purpose of the permitted use.

4.7 This effectively allows the use of a site without formal planning permission for a certain number of days per year. Event organisers use it a lot for events, gymkhanas, arts festivals, local fairs and the like.

4.8 Class B.1 states Development is not permitted by Class B if-

(a) it would consist of development of a kind described in Class E of this Part (temporary use of land for film making);

(b) the land in question is a building or is within the curtilage of a building

(c) The use of the land is for a caravan site:

(d) the land is or is within a site of special scientific interest

4.9 The clay shoot is not restricted by any of the above limitations. Officers consider that the curtilage of the shooting lodge extends to an area excluding the Land to which the 28 day use operates. Thus, the remaining land where the shooting events take place is not within the curtilage of the shooting lodge. The Principal Enforcement Officer has confirmed that it complies with the permitted development requirements. Clay and

simulated shooting clients are therefore already visiting the site in accordance with permitted development regulations.

- 4.10 It should be noted that the site previously had fixed launchers for clay pigeons (which can be seen on website for the facility). However, Enforcement Officers have visited the site and confirm that these have been removed.
- 4.11 Whilst the clay and simulated shooters cannot use the lodge due to the restrictive condition as set out above, under Part 4, Class B.1 of the GDPO moveable structures (mobile catering lavatories, and marquees) can currently be brought to the site without planning control to service these events.
- 4.12 Application 18/04264/APP now seeks to vary condition 4 of planning permission 14/02604/APP as follows:
- To permit the use of the shooting lodge for clay pigeon and simulated shooting events
  - To allow the existing shooting lodge to be used for sales of goods to members of the public attending shooting events
  - To allow two existing storage rooms at first floor level within the shooting lodge to be used for overnight accommodation for clients attending shooting events.
- 4.13 The County Highway Officer was consulted on the application and noted that the proposed variation of condition relates solely to the use of the lodge, and not the entire site. Currently, under permitted development rights, clay and simulated shooting activities can be carried out on the site for up to 28 days a year (on land outside the curtilage of the lodge) and whilst permitted development would allow for no restriction on the number of people/vehicles attending these events, due to capacity issues the number of people attending shooting events on site is capped at 60 by the applicant. Thus, the Highway Officer concluded that the proposed variation of condition solely for the use of the lodge in connection with these already permitted shooting activities (under permitted development) would not in itself increase the number of vehicle movements to and from the site. She also noted that the proposed variation of condition includes the creation of one room for overnight accommodation for two people but did not consider that this would result in a material intensification of the access compared to the existing number of vehicles visiting the site to use the shooting facilities. Therefore, as this development will not result in a material increase in vehicle movements through the existing access, the County Highway Officer felt unable to justify asking for the access to be upgraded. However, she was satisfied that sufficient visibility can be achieved from the access in line with guidance stated in Manual for Streets.
- 4.13 The Environmental Health Officer considered that as the application related to the use of the lodge by existing users and the use of the lodge is not an inherently noisy activity, no objection could be raised.
- 4.14 The application, which was recommended for approval, was considered by the Development Management Committee on 16<sup>th</sup> May 2019 but was deferred for further consideration. This is because Members are concerned that the use of the lodge hospitality facility may make the clay pigeon/simulated shooting events more attractive and that this may increase the number of people attending events leading to:
- an increase in shooting noise (which may impact upon residents in Tetchwick and Ludgershall), having particular regard to the fact that clay pigeon shooting uses more bullets than game shooting

- would lead to an unacceptable increase in highway movements

4.15 It was therefore requested that further consideration by the County Highway Officer and Environmental Health Officer.

4.16 Members are referred to the original committee report (attached as an appendix to this report) and the additional information now available to Members. The differences between this report and the former report, have been further commented on and evaluated below.

## **5.0 REPRESENTATIONS**

5.1 Objection letters

5.2 Two further letters of objection have been received since the application was taken to the planning committee meeting in May. The additional points that were not listed in the officer report are summarised as follows:

- When shoot has been active the noise level is unacceptably high and continuous so as to destroy our enjoyment and ability to live in our homes
- Noise Impacts 4 communities in Tetchwick, Kingswood, Ludgershall and Wotton Underwood
- Unreasonable to grant permission permitting noise pollution on a horrendous scale
- A statement saying noise and traffic will not increase is worthless especially when owners' planning record is reviewed
- The access track is via a substandard track through a field with cattle in it which the owners do not own
- BCC highways were reluctant to agree to retrospective planning when the current owner built the lodge bigger than granted planning permission
- The letter from the Agent in 2011 stating that there would never be clay pigeon shooting at the site restricted use and thus access. However they have now changed their minds
- The applicants confirmed in 2011 that they wanted to develop the site for commercial gain.

5.1 Summary of comments from the agent:

- The game bird season at Tittershall Lodge will run from 1st September until the 31st January this year. There are approximately 30 days of shooting game throughout the season with each day on average consisting of 5 game drives that last 30-45 minutes each. This means that each day of game shooting there is roughly 3 hours and 45 minutes of shooting, that does not include the breaks between drives and a break for food and beverages.
- Simulated shoots these are not taking place at Tittershall Lodge this season. Clay Shoots take place on around 22 days a year which is less than the 28 days permitted under Class B of Part 4 of Schedule 2 of the General Permitted Development Order 2015. Whilst the sport can be conducted all year round, Tittershall Lodge only host events between the 1st January until the 27th October for this season. Each day of clay shooting which only ever takes place on a Sunday from 10:00 to 13:00 during the open shoot events attracts between 40-60 shooters, that in turn generates approximately 40-50 vehicles. During the months of January, February and March there will only be one clay shooting event a month.

- In addition, a clay shoot never takes place on the same day as a game shoot.
- **Attendance of Shoots**
  - Clay Shoots – Attracts on average 40-60 people. The facility is operating at near capacity levels so there is not scope for more than 60 visitors to attend. The capacity limit is dictated by staffing levels. The agent reports that the clay shooting events are staffed by 5 employees and therefore can only accommodate a maximum of 60 visitors.
  - Game Shoots – Attracts on average of between 30-40 people which consists of 18 beaters, 6 pickers and 14 guests/shooters.
- All forms of shooting on site take place within Tittershall Wood, which is subject to a Section 11 that is issued by Thames Valley Police, who regularly come out to site to review the practises for aspects such as safety, and they will consider the following aspects:
  1. Buffer Zones.
  2. All shooting should be into the woods.
  3. Correct insurances.
  4. Reviewing Public Right of Ways.
  5. Impacts on watercourses.
  6. Adequate signage around and on site.
- There are a number of other factors that we would ask the Committee to consider:
  - Our client has made efforts to mediate with residents, offering to have meetings with residents. As such my client has acted considerately and tried to appease residents by reducing the number of shooting days whilst also maintaining a viable business.
  - Tittershall Lodge is one of five shooting establishments within a 2 mile radius of the surrounding settlements and so may not be responsible for any noise complaints that the members of the public have raised.
  - I have been informed by my client that they have been involved with regular discussions with the enforcement officer, on the events being held on the site so AVDC hold a record of events being held throughout the year on site.
  - Most recently on the 27<sup>th</sup> May the Lodge gave up one of their allocated shooting days for a charity event with all proceeds going to support the local churches and community.
  - A number of the surrounding businesses operating along Kingswood Lane, such as Oakfield Fisheries that is in operation 7 days of the week and sees 40-60 vehicles every day including HGV movements, which is a significantly more intensive use than at Tittershall Lodge.
  - There will be no material increase to harm in any respect as a result of the proposals having reference to the existing lawful activities that can and could take place as a fall back position. The applicant requests that the Committee has regard to this material consideration.

- Finally, the agent provided the following schedule for 2019 clay shooting events.

3rd February  
 3rd March  
 14th April  
 22nd April  
 28th April  
 6th May  
 12th May  
 27th May  
 9th June  
 23rd June  
 28th June (Charity Day)  
 7th July  
 21st July  
 4th August  
 18th August  
 26th August  
 1st September  
 15th September  
 29th September  
 13th October  
 27th October  
 17th November  
 1st December  
 15th December  
 29th December

## **6.0 FURTHER CONSULTATION AND EVALUATION**

- 6.1 In the light of the additional information further comments have been requested from both the Environmental Health Officer and the Bucks County Council Highways Officer
- 6.2 Bucks County Council consider that the issues for consideration are the suitability of the access and trip generation. The access must be a minimum of 4.8m in width and achieve visibility splays of 2.4m x 151m in line with guidance stated in Manual for Streets. After visiting the site, the Highway Officer is satisfied that the existing access complies with both of these requirements. They are also satisfied that the access can safely accommodate two vehicles simultaneously passing one another and the visibility requirements stated in the nationally recognised Manual for Streets can be achieved. Consequently, the access arrangement is suitable to serve the proposed development.
- 6.3 With regard to trip generation The County Highway Authority notes that as previously stated, the proposed variation of condition relates solely to the use of the lodge, and not the entire site. Currently, under permitted development rights, clay and simulated shooting activities can be carried out on the site for up to 28 days a year. There is currently no restriction on the number of people/vehicles attending these events. However, the applicant has advised that *'on average 40-60 people attend the clay shooting events, but the facility is working to near maximum capacity levels so there is not scope for more than 60 visitors to attend'* and this suggests that the site is constrained and a limited number of vehicles and users can visit the site.
- 6.4 Therefore the proposed variation of condition solely for the use of the lodge in connection with these already permitted shooting activities (under permitted development) would not in itself increase the number of vehicle movements to and from the site. On the

understanding that the overall use of the site would remain as it is, the proposed change in wording would only allow those that are already using the site to benefit from a greater range of facilities, rather than open up the use of the site to other, new users.

- 6.5 As the proposed variation of the condition relates solely to the use of the lodge in connection with the existing shooting activities and the creation of one room for accommodation, the Highway Authority has no objection to the proposed variation of condition.
- 6.6 The Environmental Health Team has been contacted by local residents regarding noise from shooting activities on the site. To date they have received 6 direct complaints from residential households – 3 from Tetchwick (north of the shooting ground), 3 from Ludgershall (west of the shooting ground).
- 6.7 Environmental Health officers have visited residential properties on three occasions when shooting has been advertised. They have also installed noise recording equipment on two occasions when shooting has been advertised. At all three on-site visits shooting was heard coming from the direction of the Tittershall grounds. Shooting was also heard on one of the unattended recordings. However the level of noise witnessed so far has not met the threshold for Statutory Nuisance.
- 6.8 In response to the application to remove a planning condition to allow the Lodge to be used by persons attending Clay Pigeon events (the current condition restricts use of the Lodge only to persons attending Game Shooting) the initial comment indicated that the use of the Lodge is not in itself an inherently noisy activity. Shooting is a noisy activity, and has the potential to meet the threshold for statutory nuisance. However as mentioned earlier this so far has not been witnessed by Environmental Health Officers .
- 6.9 Local residents are concerned that allowing the Lodge to be used by persons attending Clay Shooting events will intensify the shooting activity and thus lead to increasing noise levels. I understand the agent has confirmed the facility is already working to near maximum capacity with no scope for more than 60 visitors, thus it would seem increased noise levels are not anticipated. If increased noise levels from the site are reported this can continue to be investigated by the Environmental Health Team using The Environmental Protection Act 1990. For the reasons set forth above, the Environmental Health Officers have no objections to the varying of Condition 4.

