

<b>ITEM NO:</b>	<u>Location:</u>	<b>Land Adjacent To Elm Tree Farm, Hambridge Way, Pirton</b>
<b>6</b>		
	<u>Applicant:</u>	<b>Cala Homes</b>
	<u>Proposal:</u>	<b>Construction Management Plan &amp; Traffic Management Plan - Condition 6 - Holwell route by CALA (as amended by Construction Route Plan dated 12/02/18) - Arrival and Departure via Holwell by Waterman Infrastructure &amp; Environment Ltd (as amended by submission on 12 February 2018) Road safety audit of the passing places by Mayer Brown dated October 2017 Safety Audit Response Sheet by Waterman dated 19.10.17 Road Safety Appraisal by Mayer Brown dated 27th October 2017 Plan number 0049 rev A01 entitled Bus and large crane vehicle tracking by Waterman dated October 2017 (as Discharge of Condition of Planning Permission 15/01618/1 granted 25/05/2016)</b>
	<u>Ref.No:</u>	<b>17/02778/1DOC</b>
	<u>Officer:</u>	<b>Simon Ellis</b>

**Date of expiry of statutory period :** 30 March 2018

**Reason for Delay**

N/A. The applicant has agreed to an extension to the statutory determination period for this application to 30 March 2018.

**Reason for Referral to Committee**

Under the Council's constitution and scheme of delegation the Development and Conservation Manager has full delegated powers to determine all applications for the discharge of details submitted pursuant to conditions of any planning permission. The Development and Conservation Manager does however have discretion to refer any decision to the Planning Control Committee where there has been significant public interest. Proposals relating to construction management and construction traffic routes associated with the proposed residential development on land at Elm Tree Farm, Pirton, is clearly an example of a proposal that has generated significant public interest, as is set out in the relevant sections of this report below. On that basis I have once again decided to refer this application to be determined by the Planning Control Committee rather than under powers delegated to me.

On a related point there is no requirement under relevant legislation and regulations to consult local residents on any application to seek discharge of a pre-commencement condition of planning permission.

However, given the level of public interest in this proposal officers decided to undertake a wide public consultation exercise enabling local residents to have three weeks to comment on this application as a minimum. This formal consultation period ended on 28 February 2018.

## **1.0 Relevant History**

- 1.1 At the meeting of the Planning Control Committee held on 17 December 2015 Members resolved to grant outline planning permission on this site for the following development proposal (ref. 15/01618/1):

**Outline application (all matters reserved) for residential development of up to 82 dwellings with associated infrastructure, public open space and planting (amended description).**

- 1.2 Following the completion of the associated S106 Obligation outline planning permission was granted on 27 May 2016.
- 1.3 Condition no. 2 of this outline planning permission reads as follows:

**Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of 3 years from the date of this permission, and the development hereby permitted shall be begun before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.**

**Reason: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.**

- 1.4 Condition no. 6 of this outline planning permission reads as follows:

**Prior to the commencement of the development full details of a Construction Management Plan shall be submitted to the Local Planning Authority for approval in writing. The Construction Management Plan shall contain the program of works on site, area of construction vehicle parking, storage and delivery of materials within the development site, construction vehicles wheel washing facilities, and details construction vehicle routing to and from the site.**

**Reason: In the interests of maintaining highway efficiency and safety.**

- 1.5 At the meeting of the Planning Control Committee held on 25 May 2017 Members resolved to grant reserved matters approval for the following development proposal (ref. 16/02256/1):

**Reserved matters application for approval of access, appearance, landscaping, layout and scale to serve a residential development of 78 dwellings (31 affordable and 47 private), pursuant to outline planning application 15/01618/1 granted 27.5.16 (as amended).**

