

Location: **Land West of Tuthill House
Kelshall Tops
Therfield
Hertfordshire**

Applicant: **Mr & Mrs Bullard & Mr I Bell**

Proposal: **Erection of three dwellings (1 x 4-bed, 1 x 5-bed and 1 x
6-bed) with associated infrastructure (amended plans
received 27.07.2021)**

Ref. No: 21/01349/FP

Officer: **Simon Ellis**

Date of Statutory Expiry Period: Agreed extension to 30.09.21

Reason for Delay

Amended plans received and progression of related S106 Obligation.

Reason for Referral to Committee

The application site area at just over 0.5ha requires that this planning application for residential development must be determined by the Planning Control Committee under the Council's constitution and scheme of delegation.

Submitted Plan Nos:

Dapa_1548_102_02 – Existing Site Layout Plan (received 27.07.2021)

Dapa_1549_300_07 – Proposed site Layout and Roof Plan (received 27.07.2021)

Dapa_1549_310_00 – Landscape Strategy Plan (received 27.07.2021)

Dapa_1549_103_01 – S106 Plan Appendix Plan for Landscape Strategy (received 27.07.2021)

Amended note on Landscaped Land and Landscaping Strategy (received 27.07.2021)

Dapa_1549_305_02 – Proposed Ariel View

Dapa_1549_306_02 – Proposed Entrance View

Dapa_1549_304_03 – Proposed Street Scene

Dapa_1549_302_04 – Proposed Barn House

Dapa_1549_303_04 – Proposed Manor House

Dapa_1549_301_04 – Proposed Stable House

Associated Documents:

Amended Arboricultural Assessment Report (received 27.07.2021)
Note on Existing S106 and draft S106
Ecological Assessment Report
Accommodation Schedule
Geo Environmental Investigation and Desk Study and Appendices
Flood Risk Assessment
Design and Access Statement
Transport Statement
Planning Statement
Tuthill Yard Heritage Statement

1.0 Policies

1.1 North Hertfordshire District Local Plan No. 2 – with Alterations (Saved Policies):

Policy 6 'Rural Area Beyond the Green Belt'
Policy 14 'Nature Conservation'
Policy 26 'Housing Proposals'
Policy 55 'Car Parking Standards'
Policy 57 'Residential Guidelines and Standards'

1.2 National Planning Policy Framework (NPPF) (July 2021):

In total but in particular:

Section 2 'Achieving Sustainable Development'
Section 4 'Decision Making'
Section 5 'Delivering a Sufficient Supply of New Homes'
Section 8 'Promoting Healthy and Safe Communities'
Section 11 'Making Effective Use of Land'
Section 12 'Achieving Well Designed Places'
Section 14 'Meeting the Challenge of Climate Change, Flooding and Coastal Change'
Section 15 'Preserving and Enhancing the Natural Environment'
Section 16 'Conserving and Enhancing the Historic Environment'

1.3 Supplementary Planning Documents:

Vehicle Parking Provision at New Development (SPD – 2011)
Design SPD
Planning Obligations SPD (November 2006)

1.4 **Submission Local Plan (2011-2031) (with Modifications):**

Section 2 – Strategic Policies

SP1 - Sustainable development in North Hertfordshire;
SP2 - Settlement Hierarchy;
SP5 – Countryside and Green Belt
SP6 – Sustainable Transport
SP8 - Housing;
SP9 - Design and Sustainability;
SP10 - Healthy Communities;
SP11 - Natural resources and sustainability;
SP12 - Green infrastructure, biodiversity and landscape;
SP13 - Historic Environment

Section 3 – Development Management Policies

CGB1 – Rural areas beyond the Green Belt
T1 - Assessment of transport matters
T2 - Parking;
HS3 - Housing mix;
HS5 - Accessible and Adaptable Housing
D1 - Sustainable design;
D3 - Protecting living conditions;
NE1 - Landscape;
NE5 - New and improvement public open space and biodiversity;
NE6 – Designated biodiversity and geological sites;
NE7 - Reducing flood risk;
NE8 - Sustainable drainage systems;
NE9 - Water Quality and Environment;
NE10 - Water Framework Directive and Wastewater Infrastructure;
NE11 – Contaminated Land
HE1- Designated Heritage Assets
HE4 -Archaeology

2.0 Site Planning History

- 2.1 This site has a complex planning history the relevant highlights of which have been summarised below.
- 2.2 92/00643/1 Application to use the land for open storage of agricultural vehicles and as operating depot for 4 HGV. This was approved subject to a S106 agreement.
- 2.3 93/00543/1TD Application for a 15m telecommunications mast was accepted as permitted development subject to an amendment to the S106 agreement.