## 7.0 CONCLUSION

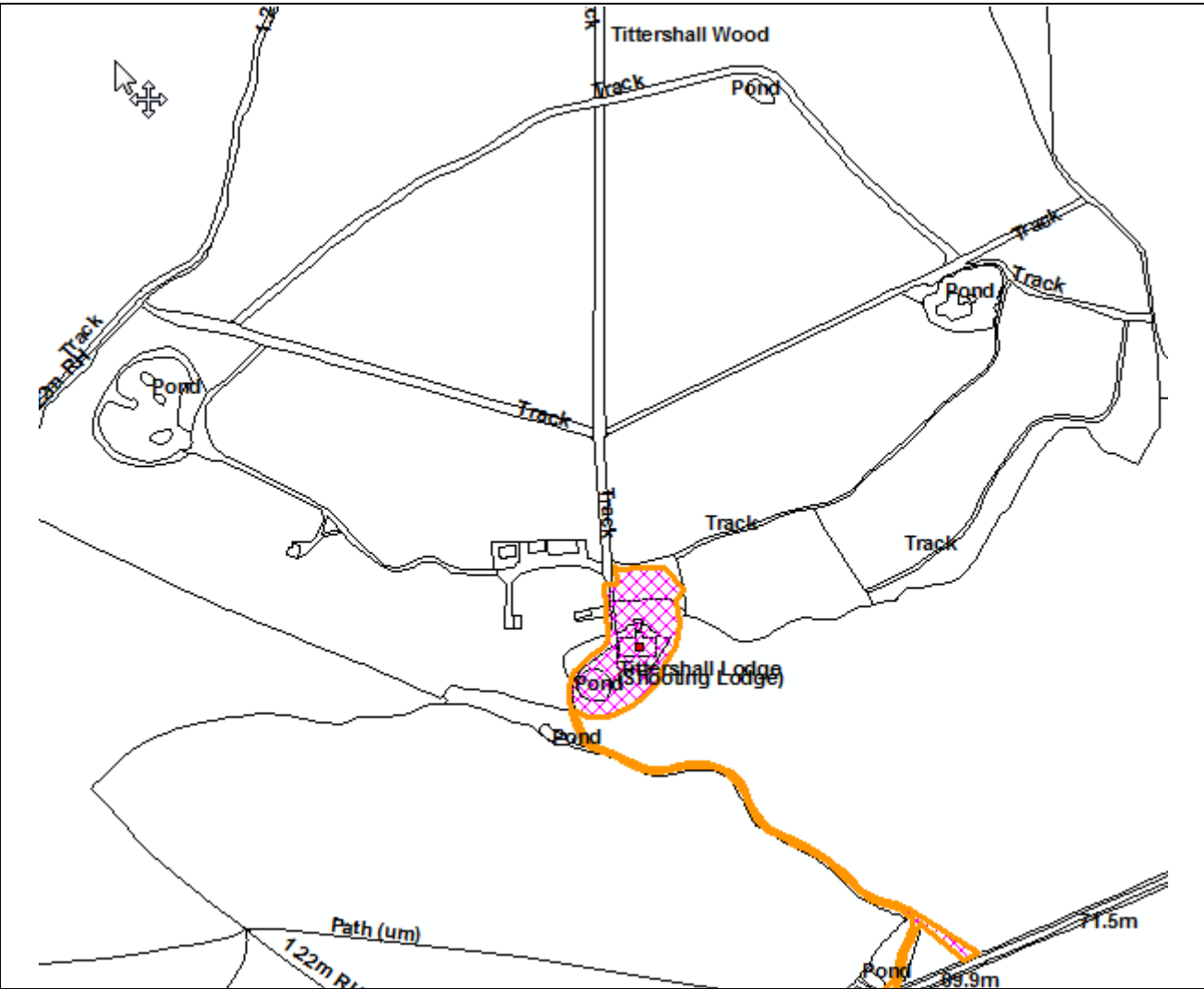
- 7.1 Clay and simulated shooting events are permitted at the site for 28 days per year as permitted development. It has been confirmed by the applicant's agent that *'on average 40-60 people attend the clay shooting events, but the facility is working to near maximum capacity levels so there is not scope for more than 60 visitors to attend'* They have also confirmed that clay pigeon and simulated shoots do not take place at the same time as game bird shooting events. There are currently no highway and noise issues, and given that the site is operating at near capacity and there will be no further significant intensification, it is therefore considered that the use of the lodge by existing clients attending clay pigeon shoots, sales of goods to clients attending shooting events and the use of two storage rooms for overnight accommodation for clients attending shooting events will not materially worsen traffic movements or noise issues at the site. On this basis the County Highway Officer and Environmental Health Officer therefore hold no objection to the proposed variation of condition.

Case Officer: Mrs Diana Locking

[dlocking@aylesburyvaldc.gov.uk](mailto:dlocking@aylesburyvaldc.gov.uk)



18/04264/APP



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REFERENCE NO	PARISH/WARD	DATE RECEIVED
18/04264/APP	WOTTON UNDERWOOD	29/11/18
VARIATION OF CONDITION 4 OF PLANNING PERMISSION 14/02604/APP TO VARY THE WORDING OF THIS CONDITION TO THE BUILDING HEREBY APPROVED SHALL ONLY BE USED AS A SHOOTING LODGE IN CONNECTION WITH GAME SHOOTS, SIMULATED SHOOTS AND CLAY PIGEON SHOOTS OPERATED ON AND FROM THE LAND, AND THE USE OF TWO ROOMS FOR OVERNIGHT ACCOMMODATION FOR CLIENTS ATTENDING SHOOTING EVENTS AND FOR NO OTHER PURPOSE INCLUDING BUT NOT LIMITED TO RETAIL SALES TO MEMBERS OF THE PUBLIC OTHER THAN THOSE ATTENDING SHOOTING EVENTS OR AS A VENUE FOR HIRE.	The Local Member for this area is:-  Councillor Cameron Branston	
TITTERSHALL LODGE KINGSWOOD LANE HP18 9FY		
MS ROSA PIACQUADIO		
STREET ATLAS PAGE NO 96		

## 1.0 The Key Issues in determining this application are:-

- a) The planning policy situation and the approach to be taken in determination of the application
- b) Whether the proposed variation of condition would constitute a sustainable form of development having regard to:
  - Building a strong competitive economy
  - Conserving and enhancing the natural environment
  - Conserving and enhancing the historic environment
  - Promoting sustainable transport
- c) Impact upon the residential amenity

The recommendation is that permission be **GRANTED**, subject to conditions

## 2.0 INTRODUCTION

2.1 The application stands to be determined by committee as Councillor Cameron Branston has requested that the application be brought to Committee for determination for the following reasons:

- He is concerned about the impact upon residents and takes as a starting point Policy GP8
- He is concerned about the impact of increased traffic in the area
- He believes that it will increase noise levels for residents

## 3.0 BACKGROUND AND MAIN ISSUE

3.1 Retrospective Planning Permission was granted under reference 14/02604/APP on 5<sup>th</sup> January 2016 for the construction of the Shooting Lodge including the car park, patio and other incidental works at Tittershall Lodge, Kingswood Lane, Wotton Underwood.

3.2 The decision notice included a condition which restricted the use of the shooting lodge as follows (Condition 4):

The building hereby approved shall only be used as a shooting lodge in connection with game shoots operated on and from the land, and for no other purpose including overnight or residential accommodation, retail sales to visiting members of the public or as a venue for hire.

Reason: The building has been approved in the light of guidance in Para 17 of the NPPF because of the special needs of the game shoots operated on and from the land. This control is necessary to prevent inappropriate uses taking place and in the interests of highway safety given the substandard nature of the access to the site

- 3.3 The applicant has submitted a Section 73 Variation of Condition application which seeks to vary condition 4 as follows:
- to permit the use of the existing shooting lodge in connection with clay pigeon and simulated shooting
  - to allow the existing shooting lodge to be used for the sales of goods to members of the public attending shooting events at the site
  - to allow two existing storage rooms at first floor level within the shooting lodge to be used for overnight accommodation for clients attending shooting events.

#### 4.0 CONCLUSION AND RECOMMENDATION

- 4.1 The application has been evaluated against the extant development plan and the NPPF.
- 4.2 The shooting lodge is an existing building, and the principle of its use by clients participating in game bird shoots has previously been accepted under Planning Permission 14/02604/APP. The variation of condition to enable the lodge to be used for clay pigeon and simulated shoots, which are existing lawful uses on the site under the 28 day rule, and to allow the sales of goods to members of the public attending shooting events, would accord with Para 83 of the NPPF which seeks to promote a strong rural economy and the sustainable growth and expansion of all types of business and enterprise in rural areas. The use of two existing storage rooms for overnight accommodation would accord with policy GP72 of the AVDLP and Para 83 of the NPPF which also gives support given to sustainable rural tourism and leisure developments that have the potential to benefit businesses in rural areas. The support to a local business should be afforded positive weight in the planning balance.
- 4.3 It is considered that the proposed variation of condition 4 relating to the use of the existing shooting lodge would have no further impact upon the character and appearance of the countryside, sustainable transport or the amenity of residential properties. It is considered necessary to put two new conditions in place to limit the use of the overnight condition given that the local Planning Authority would not accept a new dwelling on the site given the open countryside location. With these conditions in place it is considered that the proposal would comply with policies GP8, GP24, GP35, GP72 and RA4 of the AVDLP and the NPPF.
- 4.4 It is recommended that the application be approved subject to the following conditions:
- 1 Landscaping scheme to be implemented (Agent has confirmed that this condition has been implemented so can be **Deleted**).
  - 2 Any tree or shrub which forms part of the landscaping scheme approved under Planning Permission 14/02604/APP which within a period of five years from planting fails to become established, becomes seriously damaged or diseased, dies or for any reason is removed shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be approved by the Local Planning Authority.  
  
Reason: In the interests of the visual amenities of the area and to comply with Policy GP38 of the AVDLP and the NPPF.
  - 3 The area shown for parking and manoeuvring on the approved plan reference 218/2014/01, approved under Planning Permission 14/02604/APP, shall not be used for any other purpose  
  
Reason: To enable vehicles to draw off, park and turn clear of the highway to minimise danger, obstruction and inconvenience to users of the adjoining highway and to comply with Policy GP24 in the Aylesbury Vale District Local Plan and to accord with the NPPF.
  - 4 The building hereby approved shall only be used as a shooting lodge in connection with game shoots, simulated shoots and clay pigeon shoots operated on and from the land and

no other purpose including, but not limited to, retail sales to members of the public other than those attending shooting events, or as a venue for hire.

- 5 **(New Condition)** The guest accommodation shown on drawing no. shall only be used as short term overnight accommodation for guests attending shooting events and for no other purpose (including any other purpose within Class C of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order with or without modification).

Reason: For the avoidance of doubt as to what is being permitted and because the Local Planning Authority would not accept an independent dwelling on this site due to the open countryside location and to accord with the NPPF.

- 6 **(New Condition)** The guest accommodation hereby permitted shall not be occupied by the same person or persons for more than 28 days in any six month period.

Reason: For the avoidance of doubt and in the interests of tourism and economic vitality of the countryside and to comply with Policy GP72 of the AVDLP and the NPPF.

#### **WORKING WITH THE APPLICANT/AGENT**

- In accordance with paragraphs 38 and 39 of the National Planning Policy Framework, Aylesbury Vale District Council (AVDC) takes a positive and proactive approach to development proposals and is focused on seeking solutions where possible and appropriate. AVDC works with applicants/agents in a positive and proactive manner by offering a pre-application advice service and updating applicants/agents of any issues that may arise in the processing of their application as appropriate and, where possible and appropriate, suggesting solutions. In this case, following the receipt of an additional plan showing the rooms to be used for overnight accommodation, the application was considered to be acceptable as submitted, and no further assistance was required.

#### **5.0 SITE LOCATION AND DESCRIPTION**

- 5.1 The site lies within Tittershall Wood which is situated in the open countryside to the south-west of the village of Kingswood and to the east of Ludgershall.
- 5.2 The access to the site and Tittershall Wood is taken from the Kingswood to Wotton Underwood/Ludgershall Road, and is via a 350m long track which crosses open agricultural land.
- 5.3 Tittershall Wood is operated as a commercial game bird rearing and shooting enterprise. Close to the access to the land is the shooting lodge to which this application relates. There are a number of other buildings on the site including a gamekeeper's dwelling for which planning permission was granted in 2012.
- 5.4 The nearest residential properties not associated with the business are located in Ludgershall, over 1.2 km from the site's boundary to the west, and at Tetchwick, 365 metres to the north (Tetchwick Moat House). Middle Farm and Yeat Farm are located 850 and 1 km from the site's boundary to the south-east.

#### **6.0 PROPOSAL**

- 6.1 Retrospective Planning Permission was granted under reference 14/02604/APP for the construction of the Shooting Lodge including car park, patio and other incidental works.
- 6.2 Condition 4 of that permission reads:

'The building hereby approved shall only be used as a shooting lodge in connection with game shoots operated on and from the land, and for no the purpose including overnight or

residential accommodation, retail sales to visiting members of the public or as a venue for hire.'

6.3 The applicant has submitted a Section 73 Variation of Condition application which seeks to vary condition 4 as follows:

- to permit the use of the existing shooting lodge for clay pigeon and simulated shooting
- to allow the existing shooting lodge to be used for the sales of goods to members of the public attending shooting events at the site
- to allow two existing storage rooms at first floor level within the shooting lodge to be used for overnight accommodation for clients attending shooting events

## 7.0 RELEVANT PLANNING HISTORY

99/01977/APP - Erection of shooting lodge associated storage buildings and vehicular access (retrospective) - Approved

04/01902/APP - Extension and conversion of shooting lodge to detached dwelling - Withdrawn

05/01557/APP - Mobile home for gamekeeper - Refused

06/02415/APP - Agricultural building (retrospective) - Approved

06/02416/APP - Siting of mobile home (Retrospective) - Withdrawn

07/01887/APP - Siting of mobile home (retrospective) - Approved

10/01141/APP - Erection of replacement two storey shooting lodge with associated access to highway and parking - Approved

10/02206/APP - Erection of agricultural workers dwelling - Approved

12/00678/APP - Revised siting of Gamekeepers dwelling (amendment to planning permission 10/02206/APP) – Approved

13/03562/APP - Erection of single storey rear conservatory extension and single storey side extension. - Withdrawn

14/00974/APP - Siting of mobile home (retrospective) - Refused

14/02036/APP - Installation of electric gates and piers (retrospective) - Approved

14/02604/APP - Retrospective application for the construction of the Shooting Lodge including car park, patio and other incidental works. - Approved

14/03531/APP - Retention of mobile home. – Refused. Appeal dismissed

15/03801/APP - Retention of three outbuildings in connection with an existing game bird rearing and shooting enterprise and area of hardstanding (part retrospective). - Approved

16/04003/APP - Conversion of part of agricultural building to residential use (C3) including formation of small curtilage, parking, internal alterations and temporary retention of a mobile home for residential use until the conversion is ready for occupation. - Refused

17/04003/APP Conversion of part of agricultural building to residential use (C3) including formation of small curtilage, parking, internal alterations and temporary retention of a mobile home for residential use until the conversion is ready for occupation-Refused. Appeal dismissed

## 8.0 PARISH/TOWN COUNCIL COMMENTS

8.1 Wotton Underwood Parish Council objects to the application and fully supports the objections raised by one of the objectors (Mr Graham Lucas).