- 1.6 Following the Committee decision the reserved matters approval decision notice was issued on 30 May 2017. Referring back to the implementation time table outlined above (condition no. 2 of outline planning permission no. 15/01618/1) in order to keep this planning permission extant work on this development must now commence before 30 May 2019.
- 1.7 Rather than submit separate details of a Construction Management Plan under a separate application to discharge the requirements of condition no. 6 of outline planning permission no. 15/01618/1, the applicant submitted the Construction Management Plan (CMP) as part of the reserved matters approval application (ref. 16/02256/1, received as a valid application on 3 October 2016). This meant that as well as consulting local residents on the reserved matters application the Council also consulted local residents on the CMP.
- 1.8 During the determination process of the reserved matters application ref. 16/02256/1 officers advised the applicant that to discharge the requirements of condition no. 6 of outline planning permission no. 15/01618/1 required a separate application to the reserved matters application. When considering applications for the approval of reserved matters, consideration of construction management arrangements are not material and it was therefore necessary to separate the two issues.
- 1.9 Following this advice the applicant then submitted a separate application to seek discharge of the requirements of condition no. 6 of outline planning permission no. 15/01618/1. This separate application was received on 9 February 2017 and was given the reference number 17/00335/1DOC. As is explained above there is no requirement under relevant legislation and regulations to consult local residents on applications which seek to discharge the requirements of conditions of planning permission. However, given that local residents had already inadvertently been consulted on the CMP by virtue of being consulted on the original reserved matters application (indeed many comments had already been received before the separate application was submitted), officers felt it was clearly in the public interest to consult widely on the separate application to seek discharge of the requirements of condition no. 6 of outline planning permission no. 15/01618/1; and indeed to refer a decision on the application to the Planning Control Committee in the public interest at the discretion of the Development and Conservation Manager. The application was subsequently reported to the meeting of the Planning Control Committee held on 25 May 2017.
- 1.10 At that meeting Members resolved to defer a decision on application ref. 17/0335/1DOC:
- 1.11 To summarise the application contained 4 possible construction routes for Members to consider as follows:
1. Arrival and Departure via Holwell
  2. Arrival and Departure via Pirton
  3. Arrival via Pirton, Departure via Holwell
  4. Arrival via Holwell, Departure via Pirton

- 1.12 The reasons for deferral are complex. Essentially Members did not feel at the meeting that they could confidently grant approval for any of these options. They requested officers to liaise with the applicant and Hertfordshire County Council (Highways) to seek more clarification on highway safety issues relating to the CMP. Members also requested that consideration be given to other possible options, including the potential for a completely new road to access the site across open countryside, potentially from the A600 to the site to avoid conflict between construction traffic and other vehicles on the public highway.
- 1.13 Following the meeting officers, the applicant and Hertfordshire County Council (Highways) held discussions to attempt to address the concerns expressed by Members at the meeting and following these discussions a revised proposal was submitted under the same application proposing a construction traffic one-way through route entering Pirton from the south and exiting the site via Holwell to the A600. The idea behind this proposal was to spread the traffic across the two villages and by making the route one-way for all vehicles seeking to avoid conflict with other construction traffic on the public highway.
- 1.14 Another consultation exercise was undertaken in July 2017 and following formal advice from Hertfordshire County Council (Highways), the Hertfordshire and Middlesex Wildlife Trust and Hertfordshire Ecology officers sought further information from the applicant before being prepared to report this application back to the Planning Control Committee. The intention being to re-notify local residents again following the submission of the information requested.
- 1.15 This information was not forthcoming and on 10 August 2017 the applicant submitted a deemed discharge application to seek a decision on the application within 2 weeks (i.e. by 24 August 2017) or a deemed consent would follow.
- 1.16 **What is a deemed discharge consent application?**
- Measures contained within the 2015 Infrastructure Act sought to speed up the process of discharging pre-commencement planning conditions with a view to improving efficiency of local planning authorities in decision making and to avoid unnecessary delays to development proposals. The Act enabled the Secretary of State to instigate a deemed discharge system which came into effect under the Town and Country Planning (General Permitted Development) Order 2015.
- 1.17 Article 27 of this order requires local planning authorities to determine all applications for the discharge of conditions within 8 weeks from receipt of such applications or within any agreed extension to this period between the applicant the local planning authority.
- 1.18 Article 28 of the order allows an applicant (for certain conditions) to apply for a deemed discharge application no earlier than 6 weeks from the date of submission.
- 1.19 Article 29 of the order gives the local planning authority 14 days within which to make a decision on the application (i.e. to either approve the details and discharge the requirements of the condition or refuse the details with clear reasons) within the 14 day period. Failure to make a decision within that period results in a deemed discharge which is effectively a default approval of the application and the applicant can rely on this non decision an effective discharge of the condition.