- 2.4 93/01303/1 Application for a small storage building approved subject to an amendment to 106 agreement.
- 2.5 05/00355/1 Application for use of site for storage and distribution of building materials. Refused at the Royston and District Area Committee on 21 April 2005.
- 2.6 Applications for residential development were submitted in 2015 but subsequently withdrawn.
- 2.7 An application to vary/remove the S106 agreement was submitted in 2018 but subsequently withdrawn.
- 2.8 Planning application no. 20/00118/OP: Outline planning application for an 18 dwelling scheme. Refused at the meeting of the Planning Control Committee held on 16 July 2020.
- 2.9 Planning application no. 20/00117/OP: Outline planning for a 6 dwelling scheme. Refused at the meeting of the Planning Control Committee held on 16 July 2020.
- 2.10 Prior to the submission of this planning application two virtual meetings took place between the applicant's agents and the Development and Conservation Manager. At the meetings the applicant presented the plans for the scheme and the contents of a continuity S106 agreement to replacement existing S106 agreement was discussed.

3.0 Representations:

3.1 Technical and Statutory Consultees:

Hertfordshire County Council (Highways):

Originally objected to the application on the basis of insufficient space within the site to achieve manoeuvring space within the site for refuse collection vehicles. Amended plans received show a kerb side collection and on that basis HCC (Highways) have removed their objections. They note that with the proposed kerb side refuse collection some drag distances for residents to reach the collection point are beyond standard but this deficiency does not amount to a reason for refusal in their view (officer note, this issue has never been successful on appeal at NHDC). Suggested conditions set out below **(see recommended condition nos. 6-10)**.

3.2 Hertfordshire County Council (Lead Local Flood Authority):

No objections. Suggested condition. **(see recommended condition no.11)**.

3.3 Hertfordshire County Council (Historic Environment – Archaeology):

No objection. Suggested condition **(see recommended condition no. 12)**.

3.4 Hertfordshire County Council (Ecology):

Nothing received within the consultation period.

- 3.5 **Environment Agency (Contaminated Land and Controlled Waters):**
No objection. Suggested conditions (**see recommended condition nos. 13-15**).
- 3.6 **Historic England:**
No objections. Recommends the below ground archaeological potential of the site is examined.
- 3.7 **Senior Conservation Officer:**
Conservation surgery discussion and considers that overall harm to designated heritage assets is within the lower end of the less than substantial harm test set out in paragraph 202 of the NPPF. Considers that some harm would be caused by the larger dwelling proposed on plot 3 to be of a scale that would be dominant within the courtyard setting when compared with the smaller barn style dwellings on plots 1 and 2.
- 3.8 **NHDC Waste Collection and Recycling Service:**
Nothing received within the consultation period.
- 3.9 **NHDC Environmental Health (Noise):**
No objection. Recommend informative regarding construction management (**see recommended informative no. 4**).
- 3.10 **NHDC Environmental Health (Air Quality):**
No objection. Recommend condition regarding EV charging points associated with the development (**see recommended condition no. 16**).
- 3.11 **NHDC Environmental Protection (Contaminated Land – Human Health):**
No objections. Suggested condition (**see recommended condition 13**).
- 3.12 **Therfield Parish Council:**
Object to the proposed development. Consider the site to be greenfield, all previous reasons for refusal still stand, consider the existing controls of the S106 agreement should be maintained and no housing development should be allowed on this site.

3.13 Public Comments:

Full details can be viewed on the Council's website. A summary of views is set out below:

The application site is not allocated in the 2011-2031 Local Plan and is located outside the Therfield Settlement boundary as proposed in the Plan;

Any development of this site would set a dangerous precedent and undermine countryside protection in the wider area;

This is a greenfield site tied as agricultural use within the S106 agreement and these controls should remain;

All previous reasons for refusal still stand;

This is an ideal site for three houses;

The proposed development does not meet the housing needs of the village, which is for smaller houses than those proposed here;

The planning application is invalid as some of the trees shown for retention are outside the red line and outside the application site, and therefore their retention cannot be controlled;

Welcome development on this site as it would become a seamless addition to the village but would like to see restriction on any further development to the rear of the site.

4.0 Planning Considerations

4.1 Site and Surroundings

4.1.1 The application site comprises an enclosed and gated area of land which is largely down to concrete hardstanding. The site occupies a prominent position on the high ground to the south of the Kelshall Road on the edge of the village of Therfield, west of Tuthill Farmhouse.

4.2 The Proposals

4.2.1 Full planning permission is sought for the development of three detached dwellings and associated infrastructure on this site. The accommodation mix proposed would be 1x4 bed, 1x5 bed and 1x6 bed dwellings.

4.2.2 Vehicular access to this courtyard form of development would be gained from the current gated vehicular access point. The two dwellings proposed on either side of the proposed entrance would be of barn style design and appearance and the larger dwelling proposed in the western section of the site would have a more traditional farmhouse style appearance.

4.2.3 The proposal includes the establishment of three generous plots within a landscaped setting and would require the breaking up and removal of the large concrete apron which dominates the application site, covering almost the total area of the site at present.