## 9.0 CONSULTATION RESPONSES

9.1 **Environmental Health:** No objections

- 9.2 Proposed condition 4 lifts the restriction on its use solely for people attending game shoots. The use of the lodge is not an inherently noisy activity, whilst the shooting activities are. AVDC Enforcement Officers will investigate any future complaints of noise or breaches of planning under relevant regulations, and where necessary take formal enforcement action.
- 9.3 **Bucks CC Highways**
- 9.4 Initially requested that further information be submitted and justification as to why the applicant did not anticipate that the proposed variation of condition would not result in an increase in vehicle movements.
- 9.5 Following receipt of additional information, the County Highway Authority now consider that it is clear that the proposed variation of condition relates to the use of the lodge, not the entire site. Currently clay and simulated shooting can be carried out as permitted development for up to 28 days a year, and there is no restriction on numbers attending these events. Therefore the proposed variation of condition solely for the use of the lodge in connection with these shooting activities would not increase the number of vehicle movements to and from the site.
- 9.6 The proposed variation of condition solely for the use of the lodge in connection with these already permitted shooting activities (under permitted development) would not in itself increase the number of vehicle movements to and from the site.
- 9.7 The creation of two rooms for overnight accommodation for two people would not result in a material intensification of the access compared to the existing number of vehicles visiting the site to use the shooting facilities.
- 9.8 As this would not result in a material increase in vehicle movements through the existing access, BCC Highways are unable to justify asking for the access to be upgraded. However they are satisfied that sufficient visibility can be achieved through the existing access.

## 10.0 REPRESENTATIONS

- 10.1 39 letters have been received from local residents objecting to the application to vary condition 4 of Planning Permission 14/02804/APP). These letters raise the following points of concern:

### *Issues relating to the planning history of the site/compliance with regulations*

- Owner of Tittershall Woods has failed to comply with many planning requirements.
- The lodge was built much larger than permitted as always been intention to build a commercial shooting establishment.. Then had to apply for retrospective planning.
- The venue has been used for wedding functions.
- Owner and employees have disregard for locals and have not followed the rules.
- They have had to remove illegal erected scaffold towers to house the clay traps.
- After 13 years the applicants have removed the illegal mobile home which should have been removed when Game Keepers House was built.

### *Economy/ long term impacts of proposed variation of condition*

- The enterprise does not contribute to local economy as owners live in London.
- The variation of condition 4 will add nothing except noise traffic and individuals that fail to understand communities.
- Applicants will chip away until achieve long term aim of clay shooting 5-6 days per week.

### *Intensification of use of the shooting lodge*

- It is acknowledged that will no increase in the number of clay shooting events, but If allowed to market and use the lodge facility in connection with clay shooting, it will lead to an increased numbers using the facility, leading to more people, more shots and more noise and more traffic.
- The lodge could be used to host major clay pigeon shooting competitions, and could exceed 250 people shooting per day.
- Most 28 rule clay shoots have rudimentary facilities use a small wooden shed and do not have luxury of restaurant and bar facilities.
- The 28 day Permitted Development Rule (class B-temporary use of land) would normally only allow moveable structures to be used and the lodge is not a moveable structure.

### *Noise/Residential amenity*

- Shooting should not normally take place with separation distances of less than 1km.
- Tetchwick residents, less than 700m away from the shooting ground, are already affected by the shooting facility; noise can be heard with windows shut and TV on.
- The planning agent for approved application 14/02604/APP stated there would never be a clay shoot and that if there was there could be 150 guns.
- Now in situation where there could be 150 to 200 guns with potential to generate 400 vehicle movements per hour.
- Increased noise at weekends.
- Noise transmission carries more in winter.
- If application approved noise situation will worsen and would be a statutory nuisance.
- Nearest residential properties are not 1.2 km to west but 365m to north (Tetchwick Moat House) .
- Travellers site is 240m to south-east.
- Shoots can be heard from properties in Tetchwick and interrupts enjoyment of properties.
- Level of noise in Tetchwick has risen considerably in the last year.
- Increase in noise disturbance at Ludgershall.
- Area is widely used for horse riding and loud noise can cause alarm to horses/injure riders
- Detrimental impact of noise on pets.

### *Game/ Clay pigeon shooting*

- Game shooting in winter months (1<sup>st</sup> September to 1<sup>st</sup> February) creates less disturbance, intermittent at changing locations. It is more traditional and less of a nuisance than clay pigeon shooting.
- Extra clay pigeon shoots are often in summer months when people are outside in their gardens.
- Game shooting lasts for a short time when residents are in their homes with doors and windows shut.



- Game shooting has only 8-10 people shooting, but clay pigeon shooting has 150 to 200 people shooting each day.
- Applicants originally stated in 2011 that they would not use the site for clay pigeon shooting.
- Tittershall Lodge has hosted game shooting for many years, but not clay pigeon shooting.
- Clay pigeon shooting has only taken place for one year.
- The lodge would never have received permission for clay pigeon shooting.
- Applicants have failed to adhere to guidelines issued by Institute of Environmental Health on Clay target shooting.
- Clay pigeon shooting is very disruptive.
- There is increased uninterrupted barrage of noise with clay pigeon shooting comprising 500-800 shots per day.
- Potential for growth in clay pigeon shooting will have negative impact on local area because of increased shots and increased frequency.
- Whilst no problem with true country sports, this is a commercial business.
- Clay pigeon shooting has the potential to be encouraged to reach full capacity as will be profit driven.
- The shooting activities have exceeded 28 day rule.

#### *Contamination*

- Overall site is less than 100m from Flood Zone 3. Increase in shooting and lead shot fall out could cause contamination to water source.

#### *Rights of way/signage*

- There are a number of rights of way surrounding the site and clay shooting activities have an effect on these.
- Shooting affects enjoyment of use of public footpaths.
- Footpath signs are often taken down, signs thrown into ditches and not replaced.
- Footpaths have been closed at various times of year so residents/walkers are unable to enjoy countryside.
- Danger signs on footpaths should not be a scare tactic for local walkers.

#### *Overnight accommodation*

- Accommodation proposal indicates intention to perpetuate the proposed use to commercial levels.
- The applicant has just lost the mobile home after being illegally sited for 13 years and this request to accommodate 1-2 people comes very close in terms of a timeline just after that happening
- It is another way of offsetting loss of the mobile home, and would be likely to be used by employees.
- With existing arrangements regarding storage of club guns and bar provisions, it could create security issues.

### *Highway/traffic*

- Entrance is on a fast and dangerous stretch of road on tight bend in Kingswood Lane with limited vision.
- Road is in poor condition suffering subsidence.
- Road is often flooded and during wet periods soil and stones are dragged onto the highway from vehicles using unsurfaced track.
- Roads are used by walkers, cyclists and horse riders.
- Access has been subject of near misses with vehicles emerging onto the bend.
- Point of access is close to a caravan park.
- A41 is dangerous and both junctions with Kingswood Lane and Tetchwick are dangerous
- Intensification of use of lodge with large shooting parties coming and going detrimental to highway safety.
- Planning condition was included for good reason-to achieve balance between commercial interests of owners and local residents.
- BCC Highways requested restrictive wording due to substandard access. Additional vehicles using entrance on poorly maintained road on bad bend.
- BCC Highways are right to be concerned about the reliability of the applicant's statement that proposed change of use would not result in increase in the number of vehicle movements.

## **11.0 EVALUATION**

### ***(a) The planning policy position and the approach to be taken in the determination of the application***

- 11.1 The starting point for decision making is the development plan, i.e. the adopted *Aylesbury Vale District Local Plan (AVDLP)*. S38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions should be made in accordance with the development plan unless material considerations indicate otherwise. The *National Planning Policy Framework* (the Framework) and the *Planning Practice Guidance* (PPG) are both important material considerations in planning decisions. Neither changes the statutory status of the development plan as the starting point for decision making but policies of the development plan need to be considered and applied in terms of their degree of consistency with the Framework, PPG and other material considerations.
- 11.2 The Council has set out proposed policies and land allocations in the draft Vale of Aylesbury Local Plan. Whilst the VALP hearing has taken place there are a number of unresolved objections to the housing strategy and other policies. Paragraph 48 of the NPPF advises on the weight to emerging plans depending on the stage of preparation, unresolved objections and consistency with the NPPF. In view of this the policies in this document can only be given limited weight in planning decisions. The site is within the open countryside outside of the settlement of Wotton Underwood, and there is no neighbourhood plan for Wotton Underwood. The determination of this application needs to consider whether as a result of the proposed variation of condition the proposal would constitute sustainable development, having regard to Development Plan policy in the AVDLP and the Framework as a whole.
- 11.3 Paragraph 170 of the NPPF states that planning policies and decisions should contribute to

and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

11.4 Saved Policy GP35 of the AVDLP requires amongst other things that development respects and complements the physical characteristics of the site and surroundings and does not adversely impact upon environmental assets. These objectives are broadly consistent with the core planning principles of the Framework to always take account of the different roles and character of different areas, and to recognise the intrinsic character and beauty of the countryside.

11.5 Saved Policy RA 4 of the AVDLP states that in considering proposals for the recreational use of land outside the built-up areas of settlements the Council will have particular regard to:

- a) the visual effect of car parking and access roads;
- b) the siting and design of any associated buildings;
- c) the accessibility of the site, including public transport links and walking or cycling networks; and
- d) agricultural land quality and the effect on land drainage.

11.6 Planning permission was granted for a shooting lodge in 1999 under planning permission 99/01977/APP, and for a replacement shooting lodge in 2010 under planning permission 10/01141/APP. The officer's report for 10/01141/APP acknowledged that the shooting activities are ideally suited to the countryside location. Retrospective Planning Permission 14/02604/APP for the shooting lodge at Tittershall Wood was granted on 5<sup>th</sup> January 2016. The building consented in 2016 was larger than that which had previously existed on the site and had improved facilities; this was as a result of the owners wish to improve facilities at the site to meet a rising demand for game and subsequent rising standards in catering and presentation. It was clear that given the open countryside location, the unrestricted use of the lodge would have been unacceptable in principle and in terms of the impact on highway safety and convenience. Following consultation with the Highway Authority, Planning Permission 14/02604/APP was granted subject to the following condition and reason (Condition 4):

:

*The building hereby approved shall only be used as a shooting lodge in connection with game shoots operated on and from the land, and for no other purpose including overnight or residential accommodation, retail sales to visiting members of the public or a venue for hire.*

*Reason: The building has only been approved in the light of the guidance in Para 17 of the NPPF because of the special needs of game shoots operated on and from the land. This control is necessary to prevent inappropriate uses taking place and in the interests of highway safety given the substandard nature of the access to the site.*

11.7 Together with a landscaping condition, and condition requiring the retention of parking, it was considered that the retrospective application for the shooting lodge complied with policies GP35 and RA4 of the AVDLP and the NPPF principle which seeks to support the intrinsic character of the countryside. The principle of a shooting lodge on the site to cater for beaters, shooters and their guests has therefore been established.

11.8 The applicant now wishes to vary the condition 4 as follows:

- to permit the use of the existing shooting lodge for clay pigeon and simulated shooting
- to allow the existing shooting lodge to be used for the sales of goods to members of the public attending shooting events at the site

- to allow two existing storage rooms at first floor level within the shooting lodge to be used for overnight accommodation for clients attending shooting events.

11.9 It remains to be considered whether proposed variation of condition 4 of Planning Permission 14/ 02604/APP to allow the use of the lodge for clay pigeon and simulated shoots in addition to game shoots, sales of goods to guests attending shooting events and the use of two existing rooms for overnight accommodation for shooting clients would constitute a sustainable form of development when assessed against the material planning considerations within the NPPF.

**(b) Whether the proposal would be a sustainable form of development**

- ***Building a strong competitive economy***

11.10 The NPPF states at paragraph 83 that planning authorities should support sustainable growth in rural areas to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, the sustainable growth and expansion of all types of business and enterprise in rural areas, and the development and diversification of agricultural and other land-based rural businesses, should be supported. In addition, the paragraph advises that support should be given to sustainable rural tourism and leisure developments that have the potential to benefit businesses in rural areas, and which respect the character of the countryside.

11.11 Saved AVDLP policy GP72 states that proposals for the conversion or change of use of existing rural buildings to self-catering holiday accommodation will be considered against the background of the Council's Tourism Strategy, and the need to protect the character and appearance of the countryside. In granting permission the Council will impose conditions or seek planning obligations to control the use and occupation of holiday accommodation.

11.12 In support of the application to vary condition 4 of Planning Permission 14/02604/APP, the applicant has explained that clay and simulated shooting events are a lawful uses which can be carried out up to 28 days a year and that these events are already in operation in Tittershall Wood. Currently condition 4 only allows for game shooting clients to use the shooting lodge. Given the similar nature of the different uses, the applicant considers that it is not reasonable to permit clients participating in one type of shooting use and restrict the other types from using the lodge, and that the condition should be varied to allow members of the public attending clay and simulated shooting events to also use the lodge.

