

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

Applicant:           **Mr R Du Toit And Mr And Mrs G Bullard**

Proposal:           **Erection of three detached dwellings (1 x 4-bed, 1 x 5-bed and 1 x 6-bed) with associated infrastructure and landscaping.**

Ref. No:             21/03533/FP

Officer:             **Simon Ellis**

**Date of Statutory Expiry Period:** Agreed extension to 24.06.22

**Reason for Delay**

Further information 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 to Determine:**

Dapa\_1549\_101\_01 – Existing Site Location Plan  
Dapa\_1549\_300\_01 – Proposed Site Layout + Roof Plan  
Dapa\_1549\_301\_00 – Proposed Stable House Floor plans and elevations  
Dapa\_1549\_302\_00 – Proposed Barn House Floor Plans and Elevations  
Dapa\_1549\_303\_00 – Proposed Manor House Floor Plans and Elevations  
Dapa\_1549\_304\_00 – Proposed Street Scene and key plan  
Dapa\_1549\_305\_00 – Proposed Ariel View  
Dapa\_1549\_306\_00 – Proposed Entrance View  
Dapa\_1549\_310\_00 – Landscape Strategy  
Dapa\_1549\_311\_00 – Proposed Refuse Plan

**Associated Documents:**

Accommodation Schedule  
Design and Access Statement  
Heritage Statement  
Transport Statement (parts 1-3)  
Arboricultural Impact Assessment Report (2 parts)  
Geo Environmental Ground Investigation Report (parts 1-6 and appendices)  
Desk Study Preliminary Risk Assessment Report  
Ecological Assessment Report (2 parts)

Flood Risk Assessment and Surface Water Management Statement (parts 1-3)  
Planning Statement  
Legal Note on Original Agreement and draft DoV and new S106 Agreement

## **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 Planning application no. 21/01349/FP: Full application for the erection of 3 dwellings (1x4 bedroom, 1x5 bedroom and 1x6 bedroom) with associated infrastructure (amended plans received 27.07.21) – Withdrawn 06.01.22.

## **3.0 Representations:**

### **3.1 Technical and Statutory Consultees:**

#### **Hertfordshire County Council (Highways):**

No objections, suggested conditions and informatives (**see recommended condition nos. 6-10**).

### **3.2 Hertfordshire County Council (Lead Local Flood Authority):**

No comment.

- 3.3 **Hertfordshire County Council (Historic Environment – Archaeology):**  
No objection. Suggested condition (**see recommended condition no. 11**).
- 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 no. 13**).
- 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:**  
No objections.
- 3.9 **NHDC Environmental Health (Noise):**  
No objection. Recommend informative regarding construction management (**see recommended informative no. 5**).
- 3.10 **NHDC Environmental Health (Air Quality):**  
No objection. Recommend condition regarding EV charging points associated with the development (**see recommended condition no. 14**).
- 3.11 **NHDC Environmental Protection (Contaminated Land – Human Health):**  
No objections. Suggested condition (**see recommended condition no. 12**).
- 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 brief 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;  
The current S106 agreement prohibits development on this site;  
All previous reasons for refusal still stand;  
Visual impact on the skyline and hilltop appearance;

The development proposal is a wasted opportunity as many more houses could be accommodated on this site and houses are needed in this locality;

## **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 that the existing planning controls relating to this site contained in the current S106 agreement are maintained post such a

grant until the establishment of a new land use on the site, by which point the controls could be removed as they would no longer be necessary?

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 proposal does conflict with Saved Local Plan Policy 6 which is the most relevant development plan policy. 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 Notwithstanding the conflict with the development plan, 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 2022 of an emerging Plan period 2011-2031 the Council has still not adopted a new Local Plan since 1996. For point d), there are no policies in the Framework listed in the footnote to 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.

#### 4.3.5 On this basis any assessment of development on this site is within the test set out in the NPPF paragraph 11 (d) (ii). The Council must grant permission unless the adverse impacts of doing so 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 Polices 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 polices 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. Members must also note that for schemes of less than 10 dwellings the LLFA are not a statutory consultee and on that basis are not required to offer advice in relation to this planning application in any event.

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 The proposed landscape plan identified broad opportunities for new planting to enhance existing screening where possible, within the confines of the application boundary (a point clearly illustrated on the landscape strategy plan). The specifics of any additional planting and timing can be secured by suitably worded planning conditions which are set out in the recommended conditions below.

4.3.27 This planning application includes an area of highway land within the red line to demonstrate how the requisite visibility splays can be accommodated at the access point and within the highway land. A secure refuse collection point is also shown within the entrance to the site to ensure that roadside collection of waste can occur following this development and no objections are received from the Shared Services Waste Collection and Recycling Team to this layout.

4.3.28 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 regulating the current authorised use of the land as an HGV depot and open agricultural storage is not a material consideration that affects 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 revoking or changing the controls in the S106 agreement would be a breach of it, as currently worded. 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.

4.3.29 The attached document as **appendix 1** sets out the applicant's proposal to provide a deed of variation to the existing agreement and new S106 agreement and paragraphs 4.1 to 4.4 of the Temple Bright document explain the proposed sequence to ensure continuity of control pre-commencement, during construction and post completion. This would allow the new development to take place, whilst protecting the landscaped area marked on the appended landscape plan from future development. The applicant states that the freehold owner of the landscaped areas has agreed to sign the deed of variation agreement.

4.3.30 This approach has been supported by the Council's Legal Regulatory Team Manager and the recommendation set out below to grant planning permission is subject to the successful completion of this process.