4.3 Key Issues

4.3.1 Taking account of the relevant development plan policies and other material considerations listed above, together with the representations also listed above and the relatively recent decisions of the Planning Control Committee to refuse permission for larger scale development schemes on this site I consider the main issues to be addressed in the determination of this planning application are as follows:

- The principle of development on the site and the overall policy basis for any decision;
- Whether this revised scheme has overcome the reasons for refusal of the most recent two planning applications and whether there have been any material change in circumstances since those decisions;
- Whether any harm identified that would be caused by this development proposal would significantly and demonstrably outweigh the benefits of delivering new homes in the clear absence of a five-year land supply of deliverable housing sites in this District (latest published estimate 1.5 year land supply (April 2021)).
- Finally, if Members are minded to grant planning permission for this development proposal how does the Council ensure the existing planning controls contained in the current S106 agreement that relate to this site are maintained continuously post any grant of planning permission up until the establishment of new land use on this which would remove the requirement for the current controls by making them unnecessary?

The following paragraphs address these broad issues and related detailed matters in this order before reaching conclusions on the planning balance and setting out a recommendation.

4.3.2 Principle of Housing and Policy Basis for the Decision

The application site is located outside the settlement boundary of Therfield both in the Saved Local Plan (Policy 6) and the emerging Local Plan (Policy CGB1). The site is located within the Rural Area Beyond the Green Belt, wherein pre- the National Planning Policy Framework (NPPF) (both 2012, 2019 and 2021 versions) the planning system could effectively prevent market housing and most housing schemes in principle, certainly for market housing. With the presumption in favour of sustainable development set out in the NPPF this is no longer the case.

4.3.3 Paragraph 11 of the NPPF is of critical importance in setting out the presumption in favour of sustainable development, which for decision making reads as follows:

‘[for housing development]

c) Approving development that accords with an up to date Development Plan without delay, or

d) where there are no relevant development plan policies, or the policies which are most relevant are out of date, granting permission, unless;

i) the application of policies within this Framework that protect areas of assets of particular importance provides a clear reason for refusing the development proposed; or

ii) any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies of this Framework when taken as a whole.’

4.3.4 Addressing point c) first. The Council does not have an up to date Development Plan. In the year 2021 of an emerging Plan period 2011-2031 the Council has still not adopted a new Local Plan since 1996. Therefore, the Saved Policies of the 1996 Plan represent the current Development Plan for North Hertfordshire. For point d), there are no policies in the Framework listed in the footnote to the paragraph 11, such as Green Belt, National Park, SSSI or heritage (see discussion below) that indicate a refusal for development on this site in principle. Moreover, the Council currently has at best a 1.5 year land supply of deliverable housing sites (April 2021), down from 2.2 years in 2020 and is in fact one of the worst performing authorities for housing delivery in England. This means policies that are most relevant (Saved Local Plan Policy 6) are out of date in their entirety.

4.3.5 On this basis any assessment of development on this site is firmly within the test set out in the NPPF paragraph 11 (d) (ii). To refuse planning permission the Council must demonstrate with evidence that any harm identified as a result of the development would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.

4.3.6 Assessment of Revised Scheme against Previous Refusals

The scheme proposed in this planning application is for 3 dwellings not 6 or 18 as were proposed in the previous applications. The reasons for refusal of the 6 dwelling scheme (ref. 20/00117/OP) which most closely resembles the quantum of development proposed here are set out in order below, together with my opinion of the scheme in relation to those earlier reasons for refusal:

4.3.7 Reason for refusal 1 of planning application no. 20/00117/OP

'By reason of its suburban form and layout, the proposed development would appear at odds with the informal agrarian character of the surrounding countryside in this edge of village location. As such the proposal would fail to take the opportunity to safeguard or enhance the character of the area and the way it functions contrary to the advice set out in the NPPF, specifically paragraphs 127 and 130 and the requirements of saved Policies 6 and 57 of the local plan (SLP) and Policies CGB1 and D1 of the emerging local plan (ELP).''

4.3.8 In my opinion the current proposal creates a more agricultural style layout in the form of a group of buildings surrounding an enclosed courtyard of development which is more appropriate for this location and with the reduced number of dwellings proposed would in my view be a less suburban form of development than the recently refused scheme.

4.3.9 The policies referred to in this reason for refusal also seek to protect the intrinsic value of the countryside (although this objective is not referred to in the text) and in which case are consistent with the aims and objectives of the NPPF. As I set out above it is no longer the case the planning policies impose an effective embargo on housing development outside defined settlements and with the presumption in favour of sustainable development it is for the decision maker to assess a scheme against the objective of seeking to preserve the intrinsic value of the countryside. To this end I consider that this site which consists largely of a concrete apron on an admittedly elevated site has a very limited contribution to the intrinsic value of the countryside and on that basis I consider that in terms of protecting the countryside, the proposed development does not unduly harm the character the countryside in this location. Overall, therefore I consider the proposed development overcomes this reason for refusal and the balance between development and protection of the countryside, given that this site is not an open green space, is dominated by concrete hard standing and has an extant permission for HGV storage, is neutral in my judgement.