11.13 The applicant also considers that the current condition preventing retail sales to visiting members of the public is currently flawed, as it suggests that members of the public cannot use the lodge. However the shoot is not a membership organisation so technically all shooters are members of the public. It is suggested that this condition be varied to enable members of the public attending shooting events to purchase goods whilst attending shooting events. The applicant considers that this would prevent the lodge from becoming a retail destination whilst ensuring the proper operation and function of the lodge. The applicant also notes that many of the clientele expect to be able to purchase shooting goods at the premises, and considers that this is a reasonable expectation.

11.14 It is acknowledged that the site at Tittershall Lodge can be lawfully used for clay pigeon and simulated shooting for up to 28 days per year, and that it would seem reasonable and justifiable to allow members of the public attending these events to also use the shooting lodge as this would use an existing facility at the site be beneficial to the business. It is also acknowledged that it would be beneficial to the business for clients attending shooting events to be able to purchase goods at the lodge. Therefore it is considered that the

proposed variation of condition would accord with Para 83 of the NPPF which seeks to promote a strong rural economy, the sustainable growth and expansion of all types of business and enterprise in rural areas

- 11.15 The applicant considers that the use of two rooms within the existing lodge for overnight accommodation for clients travelling from a distance would be beneficial to the business use of the site and has confirmed that this would not be permanent residential accommodation.
- 11.16 Whilst the use of the lodge for unrestricted overnight accommodation has previously been considered unacceptable, the applicant is proposing to use only two existing storage rooms in the roofspace of the lodge for overnight accommodation. Policy GP72 specifically encourages the conversion of buildings in rural locations to increase the stock of holiday accommodation which accords with Paragraph 83 of the NPPF supporting rural tourism. The proposal would use two existing rooms in the lodge. Therefore it is considered that the use of just two rooms for overnight accommodation for guests attending shooting would support sustainable rural tourism, and benefit the game bird rearing enterprise in accordance with Para 83 of the NPPF and Policy GP72 of the AVDLP
- 11.17 The site is within an open countryside location. For the avoidance of doubt as to what is hereby being permitted, in the interests of tourism and economic vitality of the countryside, and because the Council would not accept any additional dwellings on this site due to its open countryside location, the Council's solicitor has confirmed that it would be appropriate and reasonable to impose two new additional conditions. These new conditions would ensure that the resulting accommodation shall only be lived in as short term overnight accommodation for guests attending shooting events, and in relation to the two rooms specified on the submitted plan, and would require that those rooms shall not be occupied by the same person or persons for more than 28 days in any six month period.
- 11.18 The benefit to the rural economy that would be achieved through the variation of condition 4 of Planning Permission 14/02604/APP should be afforded positive weight in the planning balance.

- ***Conserving and enhancing the natural environment***

- 11.19 This application to vary Condition 4 of Planning Permission 14/02604/APP relates to the use of the existing shooting lodge on the site. Simulated and clay pigeon shoots already take place at Tittershall Wood as a lawful use under the 28 day rule, and the use of the lodge and existing parking area, by clients attending shoots, will not require any external alterations to be made to the lodge or parking area. Neither will the sales of goods to existing shooting clients using the lodge require any external changes to be made to the shooting lodge.
- 11.20 The proposal to use two storage rooms within the loft space for overnight accommodation does not involve the insertion of any new window openings, and any clients using this facility would use the existing parking area adjacent to the lodge. As such the proposal would not result in any greater visual impact than the already permitted use on the site.
- 11.21 The proposal to vary condition 4 of Planning Permission 14/02604/APP therefore accords with Policy GP35 of the AVDLP that development respects and complements the physical characteristics of the site and surroundings and does not adversely impact upon environmental assets, and with the NPPF which requires that development respects intrinsic character and beauty of the countryside. This should be afforded neutral weight in the planning balance.

*Impact upon public rights of way*

11.22 There are a number of public rights of way to the south, south-west and east of the site. However the variation of condition relates only to the use of the shooting lodge and these would not be impacted by the proposal. Therefore the proposal would accord with Policy GP84 of the AVDLP and should be afforded neutral weight in the planning balance.

- **Promoting sustainable transport**

11.23 The promotion of sustainable transport is a principle of the NPPF which advises that it is necessary to consider whether the proposed development is located where the need to travel will be minimised.

11.24 The site relates to an existing shooting lodge in the open countryside and the principle of the shooting lodge in this location has been accepted due to the special needs of game shoots operated on and from the land.

11.25 Paragraph 109 of the NPPF (2018) 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.

11.26 Policy RA4 requires the visual effect of car parking and access roads to be considered.

11.27 The permission for the lodge has been the subject of permissions under 10/01141/APP and 14/02604/APP. The County Highway Authority entered into discussions with the applicant regarding issues around the access. At that time, concerns were raised with regards to the visibility splays and construction of the access to serve the proposed development. The applicant and the Highway Authority came to an agreement that the imposition of Condition 4 would ensure that the replacement shooting lodge would not materially increase vehicle movements from the site. Clay pigeon and simulated shoots are currently permitted up to 28 days a year. There is currently no restriction on the number of people/vehicles attending these events. Therefore the proposed variation of condition solely for the use of the lodge in connection with these already permitted shooting activities (under permitted development), would not in itself increase the number of vehicle movements to and from the site. The sale of goods to members of the public attending shooting events would also not in itself increase the number of vehicle movements to and from the site. The creation of two rooms for overnight accommodation for two people would not result in a material intensification of the access compared to the existing number of vehicles visiting the site to use the shooting facilities. Furthermore the Highway Authority are satisfied that sufficient visibility can be achieved through the existing access. Consequently it is considered that the proposed variation of condition would be acceptable in terms of highway safety and convenience.

11.28 Policy GP24 of AVDLP seeks to ensure satisfactory levels of car parking are provided appropriate to the level of development. The parking area permitted under Planning Permission 14/02604/APP adequately serves the shooting lodge. Given the ancillary nature of the development proposed no additional parking is required to be provided as a result of the variation of condition. Therefore the proposed variation of condition accords with Policy GP24 of the AVDLP.

11.29 It is considered that variation of condition would have an acceptable impact upon highway and parking issues and should be afforded neutral weight in the planning balance.

- ***Impact upon the amenity of neighbouring residential properties***

- 11.30 Policy GP8 of the Aylesbury Vale District Local Plan (AVDLP) (2004) states that planning permission will not be granted where the proposed development would unreasonably harm any aspect of the amenity of nearby residents when considered against the benefits arising from the proposal. Where planning permission is granted, the Council will use conditions or planning obligations to ensure that any potential adverse impacts on neighbours are eliminated or appropriately controlled.
- 11.31 Policy GP95 states that in dealing with all planning proposals the Council will have regard to the protection of the amenities of existing occupiers. Development that exacerbates any adverse effects of existing uses will not be permitted.
- 11.32 Paragraph 127 of the NPPF states that developments should ensure a high standard of amenity for existing and future users.
- 11.33 The application to vary Condition 4 of Planning Permission 14/02604/APP, to enable the existing shooting lodge to be used by clients attending clay pigeon and simulated shooting events in addition to allowing it to be used for the game shooting events, has resulted in a large number of letters of objection being received from members of the public who are concerned that the variation of condition will give rise to increased shooting noise. There is concern that clay pigeon is more disruptive as it takes place at different times of year than game bird shooting. However in response to this the land at Tittershall Lodge can lawfully be used for clay and simulated shooting for up to 28 days a year, and the variation of condition application relates only to the use of the shooting lodge by members of the public already attending those events. The applicant's agent has confirmed that the frequency of shoots is not proposed to increase. The Environmental Health Officer has been consulted on the application, and notes that the use of the lodge is not an inherently noisy activity whilst the shooting activities are. As this application relates only to the use of the lodge by members of the public already attending clay and simulated shooting events, the proposed variation of condition would not give rise to any further noise issues such that the suggested variation would be considered unacceptable.
- 11.34 Several members of the public have raised concerns that enabling the lodge to be used by members of the public attending clay and simulated shooting events will make the events more attractive and result in an increase in the number of people attending them. However in response to these concerns, if the current condition remains in place restricting the use of the lodge to members of the public attending game shoots, the applicant could bring in mobile catering/marquee facilities to effectively enable the same facilities to be provided by alternative means. Given what could already be achieved through permitted development, and the lack of demonstrated harm, it would not be reasonable to restrict the use of the lodge only to those members of the public attending game shoots.
- 11.35 Given that the only dwelling in close proximity is the gamekeeper's dwelling on the site, which is within the ownership of the site, the proposed use of two existing storage rooms within the lodge for overnight guest accommodation would also have no detrimental impact upon the amenity of any neighbouring residential properties.
- 11.36 It is acknowledged that one of the reasons for imposing condition 4 of Planning Permission 14/02604/APP was to prevent inappropriate uses taking place at the site in the form of unrestricted events not associated with the business and unrestricted retail sales. It is not considered that the proposed variation of condition 4 would have a detrimental impact upon any aspect of residential amenity. Therefore this should be afforded neutral weight in the planning balance.

- **Other matters**

- 11.37 One objection expresses a concern that an increase in shooting and lead shot would lead to contamination to the water source. However as the application relates only to the use of the lodge by existing uses and no increase in shooting is proposed, this is not material to consideration of the application
- 11.38 Issues have been raised about compliance with planning regulations and the shooting activities on the wider site. These are not material the variation of condition 4 of Planning Permission 14/02604/APP. However AVDC Enforcement Officers will investigate any future complaints of noise or breaches of planning under relevant regulations, and where necessary take formal enforcement action

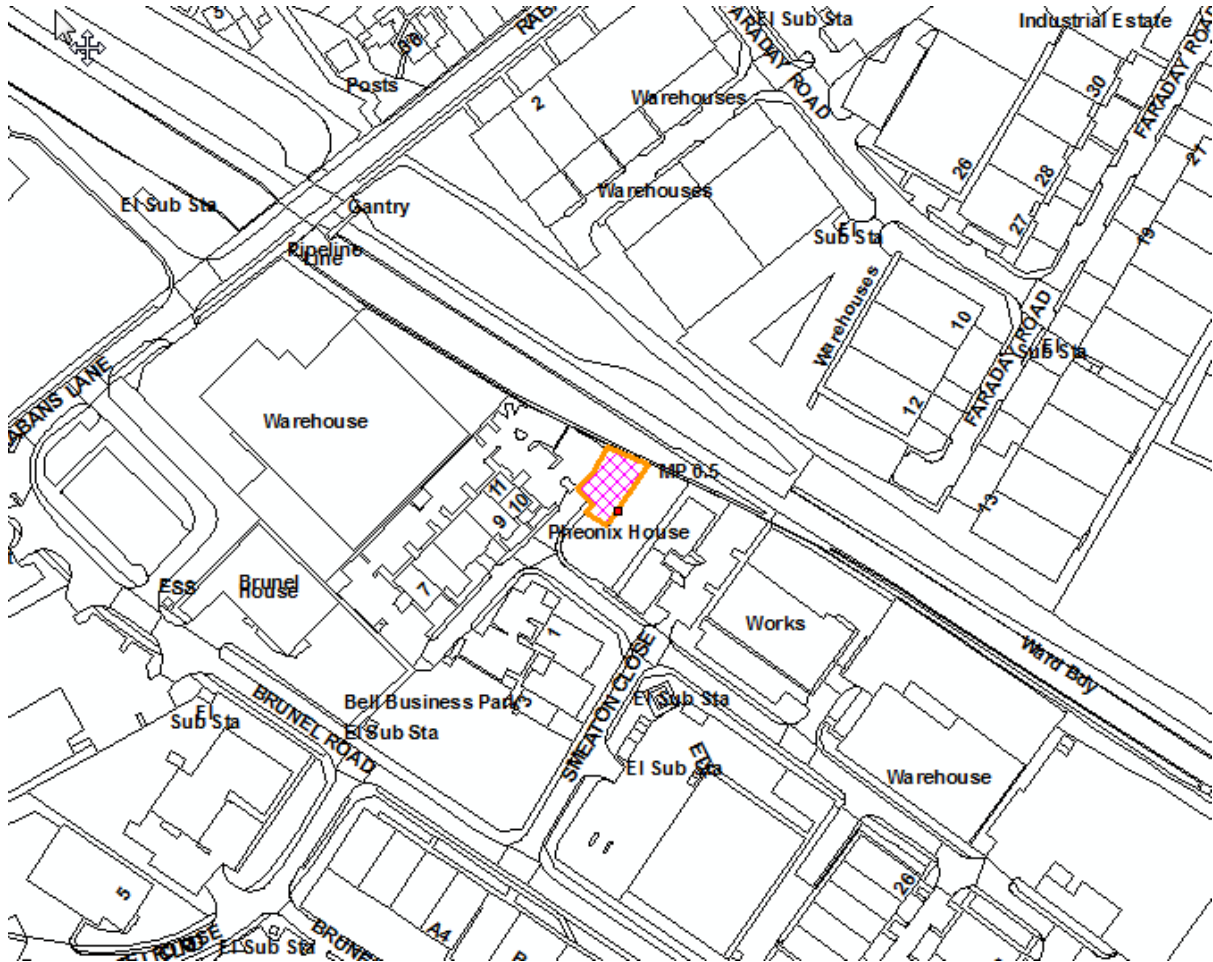
***What condition is required to ensure the reason and intention of the varied condition is still met***

- 11.39 The planning practice guidance states ‘ Where an application under Section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and un-amended. A decision notice describing the new permission should be issued, setting out all the conditions related to it. To assist with clarity, decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. ‘
- 11.40 In order to set out the same intentions as set out by the original condition, the condition should be varied to identify the approved drawings of the previous permission that are still valid and unaltered and the amended plan put forward by this proposal. Other conditions should be repeated, identifying those that relate to details approved under the previous permission.