- 1.20 Whilst there was a scheduled meeting of the Planning Control Committee on 17 August 2017, following receipt of the deemed discharge application on 10 August there was not sufficient time to prepare a report for that meeting in order to seek Members decision on the whether or not to approve application ref. 17/00335/1DOC and discharge or not the requirements of condition no. 6 of planning permission no. 15/01618/1.
- 1.21 Officers advised the applicant that a decision to approve (or to allow a deemed discharge) of this application would not be made under delegated powers and it therefore needed to be referred to the Planning Control Committee for a decision. Officers also advised that it was not possible to organise a special meeting of the Planning Control Committee at such short notice and following this advice the applicant decided to withdraw application no. 17/00335/1DOC on 22 August 2017, two days before the deemed discharge deadline imposed on the local planning authority.
- 1.22 Members must be advised that the applicant has every right to apply for a deemed discharge application for these decisions under the legislation. The applicant clearly wants the Council to agree a CMP without delay so they can implement the planning permission.
- 1.23 The right to submit a deemed discharge application (giving the local planning authority 14 days to reach a decision) applies to this current application also (the subject of this report). If a deemed discharge application is submitted on the earliest date (from 16 March 2018 – 2 weeks before current expiry date) the local planning authority would have until 30 March 2018 to reach a decision or a deemed discharge consent is effective from that date. The next scheduled meeting of the Planning Control Committee is 19 April 2018, well passed the 30 March deadline. This means Members will have to determine this application as to defer again would risk a deemed discharge.
- 1.24 Members must also note that the right to submit a deemed discharge application remains from the minimum 6 week period (as extended) (i.e. in this case 16 March 2018) right up until such time as the application is determined. Following such an application the local planning authority must make a decision within 2 weeks following the deemed discharge application.
- 1.25 As can be seen from the timing of this application (submitted on 31 October with an applicant agreed extension to the statutory expiry date of 30 March) it is essential that this application is determined at this Committee (i.e. 15 March 2018) to avoid the deemed discharge risk from 16 March 2018.

1.26 **Updated Planning History**

At the Special Meeting of the Planning Control Committee held on 28 September 2017 Members resolved to refuse two sperate Discharge of condition applications (ref. 17/02023/DOC and 17/02024/1DOC). Of these two applications the one that broadly matches the current application as it proposed a construction traffic route in from and out through Holwell (the subject of this report) was refused permission against officer recommendation for the following reason (ref. 17/02023/1):

**The Local Planning Authority does not consider that there could be a satisfactory or safe construction traffic route through Holwell. The proposed Construction Management Plan therefore conflicts with the requirements of Policy T1 of the North Hertfordshire District Submission Local Plan (2011-2031).**

- 1.27 The Council have been informed that the applicant has already lodged an appeal to the Planning Inspectorate (PINs) against this decision. However, at the time of writing PINs have not validated the appeal or given the Council a start date. Only when this happens can interested parties be informed of the appeal. Any updates on the appeal progress will be provided at the Committee meeting.
- 1.28 As well as the appeal the applicant submitted two further applications to discharge the requirements of condition no. 6. This current application (the subject of this report) and an alternative CMP proposing the same construction traffic route but with less mitigation proposed (application ref. 17/02807/1DOC).
- 1.29 Application ref. 17/02807/1DOC was reported to the meeting of the Planning Control Committee held on 14 December 2017. At that meeting Members resolved to refuse permission to discharge the requirements of condition 6 of outline planning permission no. 15/01618/1 for the following reasons:

**‘The proposed Construction Management Plan (CMP) contains insufficient information in relation to the following matters:**

- **The proposed CMP does not explicitly propose new passing places along the route although reference is made to the Waterman document which has not been submitted in paragraph 1.1.2. New passing places as shown on the Waterman document and as proposed in earlier versions of the CMP are required;**
- **Insufficient clarity and monitoring on car sharing requirements for contractors (the earlier CMP stated *“Contractors will be encouraged to car share and arrive in multi-occupancy vans where possible. CALA will record the daily journey details of our staff, operatives and delivery vehicles to the site to ensure the above arrangements are promoted throughout the construction period.”*. This version merely 'encourages' car sharing;**
- **Reference to Holwell Road route being the only route for construction traffic is not clear and needs to be clarified;**
- **The document does not refer to a strike system or a gateman to monitor the direction of vehicles. This is required within the CMP;**
- **The document refers to using rigid vehicles ‘where practically possible’ - the wording of practically possible is not acceptable, the use of alternative vehicles would need to be agreed with HCC as highway authority;**
- **Previous CMPS included the following statement *“if for any reason a larger vehicle is required to make a delivery it will only be done so with prior consent from HCC as the Highway Authority at least a week before the delivery date. This will include certain pieces of plant such as a 360 excavator. The residents on Holwell Road will be notified at 24 hours before arrival and if necessary, a temporary traffic management order will be sought.”* This is omitted from this CMP and HCC recommends this is reprovided;**

- Reference to allowing additional time in the booking system where rigid vehicles are not used has been omitted. HCC recommends that this is reprovided;
- The condition survey is to be undertaken along the entire construction route West Lane onto Holwell Road ending at Bedford Road - further information is requested as to inclusion of West Lane;
- As part of the CMP the following statement has been omitted *“Site deliveries are to be in accordance with the set delivery hours as detailed in this document. Delivery drivers will be told to contact the site manager prior to arrival on site so that the delivery can be made efficiently and with minimal disruption to the local highways.”* HCC would recommend that this statement is re-provided to ensure that deliveries do not occur outside permitted hours.