4.3.10 Reason for refusal 2 of planning application no. 20/00117/OP

'The application proposal would be in an area remote from services and facilities such that the occupiers would be almost exclusively reliant on private transport for most of their everyday needs. This inadequacy would be compounded by the site's poor connectivity with the limited facilities available in the village itself, most notably the school. Being some 800m from the school with no footpaths or lighting, along narrow country lanes, non-car access from the site would be poor and possibly hazardous. This poor local connectivity would further militate against the development's successful assimilation into the settlement. If approved, this would amount to the promotion of unsustainable development at variance with the National Planning Policy Framework and its aim to promote sustainable patterns of well connected, inclusive development and policies in the Council's emerging local plan (ELP), principally Policy SP1, supporting the same.'

- 4.3.11 This remains the case, there have been no changes to the wider higher network in the intervening period and the proposed development seeks to utilise the same access point. The lack of access to local facilities therefore remains a negative in the planning balance and other than a reduction in the number of dwellings proposed and therefore a reduction in harm there is also no corresponding increase in benefits as the costs benefit equation between harm caused to sustainability against benefits of new homes remains the same. There has however been a reduction in housing land supply since July 2020 from the 2020 AMR figure of 2.2 years to a current even worse figure of 1.5 years.
- 4.3.12 Reason for refusal 3 of planning application no. 20/00117/OP
‘The developments reliance on private transport to access essential services in the village and beyond, and the provision of car parking at the minimum standard, with limited surplus capacity for visitors, would likely combine and give rise to hazardous and unsightly on street parking conditions in what is a very narrow country lane. Given the nature of the highway network local to the site, this concern is considered serious and likely to manifest in locally severe highway issues contrary to the advice in the NPPF and policies in the local plan (SLP Policy 55) and the emerging plan (ELP Polices T1 and T2) promoting adequate parking and highway safety.’
- 4.3.13 This reason for refusal is overcome in my view as there is more than sufficient car parking proposed within the site and with no objection from HCC (Highways) in my view this reason for refusal would be very difficult to sustain on appeal if repeated. Each of the three dwellings would include double garages and space outside the dwellings for two additional car parking spaces therefore creating spaces for four cars for each dwelling. On that basis the likelihood of this development proposal leading to dangerous additional on-street car parking is very limited and certainly not a sufficiently high likelihood to justify a refusal of planning permission.

4.3.14 Reason for refusal 4 of planning application no. 20/00117/OP

'The proposal would, by its very nature, introduce a form of development which would inevitably occasion a marked change to the rural setting (and therefore significance) of the adjacent conservation area as it is currently framed on this important entrance to the village. Further, the suburbanising nature of development would occasion harm to the setting of the scheduled monument referred to as 'Motte and Bailey castle and associated earthworks and the grade 2 listed building known as Tuthill Manor. Not only would this change manifest itself by the introduction of development more typical of a suburban environment, but by the inevitable chattels and general domestication associated with such development, including overspill car parking onto the narrow Kelshall Road. Accordingly, it is considered that the proposal would adversely impact upon the setting (and therefore significance) of the listed building and conservation area as well as the scheduled monument. This being the conclusion, the proposal would fail to satisfy the provisions of Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the aims of Section 16 (particularly paragraphs 192, 193, 194 and 196) of the NPPF and Policy HE1 of the North Hertfordshire District Proposed Submission Local Plan 2011-2031.'

4.3.15 Paragraph 202 of the NPPF (July 2021) states that:

'Where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including where appropriate, securing its optimum, viable use.'

4.3.16 In terms of designated heritage assets the comments of Historic England address the scheme in relation to the nearby scheduled monument and Members will note that whilst they raise concerns regarding the effect on the setting of scheduled monument (i.e. some harm would occur as a result of this development) they do not object to the current planning application.

4.3.17 The Therfield Conservation Area boundary runs immediately to the east of the application site. Also, the grounds of the grade 2 listed building Tuthill Manor lie immediately to the east of the track that runs to the east of the application site. On this basis the proposed development of three dwellings in this location would have an effect on the setting of both these designated heritage assets. Visually, given the level of screening within the site on this side of the development and the design features of the development as a relatively close-knit courtyard development of three dwellings in appropriate materials and finish for each dwelling I consider that any harm both visually and in terms of built form would be on the lower end of the less than substantial test set out in paragraph 202 of the NPPF. Moreover, as there is more than sufficient car parking proposed and potential for generous landscaping within the scheme the specific harms set out in the above referenced previous reasons for refusal, namely overall suburbanisation and potential spill over car parking in the wider area, would not occur with this new development proposal in my judgement.