Case Officer: Mrs Diana Locking



18/04581/APP	
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REFERENCE NO	PARISH/WARD	DATE RECEIVED
18/04581/APP	AYLESBURY The Local Member(s) for this area is/are: -	21/12/18
CONSTRUCTION AND OPERATION OF AN URBAN RESERVE 2X 2MW GAS FIRED POWER PLANT AND ASSOCIATED WORKS	Councillor Chris Adams Councillor Andy Huxley	
EDISON POWERLAND REAR OF PHOENIX HOUSE RABANS LANE INDUSTRIAL AREA SMEATON CLOSE	Councillor Ashley Waite	
HP18 8UW MR BEN WALLACE		
STREET ATLAS PAGE NO. 100		

**1. The Key Issues in determining this application are:-**

<p><b>a) The Principle of Development</b>  <b>b) Noise</b>  <b>c) Impact on visual amenity</b>  <b>d) Air Quality</b>  <b>e) Highways and Parking</b>  <b>e) Impact on the Railway</b>  <b>f) Other Issues raised by Objectors</b></p> <p>The recommendation is that permission be <b>GRANTED</b>, subject to conditions</p>
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- 1.1 The use of the site for an Urban Reserve power site will provide a much needed back up system for times of excessive demand in accordance with The National Planning Policy Statement for Energy (EN-1) (July 2011) which seeks to promote resilience in the grid. The application will be subject to separate approval from the Environment Agency for an Environmental Permit which will assess the air quality of proposal.
- 1.2 The applicant has demonstrated in the submitted noise report that the proposal will not cause unacceptable noise levels for the occupiers of nearby properties. A 3m high acoustic fence proposed around the perimeter of the site is proposed to provide noise mitigation. There are no objections regarding impact on the highway and parking due to the low level of activity proposed and the low vehicle speeds in the area.
- 1.3 The height of the exhaust stack at 7m and the acoustic fence would not harm the visual appearance of the area due to the context of the site and the nature of the commercial uses. It is therefore considered to be a suitable location for the proposed development taking into account the benefits the proposal will bring to the local area in order to ensure that businesses and residential properties have power during an increase in demand.

- 1.4 The proposed development is considered to be acceptable and would accord with Policies GP.8, GP.24, GP.35 and GP95 and the NPPF and the objections raised by local residents cannot be substantiated.

**APPROVED** subject to the following conditions:-

1. The development hereby permitted shall be begun before the expiration of three years after the date of this permission. REASON: To comply with the regulations of Section 91 (1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsary Purchase Act 2004.
2. The development shall not be carried out except in substantial accordance with the following drawings unless otherwise agreed in writing by the local Planning Authority: ED1-01, ED1-02, ED1-03, ED1-04, ED1-05 and ED1-06 received on 21.12.18 and the Planning Statement Ref: 404.08071.00001 Version No: 3 dated December 2018 and the Noise Impact Assessment produced by SLR Ref: 404.08071.00001 Version No: 8 dated February 2019. REASON: To ensure a satisfactory form and appearance to the development and to comply with Saved Policies GP.8, GP.24, GP.35 and GP95 and the NPPF.
3. The generators installed shall only be used to provide additional peak power generation for the National Grid as a back up only system and shall not be relied upon to run continuously when not required to meet a peak demand unless in the case of a national emergency impacting on the main generating capacity of the National Grid. REASON: To protect the amenity of the occupiers of nearby properties particularly the residents during the night time period at the closest residential receptors in accordance with Saved Policies GP8 and GP95 of the Aylesbury Vale Local Plan and the NPPF.
4. The total noise produced by each generator set installed shall not exceed 75dBLAeq,T unless a revised acoustic assessment has first been submitted to and agreed in writing by the Local Planning. REASON: To protect the amenity of the occupiers of nearby properties, particularly the residents during the night time period at the closest residential receptors in accordance with Saved Policy GP.8 and the NPPF.
5. Prior to the use becoming operational, a 3.5m high solid acoustic fence as shown on plan reference shall be constructed and thereafter maintained during the lifetime of the use. REASON: To protect the amenity of the occupiers of nearby properties, particularly the residents during the night time period at the closest residential receptors.
6. No floodlighting or other form of external lighting shall be installed unless it is in accordance with details which have previously been submitted to and approved in writing by the Local Planning Authority. Such details shall include location, height, type and direction of light sources and intensity of illumination. Any lighting which is so installed shall not thereafter be altered without the prior consent in writing of the Local Planning Authority other than for routine maintenance which does not change its details. REASON: In the interests of the visual amenity and to comply with Saved policy GP.8 of the Aylesbury Vale District Local Plan and the National Planning Policy Framework.

## **INFORMATIVES**

1. Due to the close proximity of railway infrastructure to the application site, the applicant is required to submit directly to Network Rail a Risk Assessment and Method Statement (RAMS) for all works, including the siting of the acoustic fence to be undertaken within 10m of the operational railway under Construction (Design and Management) Regulations in addition to any planning consent. It is necessary for the applicant to ensure that the works on site follow safe methods of working and take account any potential impact on Network Rail land and operational railway infrastructure. The applicant should submit the RAMS directly to [AssetProtectionLNWSouth@networkrail.co.uk](mailto:AssetProtectionLNWSouth@networkrail.co.uk). Any changes proposed to the approved plans as a result of compliance with the RAMS shall be submitted to the Local Planning Authority to establish if planning permission is required for the changes.
2. The applicant shall agree with network rail the drainage proposal for the development to ensure that the drainage on site does not materially impact the strength of the soil near the railway boundary (thence leading to stability issues).
3. The applicant is reminded that a Basic Asset Protection Agreement (BAPA) will need to be agreed between the developer and Network Rail in addition to any planning consent.
4. The applicant is reminded that a bespoke Environmental Permit will need to be obtained from the Environment Agency before the use becomes operational. Any alterations to the approved plans as a result of compliance with the Permit may require a further planning permission and advice should be sought from the Local Planning Authority before any changes to the approved plans are implemented.

## **2. INTRODUCTION**

- 2.1 The application needs to be determined by committee as it has been called in by Councillor Andrew Huxley due to the level of objection from the neighbouring properties and the perceived environmental impact to the surrounding properties.

## **3. SITE LOCATION AND DESCRIPTION**

- 3.1 The site forms part of the Rabans Lane Industrial Area located to the north west of Aylesbury centre. To the north of the site is the mainline railway, to the south, east and west are commercial B1 uses and to the north west and south west are residential properties. A block of three storey residential apartments is to the rear of the site known as Brookes Meadow.
- 3.2 The site measures approximately 0.047ha and is currently vacant and overgrown. It is surrounded by a metal palisade fence. Access to the site is from Smeaton Close.

## **4. PROPOSAL**

- 4.1 The application is for an Urban Reserve power site comprising two steel containers measuring 12.2m long x 2.45m wide x 2.8m high which will house two 2MW generators with ventilation/cooling equipment and two exhaust stacks mounted on the flat roof. The exhaust stacks will extend between 6.4 and 7.0m high from ground level.

4.2 In addition a steel gas kiosk to house the supply which measures 4.0m x 1.5m x 2.5m high and a steel sub station which measures 2.4m x 6.0m x 2.6m high with connection point are also proposed. These are to be connected to the respective grids by underground gas pipeline and electricity cables.

4.3 The proposal also includes a 3.5m high acoustic fence around the compound on all boundaries with a set of double gates which will form the entrance.

## 5. RELEVANT PLANNING HISTORY

5.1 01/02579/APP - Erection of commercial/industrial unit with car parking and associated works - Approved

## 6. TOWN COUNCIL COMMENTS

Aylesbury Town Council - No objection but would like to see comments from Environmental Health.

## 7. CONSULTATION RESPONSES

7.1 Buckingham & River Ouzel Drainage Board - No comments

7.2 Councillor Andrew Huxley – Object to the power plant on the basis of noise and air quality. A nearby office block would be under threat, certainly in the summer months when windows are open and the wind blowing in a certain direction. The fence proposed would not provide any noise abatement as the plant is in excess of the fence height of 3.5m The sit is not suitable for a project of this nature.

7.3 Environmental Health Officer – Original comments related to the inadequacy of the details submitted in the Planning Statement regarding the generator and noise assessment and various inaccuracies and omissions.

7.4 *Comments on additional information*

The submitted noise assessment has addressed previous concerns raised. No objections subject to conditions regarding the use and noise levels of the generator and the construction of the acoustic fence to be installed prior to the first use of the site.

7.5 *Air Quality*

Given the nature of the area the site is located in and the limited running of the generators there will be no significant impact on the air quality in this area as a result of this application.

7.6 Network Rail – No objection in principle but recommends a Basic Asset Protection Agreement (BAPA) be entered into with Network Rail and a Risk Assessment and Method Statement (RAMS) for all works as well as details of drainage to ensure the works do not impact on the safe operation and integrity of the railway.

7.7 Economic Development Officer – The land is identified as white land and has not been allocated for any particular purpose so the land could be used for this particular use subject to the development satisfying other planning requirements such as environmental and sustainability requirements. A benefit to local business could be through the power purchase agreement and provision of heat to local companies. The Planning Statement states that power and heating could be provided at a significant discount. It is not clear how much power and heat would be made

available to local companies and what the expected reduction in costs businesses would receive.

- 7.8 Ecologist – No objection. There is not a likelihood of protected and priority habitats or species being affected by this development. Therefore no supporting ecological information is required.
- 7.9 County Council Highways – Smeaton Close is a private road subject to a 30mph speed restriction. As the proposals do not materially affect the public highway or propose works within there are no objection or conditions to recommend for this application regarding highway issues.
- 7.10 Environment Agency – This application is for development that is not included in the list of development that the EA requires to be consulted on. The EA does not wish to be consulted on the development and does not wish to comment.

## **8. REPRESENTATIONS**

- 8.1 59 objections have been received on the following grounds:-
- Concerned about risk of gas explosion and safety.
  - Possible noise and air pollution, especially for people with breathing problems.
  - Noise will make it difficult to hear phone calls.
  - The noise levels readings did not take into account the business park.
  - Emissions testing will be required.
  - Site unsuitable for anything other than a car park or offices/flats.
  - Will cause further congestion and fewer parking spaces.
  - Not in keeping with the area.
  - Traffic and throughway issues on an already small and difficult site. Will create further congestion through Fairford leys and surrounding locality. Problem with trying to negotiate construction traffic on the already tricky road with parked cars. This will be hazardous for employees, visitors and learner drivers visiting the DVLA offices.
  - The site is adjacent to the railway line which could present safety issues. Concerned about health and safety of staff.
  - Not an appropriate location next to flats.
  - Dust, fumes and vibration during operation and construction. Will cause disruption prejudicing health and safety.
  - No consultation undertaken.
  - The site is not an industrial site but is bounded by offices, a new residential complex and a railway line.
  - Staff will be unable to use the outside eating area.
  - The size of the chimneys and large size of fence will negatively impact on the local area visually.
  - Exhaust fumes from the plant will be 18m from ventilation windows and at approximately the same height.
  - This will adversely contribute to climate change. Burning natural gas for electricity results in the release of CO<sub>2</sub> and contributes to global warming and the extraction, distribution and storage of natural gas results in the leakage of methane.
  - Concerned that the proposed plant uses natural gas to turn it into electricity and that it might produce sulphur Dioxide and nitrogen oxide emissions. Without more information on this type of power plant and its hazards it is not possible to conclude that the application would be acceptable.
  - Aylesbury is designated a garden city so why place heavy industry in such a highly populated area?
  - Concerned about smells.