4.3.31 To summarise this point, and contrary to the argument that because an existing legal agreement stops new development on this site therefore no other development should ever be permitted, I set out the following points:

\* the existence of the controlling legal agreement was not itself a reason for refusal of the recent applications for housing, it was planning harms that were identified associated with the proposed development that persuaded Member to refuse planning permission;

\* the existing restriction are intended to control the use of the current authorised land use on the site, not to prevent other forms of development following any other grant of planning permission. If the proposed development is complete the existing authorised use of the site falls away, is no longer authorised, and no longer needs to be controlled by the existing agreement;

\* If Members are minded to grant planning permission for this development, there is a mechanism available to ensure that the current controls on the land remain until the new development is occupied and therefore the existing agreement does not prevent the Local Planning Authority from allowing a new, alternative development on this site that it considers is acceptable in planning terms.

#### 4.3.32 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

4.3.33 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.

#### 4.3.34 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.

#### 4.3.35 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 deed of variation and new S106 agreement;
- 6.2 That the applicant agrees all necessary extensions to the statutory determination - period to enable the completion of the deed of variation 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 landscaping 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. The development hereby permitted shall not commence until the proposed access has been constructed 4.8m wide complete with 6.0m radius kerbs for at least 12m into the site, and the verge shall be reinstated to the current specification of Hertfordshire County Council and the Local Planning Authority's satisfaction. These works shall be secured and undertaken as part of the S278 works.

Reason: To ensure suitable, safe and satisfactory planning and development of the site in accordance with Policy 5 of the Hertfordshire Local Transport Plan.

7. Prior to occupation of the development hereby permitted vehicle to vehicle inter-visibility splays of 2.4m by 57m to the eastern direction and 2.4m by 59m to the western direction shall be provided and permanently maintained, within which there shall be no obstruction to visibility between 600mm and 2.0m above the carriageway level. These measurements shall be taken from the intersection of the centre line of the permitted access with the edge of the carriageway of the highway respectively into the application site and from the intersection point along the edge of the carriageway.

Reason: To ensure construction of a satisfactory development and in the interests of highway safety in accordance with Policy 5 of Hertfordshire's Local Transport Plan.

8. The gradient of the main access from the adjacent Kellshall Road shall not exceed 1 in 20 for the first 12m from the edge of the carriageway into the site as measured from the near channel edge of the adjacent carriageway.

Reason: To ensure construction of a satisfactory access and in the interests of highway safety and amenity in accordance with Policy 5 of Hertfordshire's Local Transport Plan.

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. No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the construction of the development shall only be carried out in accordance with the approved plan. The Construction Management Plan shall include details of the following:
- a. Construction vehicles, number, type and routing;
  - b. Access arrangements to the site for construction vehicles;
  - c. Traffic management arrangements;
  - d. Construction and storage compounds (including areas designate for parking, loading and turning areas);
  - e. Siting and details of wheel washing facilities;
  - f. Clearing of site entrance, site tracks and the adjacent public highway;
  - g. Timing of construction activities (including delivery times and removal of waste) and to avoid school pick up and drop off times;
  - h. Provision of sufficient on-site parking prior to commencement of construction activities;
  - i. Post construction restoration/reinstatement of the working areas and temporary access the public highway;
  - j. Where works cannot be contained wholly within the site a plan should be submitted showing the site layout on the highway including extent of hoarding, pedestrian routes and remaining road width for vehicle movements;

Reason: In order to protect highway safety and amenity of other users of the public highway rights of way in accordance with Policies 5, 12, 17 and 22 of Hertfordshire's Local Transport Plan.

11. 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.

12. 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.

13. If, during development, contamination not previously identified is found to be present at the site, then no further development (unless agreed in writing by the Local Planning Authority) shall be carried until the developer has submitted a remediation strategy detailing how this unsuspected contamination shall be dealt with, and has obtained written approval of the Local Planning Authority. The remediation strategy shall be implemented as approved.

Reason: To protect and prevent the pollution of controlled waters from potential pollutants associated with current and previous land uses in line with National Planning Policy Framework (NPPF) paragraphs 174, 183, 184 and relevant Environment Agency Groundwater Protection Position Statements.

14. 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. Works to be undertaken on the adjoining highway shall be constructed to the satisfaction of the Highway Authority and in accordance with Hertfordshire County Council publication Roads in Hertfordshire Highway Design Guide. Before proceeding with the proposed development the applicant shall contact for further information: <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/highways-roads-and-pavements.aspx> or by telephoning 0300 1234047 to obtain the requirement for a S278 agreement for the associated road works as part of the development.
2. Prior to the commencement of the development the applicant shall contact <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/highways-roads-and-pavements.aspx> telephoning 0300 1234047. To arrange a site visit to undertake a conditions survey of the approach of the highway leading to the development likely to be used by delivery vehicles to the development. Under provisions of Section 59 of the Highway Act 1980 the developer may be liable for any damage caused to the public highway as a result of traffic associated with the development. Hertfordshire County Council may require an officer to be present during the movement of larger loads.
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. **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>

#### Informative 5

During the construction phase the guidance in BS5228-1:2009 (Code of Practice for noise Control on construction and open sites) should be adhered to.

During the change of use phase no activities should take place outside the following hours: Monday to Friday 08:00-18:00hrs; Saturdays 08:00-13:00hrs and Sundays and Bank Holidays: no work at any time.

## **7.0 Appendices**

### **7.1 Appendix 1 – Temple Bright Note, Draft Deed of Variation, Draft new S106 Agreement and Landscape Plan**