- 4.3.18 Given the less than substantial harm identified to the nearby designated heritage assets, consideration of the public benefits of the scheme must be weighed against this harm under the terms of paragraph 202 of the NPPF. More detailed discussion of the public benefits are set out in the Planning Balance section of the report, these being mainly the delivery of new homes in a situation where the Council has a substantial under delivery of new homes and the development proposal providing an opportunity to break up and remove an unsightly large expanse of concrete that defines this site and replace it with a well landscaped small scale housing scheme. In my view these benefits outweigh the less than substantial harm to the designated heritage assets. The conclusion of this balance under paragraph 202 of the NPPF places the overall assessment of the development proposal firmly within the presumption in favour of sustainable development set out within paragraph 11 of the NPPF as set out above.
- 4.3.19 In my opinion reason for refusal 4 of the earlier application has been overcome.
- 4.3.20 Reason for refusal 5 of planning application no. 20/00117/OP
'The Preliminary Risk Assessment report provided with the planning application 20/00117/OP appears to be incomplete and will therefore need to be updated to reflect all recent, as well as historic activity and uses, including the storage and/or dismantling of end-of-life vehicles. In the absence of this additional information, the application has not adequately demonstrated what risk the proposed development poses to controlled waters.'
- 4.3.21 Advising on potential contamination of controlled waters is the responsibility of the Environment Agency and Members will note above that they raise no objection to this planning application. On that basis this reason for refusal has been overcome.
- 4.3.22 Reason for refusal 6 of planning application no. 20/00117/OP
'The Flood Risk and Surface Water Assessment carried out by Ardent Consulting Engineers reference 196660-04 Rev A dated April 2020 submitted with this application does not comply with the requirements set out in paragraph 9 the Technical Guide to the National Planning Policy Framework. The submitted FRA does not therefore, provide a suitable basis for assessment to be made of the flood risks arising from the proposed development.'
- 4.3.23 Members will note that there are no objections to the current application from the Lead Local Flood Authority (LLFA) and on that basis this sixth reason for refusal of the earlier application has also been overcome.

4.3.24 Conclusions on Merits of the scheme and Planning Balance

From the above discussion there remain some harms that would be caused by this development that must be weighed in the planning balance, most notably the lack of access to local services and the reliance on the private car that would be necessary to access services and poor pedestrian facilities (including lack of footpath link from the site to the village) to access the wider village. There would also be albeit within the lower range of less than substantial harm to nearby designated heritage assets. Does this remaining harm significantly and demonstrably outweigh the benefits of the scheme? The benefits of the scheme in my view are the delivery of three new homes when the Council is manifestly unable to demonstrate a five-year supply and the benefits of new homes only increases in the decision-making equation the more the shortfall in supply (note that this shortfall is more acute now than it was in 2020). Other benefits include the associated removal of the concrete apron which dominates the site and other benefits in the form of new planting and landscaping. Paradoxically the operational development required to remove some or all of the concrete apron without a new planning permission would represent a breach of the terms of the current S106 agreement (as it prohibits operational development) so to deliver this benefit a new planning permission and associated modification of the current agreement is required as at this time such an operation is prohibited even if the current owner wanted to return the site to greenspace without any associated housing. The extant permission (92/00643/1) to which the associated S106 agreement relates to also allows for the storage of 4 HGVs on this site and by the proposed removal of this use and associated controlling agreement in my view would also be of benefit to the local environment.

4.3.25 As can be seen from the representations set out above and displayed on the Council's website, many local residents consider that the use of the site should remain as an agricultural use (albeit there is also permission for HGV storage). In my view the current non-use / agricultural use of this site which simply consists of a raised concrete apron contributes very little the character of the area and in my judgement if permission is granted for this relatively small scale housing development in this edge of village location (outside the settlement boundary but close to it) would provide an incentive to properly and carefully break up and remove a huge swathe of concrete and replace it with a well-designed housing layout within a landscaped setting. This in my view represents a positive benefit to the scheme as well as the delivery of three new homes. In my view the remaining harm of poor access to the village and wider services and at the lower end of less than substantial harm to nearby heritage assets does not significantly and demonstrably outweigh these benefits and on that a basis in terms of planning merits and on that basis I support this scheme.

4.3.26 A matter has been raised through public comments and through Therfield Parish Council which is that some of the trees which are located around the boundary of the application site are located outside the red line as they are not under the control and ownership of the applicant. This is indeed the case and some trees are outside the application site which means their retention cannot be controlled by suitably worded planning conditions. Having assessed this matter I am of the view that the development is acceptable in landscape and visual terms regardless of whether or not any of the trees outside the application site are retained. There is more than sufficient space within the application site (land under the control of the applicant) for a comprehensive and robust landscaping scheme, the details of which can be controlled through suitably worded planning conditions.