**Notwithstanding these inadequacies the Local Planning Authority does not consider that there could be a satisfactory or safe construction traffic route through Holwell. The proposal therefore conflicts with Policy T1 of the North Hertfordshire Submission Local Plan (2011-2031).'**

1.30 The officer recommendation for this final paragraph of the decision was as follows:

**Due to these inadequacies the Local Planning Authority is unable to determine whether the proposed CMP is safe in relation to use of the public highway by construction vehicles associated with the development. The proposal therefore conflicts with Policy T1 of the North Hertfordshire Submission Local Plan (2011-2031).**

1.31 Following the debate Members adjusted the last paragraph of this reason for refusal from the officer recommendation by altering the phrase ‘Due to these inadequacies’ to ‘Notwithstanding these inadequacies’ and then stating categorically that Members remained of the view that the route is unsafe. Whilst this is only a slight change in wording the difference of emphasis is significant in that it reaffirms the view of the Committee against the professional advice of officers and of the Highway Authority that in their view this proposed construction route is unsafe and not suitable to enable this development to be carried out regardless of any proposed mitigation that had been considered before this decision was made on 14 December 2017.

1.32 Since this decision of the Planning Control Committee on 14 December 2017 officers have been informed that CALA Homes have also lodged an appeal against the Committee’s decision to refuse application ref. 17/02807/1DOC. The applicant has also informed me that the Planning Inspectorate (PINs) have agreed to co-join this appeal with the already submitted appeal (against the Committee’s decision to refuse application ref. 17/02023/1DOC – see paragraph 1.26 above); a decision that was also made against officer recommendation.

1.33 The applicant has also submitted an application for a full award of costs against the Council in relation to the combined appeal.

1.34 At the time of writing officers have still not received an official start date for the combined appeal from PINs and until this start date is received the administration of the appeal (i.e. notifying local residents and other parties) cannot proceed.

- 1.35 However, to summarise the appeal situation as things stand; There will be a combined appeal against the Planning Control Committee's decision to refuse application ref. 17/02023/1DOC (Construction route through Holwell with mitigation – decision of the Committee against officer recommendation on 28 September 2018) and against the decision of the Committee to refuse the Holwell route scheme without any mitigation at the meeting held on 14 December 2017 (ref. 17/02807/1DOC).
- 1.36 For the combined appeal it will be for Members to provide evidence as to why they consider the in and out of Holwell route to be unsafe regardless of any previously considered mitigation. This Committee decision on the safety of the route was first made at the meeting held on 28 September 2017 and then reaffirmed at the meeting held on 14 December 2017. Both myself and officers of the Highway Authority have never advised that in their view the route is fundamentally unsafe (all previous officer recommendations have been based on the adequacy of information and implementation of mitigation), therefore as with all decisions of the Committee made against professional advice it will be for Members to defend that particular aspect of the refusals with their own evidence for the forthcoming appeals.

## **2.0 Policies**

- 2.1 **North Hertfordshire District Local Plan No. 2 - with Alterations (Saved Policies):**  
No policies relevant to applications seeking discharge of conditions relating to construction management.
- 2.2 **National Planning Policy Framework (NPPF):**  
Section 4 - Promoting Sustainable Transport  
Section 11 - Conserving and Enhancing the Natural Environment (paragraph 123)  
Paragraphs 203 - 206 - Planning Conditions and Obligations
- 2.3 **National Planning Policy Guidance (NPPG):**  
Use of Planning Conditions
- 2.4 **North Hertfordshire District Submission Local Plan (2011-2031):**  
Policy T1 - Assessment of Transport Matters

## **3.0 Representations**

- 3.1 **Hertfordshire County Council (Highways):**  
Recommend approval subject to completion of S278 Agreement. Full text attached as **appendix 1**.
- 3.2 **Environmental Health (Noise):**  
Nothing received at the time of writing. Any comments to be updated.
- 3.3 **Environmental Health (Air Quality):**  
Nothing received at the time of writing. Any comments to be updated.
- 3.4 **Pirton Parish Council:**  
Nothing receive at the time of writing. Any updates to be provided at the meeting.



- 3.5 **Pirton Neighbourhood Plan Steering Group:**  
Nothing received at the time of writing. Any updates to be provided at the meeting.
- 3.6 **Holwell Parish Council:**  
Object to the application. Full text attached as **appendix 2**
- 3.7 **Response to Local Residents consultation:**  
This application has generated significant public interest and Members are advised to read comments displayed on the Council's website which is updated regularly as comments are received. I set out below a high level summary of the issues raised:
- \* **Highway safety** - the construction traffic route through Holwell is unsafe. There are insufficient passing places on narrow roads. Construction traffic, including HGVs will lead to conflict with other road users leading to a risk of highway safety in many instances, particularly during busy periods. Many properties do not have a footpath outside their front doors and risk to pedestrian safety will increase also. All the rural roads around this site are unsuitable and a temporary new road should be constructed from the A600 to enable construction.
  - \* **Congestion** - Construction is proposed to start at 9am therefore vehicles will be using these roads at peak periods adding to delays already caused by congestion, particularly on the Holwell Road/A600 junction which is already busy at peak periods. The construction project is due to last 3 years and the congestion will be disruptive for a considerable period.
- Holwell Against CALA Traffic (HACT):**  
Nothing further received at the time of writing. Any updates to be provided at the Committee. Road Safety appraisal prepared by HACT is available on the website but also attached as **appendix 3**.