- People will not see our offices as such a desirable place to work and a possible health risk and so recruitment may become an issue.
- Applicant has not secured environmental permit for Medium Combustion Plant or specified the Generator they will be using. Premature to assume the Environment Agency will grant this and reckless to proceed without it.
- Noise model is based on samples taken at 1.5 metres from the ground and calculations based on mitigating the noise using a proposed 3.5m acoustic fence. Exhaust flues extend vertically 6.5m from the based of the Generator containers (which will be mounted on raised concrete basis) and therefore the quoted 75dB noise level will be an unrestricted source 18m from an open office environment and at the same height as the first floor windows.
- The assessment has no reliable measure of the potential noise impact and offers no guarantee that it will not be significantly higher than the estimates.
- This will be an eye sore with the 7 metre tall chimneys being at direct eye level from the 1<sup>st</sup> floor windows.
- The road is already a rat run due to the DVLA test centre and this will get worse increasing the risk of accidents especially during construction with little to no room for large vehicles to manoeuvre within the confines of the car park.
- Parking in the Bell Industrial Estate is already at breaking point. Construction of this will cause more problems as vehicular access to other offices nearby cannot be guaranteed as large vehicles will most likely block the access through the small roads on the estate.
- There are high voltage overhead power cables running over the site and the potential danger to the office buildings. Any malfunction at the site that leads to an explosion would compromise the high voltage lines and endanger lives and the services of the railway.
- There is no assessment of the risks requiring the installation of a Blast Vent.
- The use of the plant is unsuited for office and commercial working hours.
- The instant start up and shut down is likely to mean it can never become a background but will be a 'jump' noise source which is particularly disruptive. Also makes valid noise and pollution estimates and models difficult as metrics obtained from steady state conditions will not be appropriate or relevant to those at start up and shut down which will be frequent occurrences for a peaking plant. Combustion engines are typically louder and more polluting when starting and stopping.
- The applicants must implement the 'Agent of Change' principle as set out in para 182 of the NPPF which means they need to implement suitable measures to mitigate any impacts on the existing businesses and residents of this area. The application does not address these impacts satisfactorily.
- There is a lack of evidence that the assessment has considered the impact of the power plant on Brookes Meadow. No noise readings have been undertaken at ground level or above two storeys. Given the proposed acoustic fence is 3.5m high and the exhaust stacks would be 7m tall noise from the plants could travel up and over the acoustic fence and would be significantly more audible from the 2<sup>nd</sup> and 3<sup>rd</sup> storeys than from the ground floor.
- No details are provided of the acoustic fence in terms of its properties in reducing noise and so unable to assess what extent it may or not be effective.
- Unclear why the predicted noise levels are indicated to be higher at the properties to the north west of the site as they are over twice the distance away and have soft ground in between whereas there is hard surface between the flats and the site.
- It appears the plant will be operational at any time of day and/or night. A condition should be imposed to restrict hours of operation to daytime only to prevent disturbance to residents.
- No report has been submitted on likely impact of the plant on air quality and this should not be left by condition.

- The plant will be significantly higher than the 3.5m acoustic fence and would be highly visible from the flats at ground as well as first and second floor levels. No assessment has been undertaken of these impacts and no mitigation proposed.
- The application site is subject of a covenant that our site should not suffer Nuisance, Disturbance or Damage from the other parties on the freehold title and this title covers the application site. This will be contested directly with the owner.
- Planning statement does not explore impact on Phoenix House & Bell Business Park offices who are direct neighbours.
- Existing business may need to relocate due to the close proximity of the offices to the application site which are 30m away.
- The planning statement does not rule out significant emissions. An air quality report is required for the purposes of the planning assessment and determination. Would contend that dispersion modelling would not sufficient for all parties to be satisfied that emissions are acceptable given the nature of the proposed use and its proximity to office and residential occupiers.
- There are 250 offices across Bell Business Park and Phoenix Datacom and so noise impact should be assessed on these properties.
- Chimneys will not be screened and will be unsightly.
- The proposed condition by the Environmental Health Officer does not provide sufficient control and is not enforceable as currently written.
- The area has been promoted as a high tech resource for leading edge Security and Financial Services business. Investment has gone into state of the art Cyber security laboratory and disruption of this work will affect local business and will have ramifications at the highest level of industry and government.
- The similar power plant that the applicant has used as an example is located in Bletchley which is more industrial area with two adjoining industrial buildings having no opening windows that face the installation.

8.2 Councillor Andrew Huxley – Objects to the power plant on the basis of noise and air quality. A nearby office block would be under threat, certainly in the summer months when windows are open and the wind blowing in a certain direction. The fence proposed would not provide any noise abatement as the plant is in excess of the fence height of 3.5m The site is not suitable for a project of this nature.

## 9.0 EVALUATION

### 9.1 Principle of Development

9.2 The National Planning Policy Statement for Energy (EN-1) (July 2011) seeks to promote resilience in the supply of energy and identifies at paragraph 2.2.20 (Security of Energy Supplies).

*“It is critical that the UK continues to have secure and reliable supplies of electricity as we make the transition to low carbon economy. To manage the risks to achieving security of supply we need sufficient electricity capacity --- to meet demand at all times. Demand for (electricity) must be simultaneously and continuously met by its supply. This requires a safety margin of spare capacity to accommodate unforeseen fluctuations in supply or demand”*

9.3 The applicant has confirmed in their supporting Planning Statement that renewables like wind and solar generate electricity intermittently and cannot generate when weather conditions are not favourable. Urban reserve projects fill a gap in supply by generating electricity when renewables cannot and provide security of supply. Generating electricity locally reduces energy lost when transporting energy around



the country and ensures that local networks are secured and protected against shortages.

- 9.4 When choosing suitable sites for Urban Reserve projects the applicants have stated that a site of between 0.05 - 0.5ha of land is required. In addition, due to economic reasons, land with alternative uses such as employment or residential would be considered to be unviable. The existing site has been chosen due to its size, as it is 0.047ha and its limited use as well as it having a direct point into the high voltage electricity distribution network and the gas main which are both within the site boundary.
- 9.5 The principle of utilising this site for the proposed development would therefore accord with the NPPS for Energy and the Aylesbury Vale Local plan. However, other material planning considerations have to be assessed in order to establish whether this site is suitable for the proposed development.

Noise

- 9.6 Paragraphs 180 of the NPPF seeks to ensure planning decisions mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and the quality of life. Policy GP8 of the Aylesbury Vale District Local Plan seeks to protect the amenity of local residents from inappropriate development.
- 9.7 A number of objections have been received regarding possible noise disturbance from the proposed development. A noise assessment has been carried out to assess the impact on the residential flats to the rear of the site as well as from the office buildings adjacent to the boundary of the site. Noise levels have been predicated to 4m above ground level which is the approximate height of a first floor office window. All noise levels taken include a 15 dB(A) reduction for an open window. The noise report demonstrates that when the ambient noise level of the site is added to the existing baseline ambient noise level, the resultant internal ambient noise level is 41.1dB(A) in the offices to the north west and 42.3dB(A) in the offices to the south west. With reference to acceptable design criteria for an open plan office, BS8233:2014 presents a range between 45dB and 50dB. The operation of the site would not cause an exceedance of the acceptable ambient noise level inside the offices assessed.

Receptor	Existing Internal LAeq,T Noise Level	Predicted Internal LAeq,T Noise Level from the Site	Cumulative Internal LAeq,T Noise Level
Office to NW	38.2	37.9	41.1
Office to SW	38.1	40.1	42.3

- 9.8 The International Organisation for Standardisation (ISO) Noise Rating Curve has been used to assess the background noise spectrum. The acceptable NR Curve in an office is NR Curve 40. The results presented in the applicant's noise report indicate that NR Curve 33 would be met at the office to the north west and NR Curve 35 would be met at the office to the south west. The calculations assume a 15dB reduction for an open window. This would be within the acceptable limits set by the ISO.
- 9.9 The noise report submitted has modelled the specific noise levels at 1.5m , 3m and 7m high .The modelling shows that the specific noise level will be below 55db at the nearest commercial buildings. The Environmental Health Officer's own calculations

indicate that based on the noise source level assumed, the level would be around 50dB at the nearest building approximately 18m away, even with no barrier in place. As such an external noise level, even with windows open, internal noise levels would be below recommended internal noise levels for commercial spaces contained in BS8233:2014. Whilst, with windows open, the units will be audible at these premises it would not be at a level that would normally cause a significant disturbance in a working environment.

Receptor	63	125	250	500	1000	2000	4000	8000	NR Curve Met
Office to NW	45.9	44.7	37.4	36.5	31.6	27.8	21	8.8	33
Office to SW	48.8	47.8	39.8	38.4	33.7	29.8	23.9	13.2	35

- 9.10 Regarding the impact of noise on residential amenity, monitoring points south west of the site represented the Brookes Meadows development. The assessment included predictions at 4m and 7m above ground level to take account of first and second floor properties. The predicted noise levels were shown as follows:

Location	Period	Predicted Sound Level LAeq,T
Receptors to the south west	Daytime	39.6
	Night time (4m)	40.1
	Night time (7m)	39.8
Receptors to the north west	Daytime	34.9
	Night time	35.3

- 9.11 From the results above, it has been demonstrated that the levels of noise from the proposed units in relation to the impact on residential properties will be within acceptable limits. The Environmental Health Officer is satisfied that the operation of the site would not have an adverse noise impact on the adjacent offices. The proposal would therefore accord with paragraph 180 of the NPPF and Saved Policy GP95 of the Aylesbury Vale Local Plan.

#### Impact on Visual Amenity

- 9.12 Policy GP35 of the Aylesbury Vale District Local Plan and Section 12 of the NPPF seeks to ensure that the development proposals respect the characteristics of the site and its environment and Section 12 of the NPPF states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve.
- 9.13 The visual appearance of the area is largely characterised by commercial properties. The proposed structures will be utilitarian in appearance due to the materials and the nature of their use. The proposed structures will be single storey in height and rectangular so by themselves they would not appear to be out of keeping with the locality.

- 9.14 The highest part of the proposal will be the cooling/extraction and exhaust infrastructure which will be sited on top of the roofs of the steel containers. Cooling and extraction infrastructure are normally sited on the roofs of industrial and commercial buildings and so this is not considered to be incongruous. The structures will be visually prominent from the private road and from the immediately adjacent properties. The location of the proposed development has been chosen because it will be close to the local area which the urban reserve will serve and also due to the proximity of the power connections. Whilst the proposed infrastructure will dominate in terms of the visual appearance of the immediate location and occupiers of the nearby properties would be able to view the structures, they are not considered to be so out of keeping and visually detrimental to the character of the area and amenity such that planning permission should be refused.
- 9.15 The proposed fencing around the perimeter of the site will be a 3.5m high close boarded acoustic fence. This will be higher than other fences and hard boundary treatments in the area. However, due to the commercial nature of the site it is not considered that this would be out of keeping with the area. In addition, the benefits that the proposal will bring to the local area in order to ensure that businesses and residential properties have power during an increase in demand, would outweigh the limited visual impact. The proposed development is therefore considered to be in accordance with policy GP35 of the Aylesbury Vale District Local Plan and the NPPF guidance.

#### Air Quality

- 9.16 Paragraph 181 of the NPPF seeks to ensure that planning decisions sustain and contribute towards compliance with relevant limit values or national objectives for pollutants. Whilst it is noted that a number of objections to the application refer to air quality, no objections are raised by the Environmental Health Officer regarding air quality or odour.
- 9.17 The applicants are aware that a complex bespoke Environmental Permit will be required from the environment Agency for the proposed development as it falls within the remit. An Air Emissions Risk Assessment (AERA) supported by a dispersion model will be necessary to support an environmental permit application. Paragraph 183 of the NPPF states that the focus of planning decisions should be on whether proposed development is an acceptable use of land rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. The Environment Agency does not wish to comment on the planning application as it does not lie within the vicinity of a water course and given the small scale of the proposed facility, it does not fall within the Environment Agency's remit for consultation. However, the permitting process will focus on the control of processes or emissions associated with a proposed development rather than whether a proposal presents an acceptable use of a particular piece of land. Any matters that the Environment Agency will be reviewing will be with regards to the control of processes associate with this proposal rather than whether the proposed development is an acceptable use of the land in question.
- 9.18 Due to the low emissions level and the requirement to apply to the Environment Agency for a complex bespoke permit which will address air quality safety issues covered by other legislation outside the scope of the planning application, the proposed development would accord with Paragraph 183 of the NPPF.

#### Highways and parking

- 9.19 Saved Policy GP24 of the Aylesbury Vale Local Plan and Parking Policy Guidelines AY21 seeks to ensure that there is sufficient car parking to serve development proposals and paragraph 108 c) of the NPPF seeks to ensure that new development proposals do not lead to significant impacts on the highway network in terms of capacity and congestion.
- 9.20 A number of objectors have raised concerns regarding congestion on the roads leading to the site as well as the problems of car parking in the area. The applicants have confirmed that the site will generate a small number of trips to and from the site by construction workers who would park within the site itself. Smeaton Road is a private road with a 30 mile an hour speed restriction. Due to the low level use of the site, it is not anticipated that there will be any significant impact on congestion as a result of the proposed development and as such no objections have been raised by the County Highway Authority. Notwithstanding this, any parking and highways issues can be controlled locally between the occupants that have rights of way over the access and the owner of the rights of way. The proposed development would accord with Policy GP24 of the Aylesbury Vale District Local Plan and the NPPF.

#### Impact on the Railway

- 9.21 Network Rail does not raise any objections to the proposed development in principle but have requested that a number of safety measures are put into place to safeguard the safety of workers and the railway infrastructure. It is recommended that informatives are imposed to address safety concerns during construction and operation stage to ensure that health and safety procedures are put in place during construction and operation.