4.3.27 Applicant's Proposal to Ensure Continuity of Control of Existing S106 Agreement

As Members have been advised before and as is reflected in earlier decisions on planning applications relating to this site, the existence of a controlling S106 agreement which places additional controls to regulate the current authorised use of the land as an HGV depot and open agricultural storage is not a material consideration that effects the merits of the current planning application. In particular Members must note that the existence of this S106 agreement did not amount to a reason for refusal of planning permission on the previous schemes. Notwithstanding this as is explained below to develop the site for housing without removing, revoking or changing the controls of the S106 agreement would be a breach of the currently worded agreement. On this basis if Members were minded to grant planning permission for this development a suitable mechanism is required to ensure that if the development is implemented it does not breach the terms of the current S106 agreement.

4.2.28 The option I put to the applicant in the pre-application discussion that took place was for the applicant to enter into a new S106 agreement that revokes all previous permissions on this site (except the telecoms approval) and to revoke the associated controls and for this to be agreed at the time that any new permission is granted, leaving a nil use on the site before any new development can commence. Under this scenario if new development permitted is commenced for housing that development would not be in breach of the agreement as it would have been revoked. The applicant rejected this suggestion as they wanted the terms of the existing permission and use to remain up until a new development is commenced and implemented as the revocation suggestion I proposed would have occurred upon the grant of planning permission rather than upon commencement or completion of any new development. On that basis the applicant has put forward an alternative S106 agreement which seeks to achieve the following:

4.2.29 The new agreement would replace the old agreement and would maintain all current controls on the land contained in the extant agreement until commencement of development. Maintain the 'landscaped area' identified in the agreement plan and on the application drawings as landscaped area in perpetuity. Maintain all current controls progressively between commencement of the new development (whilst allowing for the commencement) and then progressively remove all other controls up until practical completion of the new housing development. At this time a new planning chapter commences on the land and the previous land use and controls are removed as by that time they would serve no planning purpose.

4.2.30 A draft S106 agreement has been submitted as part of the planning application documents. Should Members be minded to grant planning permission for this development proposal the final wording and completion of the legal agreement would need to be finalised before planning permission is granted.

4.3.31 Climate Change Mitigation

The scheme would create new soft landscaping opportunities and other sustainable development objectives could be secured by conditions (such as EV charging points) were Members minded to grant planning permission for this development. This is in accordance with Section 14 of the NPPF 2021

4.3.32 In terms of building construction and design the scheme includes the following features: highly insulated building fabric, passive ventilation, solar energy, energy efficient lighting and rainwater harvesting.

4.3.33 Conclusions

The absence of a five-year land supply of deliverable housing sites underscores the benefits of delivering new homes. Other benefits include the removal of a large area of concrete apron, and the provision of HGV car parking permitted via the extant permission. There remains harm that would be caused by the revised scheme in the form of poor pedestrian links and the relative isolation of the site in relation to services as well as to the lower end of less than substantial harm to nearby designated heritage assets. However, in my opinion, and subject to the completion of a necessary legal agreement to ensure continuity of land use control up to and including the development of the new housing scheme, the identified harm of this scheme does not significantly and demonstrably outweigh the benefits of the scheme and on that basis I recommend that planning permission is granted for this scheme as is set out below.

4.3.34 Alternative Options Considered

See discussion of case merits above.

5.0 Legal Implications

5.1 In making decisions on applications submitted under the Town and Country Planning legislation, the Council is required to have regard to the provisions of the development plan and to any other material considerations. The decision must be in accordance with the plan unless the material considerations indicate otherwise. Where the decision is to refuse or restrictive conditions are attached, the applicant has a right of appeal against the decision.

6.0 Recommendation

6.1 That planning permission be **GRANTED** subject to the following conditions and subject to the completion of the necessary S106 agreement;

6.2 That the applicant agrees all necessary extensions to the statutory determination - period to enable the completion of the S106 agreement. In the event that agreement is not secured to extend the statutory determination that the Members allow the Development and Conservation Manager to refuse planning permission based on absence of the requisite legal agreement

6.3 Recommended Conditions, Reasons and Informatives

Conditions and Reasons:

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out wholly in accordance with the details specified in the application and supporting approved documents and plans listed above.

Reason: To ensure the development is carried out in accordance with details which form the basis of this grant of permission.

3. Details and/or samples of materials to be used on all external elevations and the roof of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced and the approved details shall be implemented on site.

Reason: To ensure that the development will have an acceptable appearance which does not detract from the appearance and character of the surrounding area.

4. Prior to the commencement of the development hereby permitted full details of a comprehensive hard and soft landscaping and planting scheme shall be submitted to and approved in writing by the Local Planning Authority. All approved hard standing shall be completed prior to the first occupation of the development and thereafter retained and maintained to the satisfaction of the Local Planning Authority. The approved soft landscaping / planting details shall be carried out before the end of the first planting season following either the first occupation of any of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced during the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to vary or dispense with this requirement.

Reason: To ensure that the full landscaping scheme set out in the application is improved and implemented in full in a timely manner in the interests of phasing and to ensure the development is comprehensively landscaped in the interests of visual amenity.