## **4.0 Planning Considerations**

### **4.1 Site & Surroundings**

4.1.1 The application site is located to the east of Royal Oak Lane, south of Holwell Road and north of Hambridge Way. It has a frontage onto Holwell Road of approximately 65 metres and approximately 140 metres along Hambridge Way. The depth of the site is approximately 400 metres. The area of the site totals approximately 4.4 hectares and consists of an open field area for the majority of the northern part of the site bounded by landscaping along its eastern boundary and an area of agricultural buildings to the south of the site with a paddock area to the rear of these buildings. Part of the western boundary of the site is located adjacent to the Pirton Conservation Area. Three new detached properties are now located adjacent to the site, to the rear of 40 Royal Oak Lane.

4.1.2 The construction route is outside the application site and on the public highway.

### **4.2 Proposal**

4.2.1 The applicant seeks approval of the details required pursuant to condition no. 6 of outline planning permission no. 15/01618/1. The condition reads as follows:

**Prior to the commencement of the development full details of a Construction Management Plan shall be submitted to the Local Planning Authority for approval in writing. The Construction Management Plan shall contain the program of works on site, area of construction vehicle parking, storage and delivery of materials within the development site, construction vehicles wheel washing facilities, and details construction vehicle routing to and from the site.**

**Reason: In the interests of maintaining highway efficiency and safety.**

4.2.2 The application (as amended in February 2018) is accompanied by the following supporting documents:

- \* Amended construction routes / Plan (12 February 2018);
- \* Amended construction management plan (February 2018);
- \* CALA Construction Management Plan (amended February 2018);
- \* Holwell Road Safety Analysis;
- \* Pirton Road Safety Audit (phase 1);
- \* Construction route assessment;
- \* Letter from Wedlake Bell Solicitors (11 December 2017) setting out their view on the enforceability of condition 6;
- \* Opinion from Peter Village QC on the enforceability of the condition.

The key proposals can be summarised as follows:

Construction route is from the A600 and the wider highway network, to the site through Holwell and out of the site through Holwell back onto the A600 (using Holwell Road, Pirton Road and Waterloo Road);

Deliveries to site limited to between 9.30am and 3.00pm (Monday to Friday) and between 8.00am and 1.00pm on Saturdays. No deliveries on Sundays;

Deliveries using vehicles longer than 10m will be sporadic, limited to mobile crane (12m long) for roof work and articulated HGVs (15m long) to be used to install site compound;

The use of mostly smaller vehicles (less than 10m in length) the construction project will take approximately 3 years;

Where possible deliveries to avoid times when the local bus service is using the route (some services will be on the route between 10.19am and 2.38pm Monday to Friday);

New passing places to be constructed at the narrowest point of the route (Waterloo Lane);

Signs to be installed at each end of Holwell Road to communicate to drivers that this is a construction route and to expect the potential for HGV traffic (**Members to note this is a new mitigation measure never previously proposed**);

Provide long vehicle detector signs on either end of the narrowest section of the route (Waterloo Lane) which activate a warning when and illuminate when HGVs are detected on the route (**Members to note this is a new mitigation measure never previously proposed**);

CALA Homes to encourage contractors to car share to minimise vehicle movements to and from the site;

Any large vehicle (i.e. above 10m in length) will require prior approval from HCC (Highways), giving 1 week notice and will require temporary road closures or use of escort vehicle (**Members to note this is a new mitigation measure never previously proposed**);

Use of remote holding bays on the A1 and roads outside the village to prevent early deliveries (**Members to note that previously this was proposed on the A600 so remote waiting areas are now further away from the site**);

Letter drops to local residents to give notice of abnormal loads arriving and departing from the site;

Phasing proposed as follows:

Long vehicle detector signs to be installed before commencement of phase 1 (erection of the first 6 dwellings on site and construction Y junction as access to the site) and installation of warning signs at either end of the route;

The passing places on Waterloo Lane are to be constructed during phase 1 and become operational before the wider phase 2 development (the remainder of the scheme);

Phase 2 to take approximately 25 months and will take place when passing places, warning signs and vehicle activated signs are fully operational;