#### Other issues raised by objectors

- 9.22 Objections have been raised regarding the hours of use, the possibility of odour emissions and health and safety issues. The applicant has confirmed that the plant will operate for short periods at a time and would be operational for approximately 1,750 hours a year. It is not anticipated that it will be operational at night or at the weekend but it will need to respond 24 hours a day, 7 days a week. A condition is proposed to restrict the hours of operation to safeguard the amenities of the occupiers of nearby properties in the area.
- 9.23 With regard to possible odours, the applicant has confirmed that burning natural gas does not generally produce an odour and so the type of operations proposed to be carried out at the site will not cause odour problems. No objections have been received from the Environmental Health Officer with regard to odour emissions.
- 9.24 Regarding health and safety issues and the fear of explosions and fire from the site. The site will require an Environmental Permit from the Environment Agency and this will only be issued if there would be no risk to human health. In addition, the development and operation would also be subject to regulations and controls enforced by the Health and Safety Executive. The applicant has confirmed that there will be no natural gas stored on site and so the risk of explosion would be no more than any other premises consuming natural gas. The proposed development would also include multiple layers of automated gas control which would take the level of safety beyond that of the standard mains natural gas user.
- 9.25 It has been suggested that that the hours of operation on the site should be restricted to safeguard the amenity of the occupiers of the nearby properties. There is no justification on noise grounds for restricting operational hours. The intention is to use these units to support peak time capacity and that they are also required to be available to provide generation capacity at times when other generation capacity is

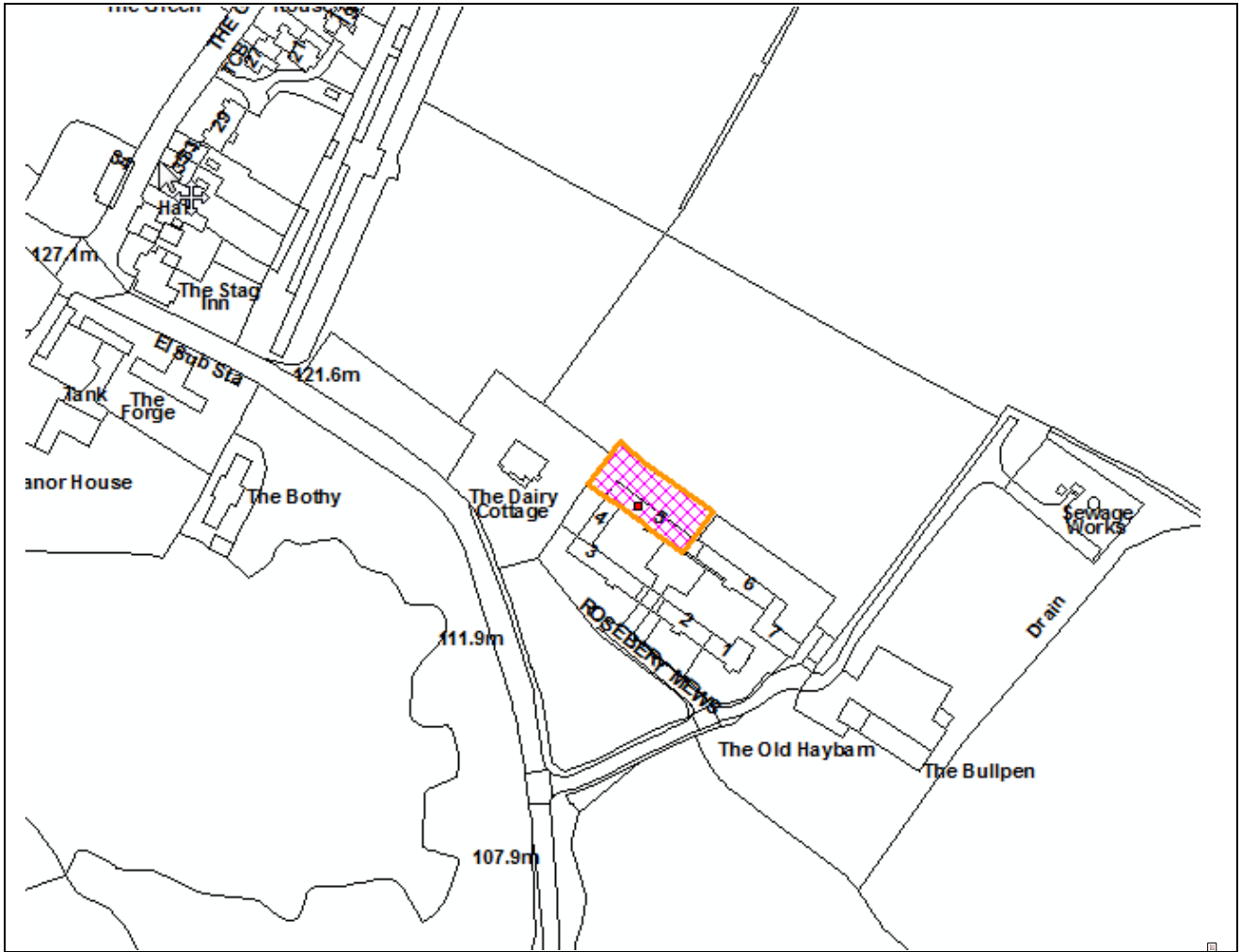
lost i.e. to prevent the chaos that happened a few weeks ago when two plants failed at the same time. Whilst such situations are most likely to occur during the daytime when demand is greatest they could possibly happen overnight and therefore it is not reasonable to impose specific time restrictions on the site. There is no justification on noise grounds for restricting operational hours and this view is supported by the Environmental Health Officer. It is anticipated that the day to day use of the site is likely to be relatively low key compared to other commercial uses and there are therefore no grounds for imposing such a condition on grounds of vehicle movements or general noise and disturbance.

Case Officer: Angela Brockett

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19/00528/APP	
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REFERENCE NO	PARISH/WARD	DATE RECEIVED
19/00528/APP	MENTMORE The Local Member(s) for this area is/are: - Councillor P Cooper	11/02/19
<p>LANDSCAPING TO REPLACE STEEP CLAY BANK, STEPS TO ACCESS EXISTING SEATING AREA, RETAINING WALL TO SECURE OLD YEW TREE ROOTS, RAISED BEDS FOR PLANTING AND A SLOPING ROSE GARDEN WITH STEPS FOR ACCESS (RETROSPECTIVE)</p> <p>5 ROSEBERY MEWS BUCKINGHAMSHIRE LU7 0UE</p> <p>MRS SALLY SMITH</p> <p>STREET ATLAS PAGE NO.</p>		

**1.0 The Key Issues in determining this application are:-**

- a) Impact on appearance and character of the application site, Conservation Area, Area of Attractive Landscape and Grade II\* Historic Park & Garden
- b) Impact on residential amenity
- c) Impact on trees

The recommendation is that permission be **GRANTED**

**Conclusion and recommendation**

- 1.1 The development is considered to be of a scale and form that, although domestic in appearance, is not overly prominent and so respects the setting of the adjacent Listed Building, Conservation Area, Registered Park & Garden and Area of Attractive Landscape. It would also not impinge on the amenity of neighbouring dwellings, while the impact to the Yew Tree has suitably been assessed.
- 1.2 It is therefore recommended that the application be **APPROVED**, unconditionally.

**Informatives**

1. To all areas of exposed soil beneath the Yew Tree shown on unnumbered drawing (Existing Layout), unnumbered drawing (Proposed Plan) and unnumbered drawing (Proposed Elevation) (received by the Local Planning Authority on 12 February 2019), a 10 centimetre deep layer of rotted wood-chip shall be applied by no later than 27 October 2019. Once the rotted wood-chip is well rotted, it shall be re-applied to a 10 centimetre depth. The rotted wood-chip shall thereafter be re-applied in this manner in perpetuity. The rooted wood-chip shall be sourced from a disease free tree similar to the Yew Tree.
2. The vitality of the tree shown on unnumbered drawing (Existing Layout), unnumbered



drawing (Proposed Plan) and unnumbered drawing (Proposed Elevation) (received by the Local Planning Authority on 12 February 2019) shall be monitored through measurement of branch extension growth and chlorophyll fluorescence testing of the foliage by no later than 27 October 2019. The vitality shall be tested again using the same measurements by no later than 27 May 2020. If there is a reduction in vitality between the first and second measurements, all areas of exposed soil beneath the tree shall be de-compacted and injected with Biochar amendment.

3. The applicant is advised that, if they wish to undertake any further works to the Yew Tree, they must first give the Local Planning Authority six weeks' notice. This is because the tree is located within a Conservation Area but is the subject of a Tree Preservation Order.

## **2.0 INTRODUCTION**

- 2.1 The application needs to be determined by Committee as The Gardens Trust (a statutory consultee for application sites within Grade I and Grade II\* Registered Park & Gardens) raised objections on the following grounds:
  - Feel that the development damages the setting of the Dairy Cottage (Grade II Listed Building) which they identify as architecturally significant;
  - Feel that the existing agricultural conversion and associated paraphernalia negatively affects the Grade II\* Mentmore Towers Registered Park & Garden (RPG). The present development also adversely affects the historic character of the wider designed landscape of the walled garden, especially the glass balustrading.
  - Believe that a more sensitive solution could be found in the context of the Grade II Listed Building and RPG.
- 1.2 On the first matter, the case officer notes that the application site and the first floor/ roof of the Dairy Cottage can be viewed together from the rear garden of no.6. However, since the boundary fencing shared between the application property and the Dairy Cottage remains the same, the development would not further obscure views of the Grade II Listed Building. As such, its setting is not affected by this development.
- 1.3 On the second matter, in relation to the existing agricultural conversion at Rosebery Mews, it is not reasonable or relevant to assess the impact of this on the appearance of the Registered Park & Garden. This is because the development was approved under 87/01179/APP and again under 90/01755/APP. As such, the impact was previously accepted under delegated powers.
- 1.4 On the second and third matters, regarding the impact of the present development, this was fully assessed in the context of the setting of the Listed Building (as above) and the Grade II\* Mentmore Towers RPG. It has been acknowledged that it is the pastoral landscape which characterises the setting of the village within the RPG.
- 1.5 However, since the works are limited to the residential curtilage of no.5, they will be viewed in this domestic context, rather than being an urban intrusion into the agricultural land. As the steep slope to the north-western side of the garden already existed, the landscaping does not represent a material change in appearance and so the relationship with the adjoining agricultural land would not be radically altered. As such, it is not considered that the development would damage the character of the RPG.
- 1.6 In terms of materials, it is acknowledged that the Gardens Trust requested amendments on these, particularly glass balustrading adjacent to the seating area. They were opposed to the hard landscaping and 'manmade' style which they considered out of keeping with the historical setting. However, the selected walling, paving and boundary treatments are predominantly of a colour and texture that suitably match or complement those to the

dwelling. Furthermore, the case officer maintains that the transparency of the balustrading is beneficial to making the development less visually prominent to the adjoining neighbours and views from the countryside.

- 1.7 As such, The Gardens Trust objection does not raise planning considerations which are of such merit to warrant the refusal of this application.

### **3.0 SITE LOCATION AND DESCRIPTION**

- 3.1 The application relates to the rear garden of no.5 Rosebery Mews, a large terraced dwelling that forms part of a courtyard of properties arising from a barn conversion (application ref: 90/01755/APP).
- 3.2 The garden is set on two separate land levels – the area immediately to the rear elevation of the dwelling is flat and grassed, while the area to the north-west comprises a steep bank that contains a large mature Yew tree (estimated to be around 200 years old). The latter area borders the rear garden of no.4 to the south-west (with dark stained close boarded wooden fencing) and the curtilage of the Dairy Cottage (a Grade II Listed Building) to the north-west, of which the first floor and roof are visible from the application site.
- 3.3 To the north-east, the site boundary is marked with brick walling, beyond which is open countryside. There are also views upslope to the north of the historical centre of Mentmore village.
- 3.4 In terms of the locality, the site is situated within Mentmore Conservation Area (apart from the outer north-eastern section of the rear garden), Mentmore Park Archaeological Notification Area, Quainton-Wing Hills Area of Attractive Landscape (AAL) and Mentmore Towers Grade II\* Historic Park & Garden. As above, there is a Grade II Listed Building (the Dairy Cottage) to the north-west of the site.

### **4.0 PROPOSAL**

- 4.1 As application 90/01755/APP removed permitted development rights normally permissible under Schedule 2, Part 1, Class E of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended), the present landscaping works are considered unlawful and so this application seeks to regularise them.
- 4.2 The landscaping includes steps from the lawn of the garden. This path splits in two directions. One branch of the fork leads to a rose bed towards the boundary shared with no.4. To the other branch, there are a greater number of steps which pass raised beds and culminate in a patio seating area. These steps comprise paving over 1.8 metre concrete lintel beams. Additionally, there are further paved steps to the south-west side which lead directly upslope to the rose bed.
- 4.3 Along the boundary shared with the Dairy Cottage, the original wooden fencing has been retained, with a section of reinforced glass balustrading proposed in front of the north-east end next to the patio.
- 4.4 With regard to the retaining wall to secure Yew roots, this is laid with heavy concrete blocks, forming a 0.44 metre deep wall. It has brick facing and paving slabs on top.

### **5.0 RELEVANT PLANNING HISTORY**

- 5.1 87/01179/APP - Conversion of Barns to Five Dwellings and Installation of Klargestor S T P – Approved
- 5.2 90/01755/APP – Farmyard Conversion – 90/01755/APP
- 5.3 16/02048/ATC - T1 - Yew: Raise the tree canopy to approximately 0.5 metres above the boundary fence; prune the neighbours shed by 1 metre and sever ivy at ground level. – Proceed after 6 weeks

## **6.0 PARISH/TOWN COUNCIL COMMENTS**

### 6.1 Mentmore Parish Council:

- Raised no objections to the application;
- Concerned that there was no recognition of the Conservation Area or the restrictions placed on permitted development within the property. Feel that this could have been better communicated and followed up by the Council.