5. Prior to the commencement of the development hereby permitted a full management plan and method statement to achieve the break up and safe and sustainable disposal of the concrete apron on the site shall be submitted to and approved in writing by the Local Planning Authority, Such works shall thereafter be carried out in complete accordance with the approved details or particulars unless otherwise agreed in writing by the Local Planning Authority and must be completed prior to the first occupation of the development hereby permitted.

Reason: To ensure the correct phasing of the development and to enable a comprehensive soft landscaping plan to be delivered on this site in association with the development hereby permitted.

6. Before first occupation of the approved development, the new vehicle access serving the development shall be completed in accordance with the approved in-principle plan, drawing number 196660-005 Rev A, and constructed to the specification of the Highway Authority and Local Planning Authority's satisfaction. This shall include the permanent provision of visibility splays of 2.4 metres x 59 metres to the west, and 2.4 metres x 57 metres to the east, within which there shall be no obstruction to visibility between 600mm and 2 m above the carriageway level.

Reason: To ensure the provision of an access appropriate for the development in the interests of highway safety and convenience.

7. Before first occupation of the approved development, a 2 metre wide pedestrian link from the site onto the adjacent public right of way (Therfield 034 Footpath) shall be provided and permanently maintained to the Local Planning Authority's satisfaction, as shown on the in-principle drawing 300.06 and referenced in paragraph 3.12 of the Transport Statement.

Reason: In the interest of sustainable travel, to reduce the reliance on the private motorcar and ensure a safe and suitable alternative route for pedestrians and cyclists to the village centre.

8. Before development commences, additional plans shall be submitted and approved in writing by the Local Planning Authority, in consultation with the Highway Authority, which demonstrate that all on-site parking spaces can be accessed by a vehicle, and that on-site turning space is sufficient to enable mid-sized service vehicles (e.g. a supermarket delivery van at 6.5 metres in length) and a fire tender to enter and exit the site in forward gear.

Reason: To ensure that service and emergency vehicles entering and exiting the site do not adversely affect the free and safe flow of traffic on the public highway.

9. Before the development hereby approved is first occupied, all on site vehicular areas shall be accessible and surfaced in a manner to the Local Planning Authority's approval so as to ensure satisfactory parking of vehicles outside highway limits. Arrangements shall be made for surface water from the site to be intercepted and disposed of separately so that it does not discharge into the highway.

Reason: In order to minimise danger, obstruction, and inconvenience to users of the highway and of the premises.

10. The construction of the development shall not commence until details of construction vehicle movements (routing, amount, types) and traffic management measures are submitted to and approved by the Highway Authority.

Reason: To ensure the impact of construction vehicles on the local road network is minimised.

11. No development shall take place until the final design of the drainage scheme is completed and sent to the Local Planning Authority for their approval in writing. The surface water drainage system shall be based on the submitted Flood Risk and Surface Water Management Report, produced by Ardent Consulting Engineers, Project No. 19660, Rev A, dated March 2021. The scheme shall include:

1. Full details of the drainage plan including location of all the drainage features;
2. Where infiltration is proposed, evidence of ground conditions / underlying geology and permeability including BRE digest compliant infiltration tests at the precise location of the proposed infiltration features. Where deep bore soakage is proposed, failing head tests should be provided with associated ground investigation and assessment;
3. If infiltration is not feasible, the applicant will need to provide an alternative surface water discharge mechanism. If discharge to the local sewer network is proposed, confirmation from the relevant water company that they have the capacity to take the proposed volumes and run off rates is provided. With discharge from the site should be at an agreed rate with the water company. This should be at Greenfield run off rate; justification will be needed if a different run off rate is used;

4. Detailed engineering drawings of the proposed SuDs management and treatment and inclusion of above ground features such as permeable paving and basin;
5. Demonstrate appropriate SuDs management and treatment and inclusion of above ground features such as permeable paving and basin;
6. Provision of half drain down times within 24 hours;
7. Final detailed management plan to include arrangements for adoption and any other arrangements to secure the operation of the scheme throughout its lifetime,

Reason: To prevent the increased risk of flooding, both on and off the site and to reduce the risk of flooding to the proposed development and future occupants.

12. A) No development shall take place until an archaeological Written Scheme of Investigation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of archaeological significance and research questions; and:

1. The programme and methodology of site investigation and recording;
2. The programme and methodology of site investigation and recording as required by the evaluation results;
3. The programme for post investigation assessment;
4. Provision to be made for analysis of site investigation and recording;
5. Provision to be made for publication and dissemination of analysis and records of the site investigation;
6. Nomination of a competent person or persons/organisation to undertake the works set out in the Written Scheme of Investigation.

B) The development shall be carried out in accordance with the programme of archaeological works set out in the Written Scheme of Investigation approved under condition (A).

C) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the Written Scheme of investigation approved under condition (A) and the provision made for analysis and publication where appropriate.

Reason: To ensure that the appropriate site investigation relating to potential archaeological remains are investigated on this site prior to the implementation of the planning permission.