**Members must note that the proposed passing places are still subject to S278 approval by Hertfordshire County Council and any further updates on progress with this separate procedure will be reported at the Committee meeting.**

Other on-site measures proposed are as follows:

- Materials to be stored on site in compounds away from neighbouring properties;
- Car parking for staff and visitors on hard standing area within the site during construction;
- On site signage for access arrangements to site during construction;
- Construction traffic into site separate from pedestrian areas;
- Screening and hoarding of works on site;
- Control of dust and noise;
- Wheel washing facility when leaving site;
- Sweepers to remove any mud from roads;
- Security lighting on site;
- Roof trusses, steel beams and pre-cast slabs to be delivered by rigid vehicles wherever possible;
- Mobile crane to be hired for installation;
- Condition survey of construction route and after and damage repaired;
- One way system within site;
- Hours of work on site between 0800 and 1700 Monday to Friday 0800 to 1300 on Saturday and no Sunday or Bank Holiday working;

### 4.3 **Key Issues**

- 4.3.1 Taking account of the local and national planning policy guidance outlined above and all comments received from interested parties I consider the main issues to be considered in the determination of this application to discharge the requirements of condition no. 6 of outline planning permission no. 15/01618/1 are as follows:

Whether the measures set out in the CMP would be safe;

- \* Whether any harm to living conditions, use of the highway and congestion would be acceptable;
- \* What realistic and reasonable alternatives are available?;
- \* Any other technical matters such as air quality and ecology issues must also be considered.

### 4.3.2 **Highway Safety Matters**

As is reported above, at the special meeting of the Planning Control Committee held on 28 September 2017 when the previous application for a CMP detailing this same construction route was considered (application ref. 17/02023/1DOC) the Committee concluded in refusing the application that:

**The Local Planning Authority does not consider that there could be a satisfactory or safe construction traffic route through Holwell. The proposed Construction Management Plan therefore conflicts with the requirements of Policy T1 of the North Hertfordshire District Submission Local Plan (2011-2031).**

- 4.3.3 The last paragraph of the later refusal reason agreed by the Planning Control Committee in reaching a decision on application no. 17/02807/1DOC (reported above) reads as follows:

**Notwithstanding these inadequacies the Local Planning Authority does not consider that there could be a satisfactory or safe construction traffic route through Holwell. The proposal therefore conflicts with Policy T1 of the North Hertfordshire Submission Local Plan (2011-2031).'**

- 4.3.4 Moreover, and to re-emphasise the point as it has importance for my recommendation set out below, these rather categorical statements represent the view of the Planning Control Committee and are not supported by my recommendation or indeed that of the Highway Authority. The first refusal represents the Committee's view of a construction route with then proposed mitigation (including new passing places on Waterloo Lane) and the second decision was the Committee's decision on the slimmed down Construction Management Plan without mitigation such as the proposed passing places (i.e. construction route into and out of Holwell on the carriageway as exists), although Members will recall that I questioned whether the submission was clear on this point.

- 4.3.5 As is set out above this current proposal includes the following additional mitigation measure over and above those previously proposed and never before considered by the Planning Control Committee. These are repeated below as follows:

1. **Signs to be installed at each end of Holwell Road to communicate to drivers that this is a construction route and to expect the potential for HGV traffic;**

**2. Provide long vehicle detector signs on either end of the narrowest section of the route (Waterloo Lane) which activate a warning when and illuminate when HGVs are detected on the route ;**

**3. Any large vehicle (i.e. above 10m in length) will require prior approval from HCC (Highways), giving 1 week notice and will require temporary road closures or use of escort vehicle.**

4.3.6 In my view these additional measures together with the previously proposed passing places on Waterloo Lane represent a considerable offer of mitigation on the highway network outside the application site, all measures designed to reduce the highway safety risk of carrying out this construction project.

4.3.7 These additional measures are the outcome of considerable discussion and negotiations between the applicant and the Highway Authority and Members will note in appendix 1 that the measures combined now command the support of Hertfordshire County Council (Highways), subject to the completion of the necessary S278 Agreement to secure the off site highway works.

4.3.8 Appeals against the earlier refusal decisions of the Planning Control Committee are on-going. I have asked the applicant to publicly declare that if Members are minded to grant this current proposal that they will withdraw the two appeals. The applicant has not agreed to this request. However, in my view they are showing intent to deliver a CMP that is acceptable to the Planning Control Committee demonstrated by pursuing this amended scheme.

4.3.9 In my opinion the question that the Committee now needs to ask itself is; are these additional mitigation measures set out in this application sufficient to overcome the earlier expressed concerns about the safety of this route for construction traffic? My recommendation is wholly in line with the highway engineers from Hertfordshire County Council, indeed I am not professionally qualified to depart from their conclusions on this matter of highway safety. Therefore if Member are minded to support my recommendation set out below which is to agree with the position of Hertfordshire County Council (Highways) and accept this CMP as discharge of the requirements of the condition I can further advice that Members approach the forthcoming appeals in the following constructive manner.