## **7.0 CONSULTATION RESPONSES**

### 7.1 Buckingham & River Ouzel Drainage Board – No comments to make.

### 7.2 AVDC Heritage Officer: Raised no objections on the following grounds, subject to the submission of alternative balustrading (as opposed to glass):

- Identified that there would be no impact to the setting of the listed building or the north-east/north-west boundary walling as a non-designated heritage asset;
- Although the hard landscaped development appears out-of-sync with the naturalistic character of the Conservation Area, it would be viewed in the context of the domestic dwelling curtilage by which the CA has already been impacted.
- Felt that the glass balustrading would be entirely out of keeping with the setting and this should be changed to an open plain metal, brick or timber barrier.
- Would cause no harm in NPPF terms and would accord with the 1990 Act.

Highlighted that the impact to the RPG would be commented on by Historic England and the Gardens Trust.

### 7.3 County Archaeology Officer: No comments to make.

### 7.4 Historic England: Do not wish to make any comments.

### 7.5 The Gardens Trust: Raised objections on the following grounds:

- Feel that the development damages the setting of the Dairy Cottage (Grade II LB) which they identify as architecturally significant;
- Feel that the existing agricultural conversion and associated paraphernalia negatively affects the RPG. The present development also adversely affects the historic character of the wider designed landscape of the walled garden, especially the glass balustrading.
- Believe that a more sensitive solution could be found in the context of the designated heritage assets.

### 7.6 AVDC Tree Officer: Superseding their original objection, the Tree Officer made the following comments on the submitted Arboricultural Assessment:

- Although the Yew tree has been negatively impacted by the development, it is generally in good health;
- Arboricultural Assessment demonstrates that there are amelioration measures to improve the remaining soil environment and that ongoing monitoring will allow these measure to be tailored to the tree, should its vitality decrease significantly.
- Proposed that the amelioration and monitoring measures should be secured by condition and supplied to the Council.
- Permission must be sought for any subsequent works.

## **7.0 REPRESENTATIONS**

### 7.1 Members of the public commented to support the application on the following grounds:

- Enhances the views from the garden without altering the height of the garden and fences;

- Improved safety and easier maintenance within the garden;
- Improved support of the root system for the preserved tree;
- Attractive development that maintains the ambiance of Rosebery Mews.

## 9.0 EVALUATION

9.1 There is no neighbourhood plan relevant to the determination of this application.

### a) *Impact on appearance and character of the application site, Conservation Area, Area of Attractive Landscape and Grade II\* Historic Park & Garden*

- 9.2 NPPF paragraph 124 highlights that 'Achieving well designed places' is central to the purpose of the planning system and to achieving sustainable development. Policy GP35 of the AVDLP requires development to respect and complement the physical characteristics of the site and the surroundings, the building tradition, ordering, form and materials of the locality, the historic scale and context of the setting, the natural qualities and features of the area and the effect on important public views and skylines.
- 9.3 The NPPF recognises the effect of an application on the significance of a heritage asset is a material planning consideration. Paragraph 193 states that there should be great weight given to the conservation of designated heritage assets; the more important the asset, the greater the weight should be. With paragraph 194 stipulating that any harm to or loss of the significance of a designated heritage asset must be supported by a "clear and convincing justification".
- 9.4 In the case of heritage assets, permission for the substantial harm to or loss of the significance of these assets would only be granted in exceptional circumstances. On non-designated assets, in paragraph 197 of The Framework stipulates that the significance of the asset should be weighed up against the scale of any harm or loss to it.
- 9.5 In this instance, the relevant heritage assets are Mentmore Towers Conservation Area, Mentmore Towers Grade II\* Historic Park & Garden, the setting of a Grade II Listed Building (the Dairy Cottage) and the north-west/ north-east boundary wall.
- 9.6 Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on local authorities to pay special regard to the desirability of preserving or enhancing the character or appearance of Listed Buildings and Conservation Areas respectively. Recent cases in the High Court of Appeal have placed emphasis on Local Planning Authorities ensuring that great weight is attached to these duties.
- 9.7 While there is no 'saved' Listed Building policy in the AVDLP, policy GP.53 on Conservation Areas carries some weight in planning decisions. To clarify, policy GP.53 is not entirely consistent with the 'language' of the NPPF in so far as it does not go on to comment on whether the proposal would result in substantial or less than substantial harm which would need to be outweighed by the public benefits of the scheme. In this respect, GP.53 cannot be given full weight but is still a material consideration.
- 9.8 As the site is also within Quainton-Wing Hills Area of Attractive Landscape (AAL), AVDLP policy RA.8 applies. This policy states that proposals should respect the special landscape character of the areas specified in the Local Plan Proposals Map.
- 9.9 The development undertaken is contained to the rear garden of the property and so only visible from the rear gardens of the immediately adjoining neighbours to the south-west

and south-east, namely no. 4 and no. 6 respectively. There are also no public Rights of Way to the open countryside to the north-east. As such, the development would not affect views from the highway or any other public views. Although the application site is directly adjacent to the countryside, the works are set into the slope of the garden and are enclosed by existing boundary treatment of approx. 1.8 metres in height. As such, it is considered that the work would not be especially noticeable from the open countryside and would not affect its intrinsic beauty, as recognised by the NPPF paragraph 170. Furthermore, the modern style and materials of the hard landscaping appear congruous with the application dwelling and similarly modern neighbouring dwellings.

- 9.10 To this part of the Conservation Area (CA), the CA appraisal document only highlights the significance of views to the Dairy (i.e. the Grade II Listed Building adjacent to the site) on the southern approach into the village, as well as the avenue of 'Wellingtonia' trees. From the highway, the application site is set well away and so the development is not considered to harm the significance of the village approach.
- 9.11 The Heritage Officer highlighted that the character of this section of the CA is derived partly from its relationship to the designed landscape of the Registered Park and Garden (RPG). The RPG takes in the entirety of Rosebery Mews and extends further to the north-east into open countryside, specifically agricultural land. Based on the Historic England entry, it is this agricultural land which characterises the setting of the village within the RPG. The landscaping is limited to the residential curtilage and so can only be viewed in this domestic context. By virtue of the positioning of the terracing, being screened by walling, it cannot be seen from the adjacent 'paddock' land, contrary to The Gardens Trust's revised comments. As such, it is not considered as an intrusion into open countryside. As the steep slope to the north-western side of the garden already existed, the landscaping would not represent a material change in appearance and so the relationship with the adjoining agricultural land would not be radically altered. As such, it is not considered that the development would damage the character of the RPG. In addition, the Heritage Officer also highlights that existing residential paraphernalia in the vicinity will have already impacted on the rural quality of the Conservation Area.
- 9.12 With respect to the setting of the Grade II Listed Building, the application site and the first floor/ roof of the Dairy Cottage can be viewed together from the rear garden of no.6 to the south-east. However, since the boundary fencing shared between the application property and the Dairy Cottage remains the same, the development would not further obscure views of the Grade II Listed Building. This is in agreement with the Heritage Officer's comments.
- 9.13 In terms of materials, the selected walling, paving and boundary treatments are predominantly of a colour and texture that suitably match or complement those to the dwelling. Regarding the glass balustrading, it is acknowledged that the Gardens Trust and Heritage Officer requested amendments on this due to its contemporary style which they considered out of keeping with the historical setting. The Gardens Trust stated that the development is visible from the kitchen garden which is now paddock land.
- 9.14 It is acknowledged that the balustrading is of a modern style. However, it is of a particularly restrained scale and is contained within a garden which is partly bound by domestic close boarded fencing. Furthermore, the balustrading would be easily removable, should this be necessary or desired. In the context of the RPG, given the positioning of the balustrading, it can only be viewed from the rear garden of the dwelling and the immediately adjoining neighbours. It is screened from the wider landscape by the existing fencing and Yew Tree. Moreover, the case officer maintains that the transparency of the balustrading is beneficial to making the development less visually prominent to the adjoining neighbours and views from the countryside. While glass can also be a reflective material, it draws less attention to the landscaping works than alternatives such as shrubs and fencing.

- 9.15 With special attention to the designated heritage assets, the case officer considers that the scheme results in less than substantial harm to the significance of the Mentmore Towers RPG and Mentmore Conservation Area. However, for the reasons detailed above, the case officer emphasizes that this harm would be at the lower end of the scale. As such, it is not considered that harm of such a minor degree could sustain a reason for refusal of the application.
- 9.16 In summary the development is considered to be of a scale and design that respects the character and appearance of the existing dwelling and does not overwhelm it. In addition, it is considered that the proposal would not appear overly prominent within the streetscene or the locality in general. The proposals are therefore considered to comply with RA.8, GP.53, GP9 & GP35 of the AVDLP and NPPF.
- 9.17 Special attention has been paid to the statutory test of preserving or enhancing the character or appearance of the conservation area under section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 and to the statutory test of preserving the setting of the listed building under section 66 of the Planning (Listed Building and Conservation Areas) Act 1990, which are accepted as a higher duty. It has been concluded that the development would preserve the character and appearance of the conservation area and that the setting of the listed building would be preserved and so the proposal accords with section 66 & 72 of the Act. In addition, no harm would be caused to the significance of the heritage asset, and as such the proposal accords with guidance contained within the NPPF.

**b) Impact on residential amenity**

- 9.16 Policy GP8 of the AVDLP states that planning permission will not be granted where the proposed development would unreasonably harm any aspect of the amenity of nearby residents when considered against the benefits arising from the proposal. Where planning permission is granted, the Council will use conditions or planning obligations to ensure that any potential adverse impacts are eliminated or appropriately controlled.
- 9.17 The development builds on an existing steep bank that continues to the south-west into the rear garden of no.4. Additionally, none of the walling erected exceeds the height of the existing boundary fencing and walls. As such, it is not considered that the development gives rise to a material worsening in overshadowing or overbearing of the adjacent neighbours.
- 9.18 In terms of overlooking, as the new seating area (behind the glass balustrading) is situated to the north corner of the garden, it is situated approx. 42 metres and 15 metres from boundaries shared with the rear gardens at no.6 and no.4 respectively. As such, although it is in an elevated position, it allows very limited overlooking to these neighbouring properties. Additionally, Dairy Cottage to the north-west is screened from the seating area by the existing close boarded fencing of approx. 1.8 metres and so no overlooking would be caused to this neighbour.
- 9.19 In summary, given the positioning of the proposal and its relationship relative to the neighbouring properties in terms of scale and orientation, it is considered that the proposal would not have an unacceptable adverse impact upon the neighbouring amenity. Therefore the proposal accords with GP.8 of AVDLP and NPPF.

**c) Impact on trees**

- 9.20 NPPF paragraph 170 requires that planning decisions should contribute to and enhance the natural environment by protecting and enhancing sites of biodiversity value in a manner commensurate with their statutory status.
- 9.21 AVDLP policy GP.38 states that development schemes should conserve existing natural and other features of value as far as possible. Conditions will be attached to relevant planning permissions to require the implementation of the approved arrangements. For development affecting trees, AVDLP policy GP.39 stipulates that the Council will require a site and tree survey and will impose conditions to ensure that the retention of trees of amenity, landscape or wildlife importance. AVDLP policy GP.40 highlights that the Council will oppose the loss of trees.
- 9.22 On the application site, the key natural feature is the Yew tree to the landscaped slope which is of importance to the visual amenities of the locality, setting of the adjacent Listed Building, Conservation Area and Registered Park & Garden, as well as being of importance to biodiversity.
- 9.23 The Tree Officer originally raised substantial concerns on the impact of the landscaping on the Yew. They deemed it highly likely that harm to the tree had occurred, by virtue of the nature of the works and the materials used. Following this, the applicant submitted an Arboricultural Assessment. The Tree Officer was satisfied with the testing undertaken to assess tree health and the proposed amelioration and monitoring measures.
- 9.24 Overall, although there has been some impact to the tree, the proposed measures going forward will better safeguard the longevity and vitality of the tree going forward and so its value will be preserved. As such, the proposal is considered to accord with AVDLP policies GP.38 – 40 and the NPPF.

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## **THE FOLLOWING ADDITIONAL ISSUES HAVE BEEN TAKEN INTO ACCOUNT IN PREPARING THE REPORTS ON THIS AGENDA**

### DETERMINATION OF PLANNING APPLICATIONS

The Council is required in all cases where the Development Plan is relevant, to determine planning applications in accordance with policies in the Development Plan unless material considerations indicate otherwise.

### HUMAN RIGHTS ACT 1998

The determination of the applications which are the subject of these reports is considered to involve the following human rights:-

1. Article 8: Right to respect for private and family life; and
2. Article 1 of the First Protocol: Protection of Property

The evaluation section of each report considers in detail the competing rights and interests involved in the application. Having had regard to those matters in the light of the Convention rights referred to above, it is considered that the recommendations in the reports are in accordance with the law, proportionate and balances the needs of the Applicant with the protection of the rights and freedoms of others in the public interest.

### SECTION 17 CRIME AND DISORDER ACT 1998

In reaching the recommendations set out in each report, due regard has been given to the duty imposed upon the Council under Section 17 of the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in its area.

### EQUALITY ACT 2010

In dealing with planning applications on this agenda and in reaching the recommendations set out in each report, proper consideration has been given to the duty imposed on the Council under the Equality Act 2010 to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by that Act; to advance equality of opportunity and to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics under the Act are a person's age, sex, gender assignment, sexual orientation, disability, marriage or civil partnership, pregnancy or maternity, race, religion or belief.

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