13. Following the breaking-out of the concrete surface of the site, a visual olfactory survey shall be made of the surface of the site by a qualified, experienced environmental consultant. Any evidence of contamination, encountered either during the above mentioned survey, or during the development of this site, shall be brought to the attention of the Local Planning Authority as soon as practically possible and development shall cease; a scheme to render the contamination harmless shall be submitted to and approved in writing by the Local Planning Authority, and subsequently fully implemented prior to the occupation of the development.

Reason: To ensure that any contamination affecting this site is dealt with in a manner that safeguards human health, the built and natural environment and controlled waters.

14. Prior to the commencement of the development hereby permitted a scheme of surface water disposal shall be submitted to and approved in writing by the Local Planning Authority. Infiltration systems shall only be used where it can be demonstrated that they will not cause a risk to ground water quality. The development shall be carried out in accordance with the approved details.

Reason: Infiltration through contaminated land has the potential to impact on ground water quality.

15. Piling or any other foundation designs and investigation boreholes using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site which it has to be demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reason: Contamination can still be missed by an investigation and this condition gives the Local Planning Authority the ability to require a new, or amendments to an existing, remediation strategy to address any previously unexpected contamination.

16. Prior to occupation, each of the three proposed new dwellings an Electric Vehicle (EV) ready domestic charging point.

Reason: To contribute to the objective of providing a sustainable transport network and to provide the necessary infrastructure to help off set the adverse impact of the operational phase of the development on local air quality.

Proactive Statement

Planning permission has been granted for this proposal. The Council acted proactively through positive engagement with the applicant at the pre-application stage and during the determination process which led to improvements to the scheme. The Council has therefore acted proactively in line with the requirements of the Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Informatives

1. Storage of materials: The applicant is advised that the storage of materials associated with the construction of this development should be provided within the site on land which is not public highway, and the use of such areas must not interfere with the public highway. If this is not possible, authorisation should be sought from the Highway Authority before construction works commence. Further information is available via the website <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/highways-roads-and-pavements.aspx> or by telephoning 0300 1234047.
2. Obstruction of public highway land: It is an offence under section 137 of the Highways Act 1980 for any person, without lawful authority or excuse, in any way to wilfully obstruct the free passage along a highway or public right of way. If this development is likely to result in the public highway or public right of way network becoming routinely blocked (fully or partly) the applicant must contact the Highway Authority to obtain their permission and requirements before construction works commence. Further information is available via the website <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/highways-roads-and-pavements.aspx> telephoning 0300 1234047.
3. Road Deposits: It is an offence under section 148 of the Highways Act 1980 to deposit mud or other debris on the public highway, and section 149 of the same Act gives the Highway Authority powers to remove such material at the expense of the party responsible. Therefore, best practical means shall be taken at all times to ensure that all vehicles leaving the site during construction of the development are in a condition such as not to emit dust or deposit mud, slurry or other debris on the highway. Further information is available via the website <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/highways-roads-and-pavements.aspx> or by telephoning 0300 1234047.
4. During the construction phase the guidance in BS5228-1: 2009 (code of practice for control and construction on open sites) should be adhered to. During the construction phase no activities should take place outside the following hours: Monday to Friday 0800 to 1800 hours; Saturdays 0800 to 1300 and no work on Sundays or bank holidays.

5. **EV Charging Point Specification:**

A charging point shall be installed by an appropriately certified electrician/electrical contractor in accordance with the following specification. The necessary certification of electrical installation should be submitted as evidence of appropriate installation to meet the requirements of Part P of the most current Building Regulations.

Cable and circuitry ratings should be of adequate size to ensure a minimum continuous current demand for the vehicle of 16A and a maximum demand of 32A (which is recommended for Eco developments)

- o A separate dedicated circuit protected by an RBCO should be provided from the main distribution board, to a suitably enclosed termination point within a garage or an accessible enclosed termination point for future connection to an external charge point.

- o The electrical circuit shall comply with the Electrical requirements of BS7671: 2008 as well as conform to the IET code of practice on Electric Vehicle Charging Equipment installation 2012 ISBN 978-1-84919-515-7 (PDF). This includes requirements such as ensuring the Charging Equipment integral protective device shall be at least Type A RCD (required to comply with BS EN 61851 Mode 3 charging).

- o If installed in a garage all conductive surfaces should be protected by supplementary protective equipotential bonding. For vehicle connecting points installed such that the vehicle can only be charged within the building, e.g. in a garage with a (non-extended) tethered lead, the PME earth may be used. For external installations the risk assessment outlined in the IET code of practice must be adopted, and may require additional earth stake or mat for the EV charging circuit. This should be installed as part of the EV ready installation to avoid significant on cost later.

- o A list of authorised installers (for the Government's Electric Vehicle Homecharge Scheme) can be found at <https://www.gov.uk/government/organisations/office-for-low-emission-vehicles>

7.0 **Appendices**

7.1 None