4.3.10 The second part of my recommendation below is to allow me to write to the Planning Inspectorate to confirm that it is as a result of the additional mitigation measures set out in this current revised application that forms the basis of the Planning Committee's view to accept that the Holwell construction route is adequately safe for construction vehicles, but only if these measures are put in place. In my view such a decision would be a coherent and logical approach to defending the earlier decisions of the Planning Control Committee on previous schemes with less or no off site mitigation at all. Such an argument if put to the Planning Inspectorate would enable the appointed Inspector to understand the Committees' earlier decisions which were based on the information that was available to Members at that time.

- 4.3.11 I cannot go so far as to argue that such an approach will insulate the Council against an award of costs which has already been submitted by the applicant together with the appeals. As I have explained these earlier decisions were made against officer and Highway Authority recommendations, but to set out a position based on information that was not available at the time the Committee made those earlier decisions would in my view represent a coherent and credible assessment of the applications as they have evolved.
- 4.3.12 The Council cannot control which CMP the applicant chooses to pursue and may of course seek to pursue one of the appeal schemes and not implement the current scheme which contains the extra mitigation. If however the applicant is prepared to abandon the current appeals and will only do so of course if Members support this current proposal, then Members can be satisfied that these earlier decisions have at least led to further strengthening of the mitigation that may not otherwise had occurred had they approved the scheme presented in September 2017.
- 4.3.13 The only alternative available to Members is to maintain the Committee's earlier decisions and declare that even with these additional and in my view carefully thought through extra mitigation measures the Committee remains of the view that this construction route is not appropriate or safe. The costs risk to the Council of such a decision increases further in my view as such a decision would represent the third time that the Committee have made a decision against the advice of officers and the highway authority relating to this matter.
- 4.3.14 To summarise on this point; If Members are minded to agree the recommendation set out below it enables Members to present a coherent case to the associated appeals, by remaining consistent with earlier decisions of the Committee which were made without the benefit of this information and proposed extra mitigation set out in this latest proposal. It would also demonstrate that the Committee are able to allow a CMP to enable the development of a housing scheme that benefits from planning permission granted by the Committee which will deliver much needed new homes in the District.
- 4.3.15 **Congestion and Living Conditions**  
Noise impacts on residents from traffic using the public highway is not capable of being a matter that can be addressed under noise nuisance powers contained within the Environmental Protection Act. In any event by restricting deliveries to the times set out and extended to 9.30am to 3.00pm I consider that noise from passing traffic would not be unduly detrimental to living conditions.
- 4.3.16 Construction noise on site can only take place in the hours set out above, no earlier than 8.00am and no later than 5.00pm with no construction on Sundays or bank holidays. In my view this is again reasonable and would not unduly harm the noise climate in the local area.
- 4.3.17 In terms of congestion, I understand concerns about increased journey times over the 3 year construction period. However, this must be considered in the context of the planned growth across the District that is needed to meet our Objectively Assessed housing Needs (OAN) set out in the submission Local Plan (15,950 homes from 2011-2031). The plan indicates that from 2022 approximately 1200 homes per annum will be constructed in the District (compared with recent annual figures of 300-400 homes per annum). If these figures are anywhere near realistic construction traffic across many roads in North Hertfordshire will be an every day reality for most communities.

- 4.3.18 The government recognises that development and construction of new development inevitably increases congestion, particularly in areas of high housing demand. The NPPF paragraph 32 argues that permission can only be refused on transport grounds when it can be demonstrated that a 'severe' impact would result.
- 4.3.19 In my view this policy position has relevance to this application and on that basis I do not consider that it can be realistically argued that any additional congestion would be a severe impact.
- 4.3.20 In terms of air quality at the time of writing I have not received comments from the Council's environmental protection officer. Any comments received will be updated.

#### 4.4 **Conclusion**

- 4.4.1 The applicant continues to work with Hertfordshire County Council (Highways) on the associated S278 agreement which includes details of all works to the highway associated with the wider development. The S278 Agreement also relates to the final design details of the proposed passing places along Waterloo Lane. As has been explained before this process is entirely outside the control and influence of the Local Planning Authority. However, given that the this proposed CMP can only be effective if passing places are constructed I repeat my precautionary recommendation that was presented to the meeting of the Planning Control Committee held on 28 September 2017, which is that the requirements of this condition are only discharged following the completion of the necessary S278 agreement which secures the delivery of the passing places.
- 4.4.2 I consider this approach to be reasonable as the applicant's stated phasing is for the development of phase 1 to be carried out while the passing places are being constructed and to insist on development only commencing on phase 1 after the necessary legal agreement with the Highway Authority is secured ensures that this phasing occurs.
- 4.4.3 I have been advised by the Highway Authority that the requisite signage will also need to be part of the S278 process so on this basis I also recommend withholding the formal discharge of the condition until after the S278 agreement is finalised and then only following the installation of the necessary signage. This adds a further control over the phasing. The applicant states that they would not commence phase 1 until the signage is in place in any event, so this delay in allowing development to commence makes sure that this commitment is fulfilled.
- 4.4.4 I set out below a carefully worded recommendation which ensures that the requirements of the condition are not formally agreed until the proposed off site mitigation measures have been secured through the associated S278 agreement between the applicant and highway authority.

- 4.4.5 I have also explained above how if Members were minded to agree this recommendation and indeed the specific recommendation I have framed regarding how to inform PINs of the Committee's decision, offers a coherent argument as to how this new mitigation overcomes the concerns of the Committee and that it is these additional changes to the CMP that has persuaded Members that the construction route can now be made safe. Such an approach would not undermine any Committee defence of the on-going appeals which relate to different Construction Management Plans. It is however hoped that should Members be minded to agree this recommendation that CALA Homes would withdraw the two appeals and implement this more effective Construction Management Plan which contains much more mitigation than all previous versions, including the two that they have decided to take to an appeal.

## **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.
- 5.2 As is set out in the supporting documents to this application, the applicants have submitted a legal opinion from a leading QC. This opinion essentially states that the specific wording of the condition is such that it does not prevent the developer from starting work on site before the condition is discharged and that even after a Construction Management Plan is approved there is no requirement within the condition that the development must then proceed in accordance with any approved CMP.
- 5.3 Officers have had this opinion reviewed by an independent planning barrister who agrees with much of the analysis of the applicant's QC save for one important aspect. The advice officers have received does not state that the terms of any approved CMP cannot be enforced but it does state that it is difficult to insist that the applicant carries out off-site highway works associated with the CMP and that any such requirement to provide off-site highway works of the nature proposed here should have been a requirement of the outline planning permission.
- 5.4 My overall view of this is that the condition still explicitly requires a CMP to be approved by the Local Planning Authority. The Council's legal advice is that it may be possible to enforce the terms of the CMP during implementation on the basis of the normal tests of expediency, relating to the severity of the breach and advice from the Highway Authority.
- 5.5 Moreover, it is not the Local Planning Authority who are requiring the off site highway works associated with the CMP; the proposed off site highway works which now include signage as well as new passing places along Waterloo Road are matters that have been proposed and put forward by the applicant as a means to mitigate highway safety concerns of using the Holwell route to and from the site. On that basis it is incumbent on the applicant in my view to implement the CMP they propose and if elements of the CMP are ignored and construction proceeds the Council would need to review its position on enforcement at that time. I hope however that the applicant is not seriously suggesting that it will seek approval of a comprehensive CMP and then following that approval ignore its content, or indeed start work before the CMP is approved.



## **6.0 Recommendation**

- 6.1 That Members resolve to **APPROVE** the Construction Management Plan (CMP) and discharge the requirements of condition no. 6 of planning permission no. 15/01618/1 subject to the following:
1. That the requirements of condition no. 6 of planning permission no. 15/01618/1 are not discharged until the applicant has secured the necessary S278 Agreement with Hertfordshire County Council (Highways) in order to implement the highway alterations to secure the proposed passing places and signage (including associated safety audits and highway licences);
  2. That the requirements of condition no. 6 of planning permission no. 15/01618/1 are not discharged until the proposed signage set out in the application is installed and is operational;
  3. That Members delegate the decision to approve the CMP and discharge the requirements of condition no. 6 of planning permission no. 15/01618/1 to the Development and Conservation Manager following the completion of point 1) and 2) above;
- 6.2 In the event that the applicant submits a deemed discharge consent application before points 1) and 2) of recommendation 6.1 are satisfied; that Members delegate powers to the Development and Conservation Manager to refuse the discharge of the condition application on the basis of failure to comply with points 1), 2) or both before the expiration of 2 weeks from the date of the deemed discharge application;
- 6.3 In the event that the appeals against earlier refusals are not withdrawn that the Development and Conservation Manager responds on behalf of the Planning Control Committee to the Planning Inspectorate following formal notification of forthcoming appeals against the Planning Control Committee's decisions to refuse application nos. 17/02023/1DOC and 17/02807/1DOC that Member's decision to now approve application no. 17/02778/1DOC is based on new information and further mitigation that was not proposed in these earlier applications and that this additional mitigation overcomes the reasons for refusal of the earlier applications.