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Friday, 25 March 2022

Dear Sir/Madam

## PLANNING COMMITTEE

A meeting of the Planning Committee has been arranged to take place **MONDAY, 4TH APRIL, 2022 at 6.00 PM IN THE COUNCIL CHAMBER, FROG LANE, LICHFIELD**, District Council House, Lichfield to consider the following business.

Access to the Council Chamber, Frog Lane, Lichfield is via the Members' Entrance.

The meeting will be live streamed on the Council's [YouTube channel](#)

Yours faithfully

A handwritten signature in black ink, appearing to read 'Christie Tims'.

Christie Tims  
Chief Operating Officer

## To: Members of Planning Committee

Councillors Marshall (Chair), Baker (Vice-Chair), Anketell, Barnett, Birch, Checkland, Cross, Evans, Ho, Humphreys, Matthews, Ray, Salter, Tapper and S Wilcox



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## AGENDA

1. **Apologies for Absence**
2. **Declarations of Interest**
3. **Minutes of Previous Meeting** 3 - 4
4. **Planning Applications** 5 - 50
5. **Tree Preservation order no. 2021/00455/TPO - Land to the North West Westfields Road, Armitage** 51 - 60
6. **Enforcement Plan Update** 61 - 94
7. **Pre-application Charging Regime - Review and Update** 95 - 106



**PLANNING COMMITTEE**

**7 MARCH 2022**

**PRESENT:**

Councillors Marshall (Chair), Baker (Vice-Chair), Anketell, Barnett, Birch, Checkland, Evans, Ho, Matthews, Ray, Salter and S Wilcox

**33 APOLOGIES FOR ABSENCE**

There were apologies from Cllr Derrick Cross, Cllr Kenneth Humphreys and Cllr Samuel Tapper.

**34 DECLARATIONS OF INTEREST**

There were no declarations of interest received.

**35 MINUTES OF PREVIOUS MEETING**

The Minutes of the meeting held on Monday 7 February 2022 previously circulated, were approved as a correct record and signed by the Chair.

**36 PLANNING APPLICATIONS**

Applications for permission for development were considered with the recommendations of the Chief Executive and any letters of representation and petitions of observations/representations received together with the supplementary report of observations/representations received since the publication of the agenda in association with Planning Application 21/01396/FUH

21/01396/FUH – Erection of a first-floor extension over existing kitchen to rear and garage to front to form larger bedrooms plus general façade changes.  
16 Spring Lane, Whittington, Lichfield, WS14 9LX

FOR: Mr and Mrs S White (Note: This application was reported to the Planning Committee due to the applicant being the spouse of an employee of Lichfield District Council)

**RESOLVED:** That this planning application be approved subject to the conditions contained in the report of the Chief Executive.

**37 TREE PRESERVATION ORDER NO 2021/00459/TPO - SPRINGHILL FARM, WALSALL ROAD, MUCKLEY CORNER**

Confirmation of Tree Preservation Order no. 2021/00459/TPO at Springhill Farm, Walsall Road, Muckley Corner.

**RESOLVED:** Tree Preservation Order confirmed, as set out in the report of the Chief Executive.

(Prior to consideration of the application, representations were read out by the committee clerk on behalf of Mrs Sarah Butterfield (Objector))

(The Meeting closed at 6.31 pm)

CHAIRMAN

# Agenda Item 4

## Planning Committee

4 April 2022

Agenda Item 4

Contact Officer: Claire Billings

Telephone: 01543 308171

### Report of Chief Executive

#### LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT, 1985

All documents and correspondence referred to within the report as History, Consultations and Letters of Representation, those items listed as 'OTHER BACKGROUND DOCUMENTS' together with the application itself comprise background papers for the purposes of the Local Government (Access to Information) Act, 1985.

Other consultations and representations related to items on the Agenda which are received after its compilation (and received up to 5 p.m. on the Friday preceding the meeting) will be included in a Supplementary Report to be available at the Committee meeting. Any items received on the day of the meeting will be brought to the Committee's attention. These will also be background papers for the purposes of the Act.

#### FORMAT OF REPORT

Please note that in the reports which follow

- 1 'Planning Policy' referred to are the most directly relevant Development Plan Policies in each case. The Development Plan comprises the Lichfield District Local Plan Strategy 2008-2029 (2015), Lichfield District Local Plan Allocations 2008-2029 (2019), any adopted Neighbourhood Plan for the relevant area, the Minerals Local Plan for Staffordshire 2015-2030 (2017) and the Staffordshire and Stoke on Trent Joint Waste Local Plan 2010-2026 (2013).
- 2 The responses of Parish/Town/City Councils consultees, neighbours etc. are summarised to highlight the key issues raised. Full responses are available on the relevant file and can be inspected on request.
- 3 Planning histories of the sites in question quote only items of relevance to the application in hand.

**ITEM 'A'** Applications for determination by Committee - **FULL REPORT**

**ITEM 'B'** Lichfield District Council applications, applications on Council owned land (if any) and any items submitted by Members or Officers of the Council.

**ITEM 'C'** Applications for determination by the County Council on which observations are required (if any); consultations received from neighbouring Local Authorities on which observations are required (if any); and/or consultations submitted in relation to Crown applications in accordance with the Planning Practice Guidance on which observations are required (if any).

## **AGENDA ITEM NO. 4**

### **ITEM A**

#### **APPLICATIONS FOR DETERMINATION BY COMMITTEE: FULL REPORT**

**4 April 2022**

#### **CONTENTS**

Case No.	Site Address	Parish/Town Council
21/00288/FULM	Land At Rosaries Trent Valley Road Lichfield	Lichfield
20/01245/FULM	Land South Of Main Road Haunton Tamworth	Clifton Campville

# LOCATION PLAN

21/00288/FULM  
Land At Rosaries  
Trent Valley Road  
Lichfield

Scale: 1:1,250

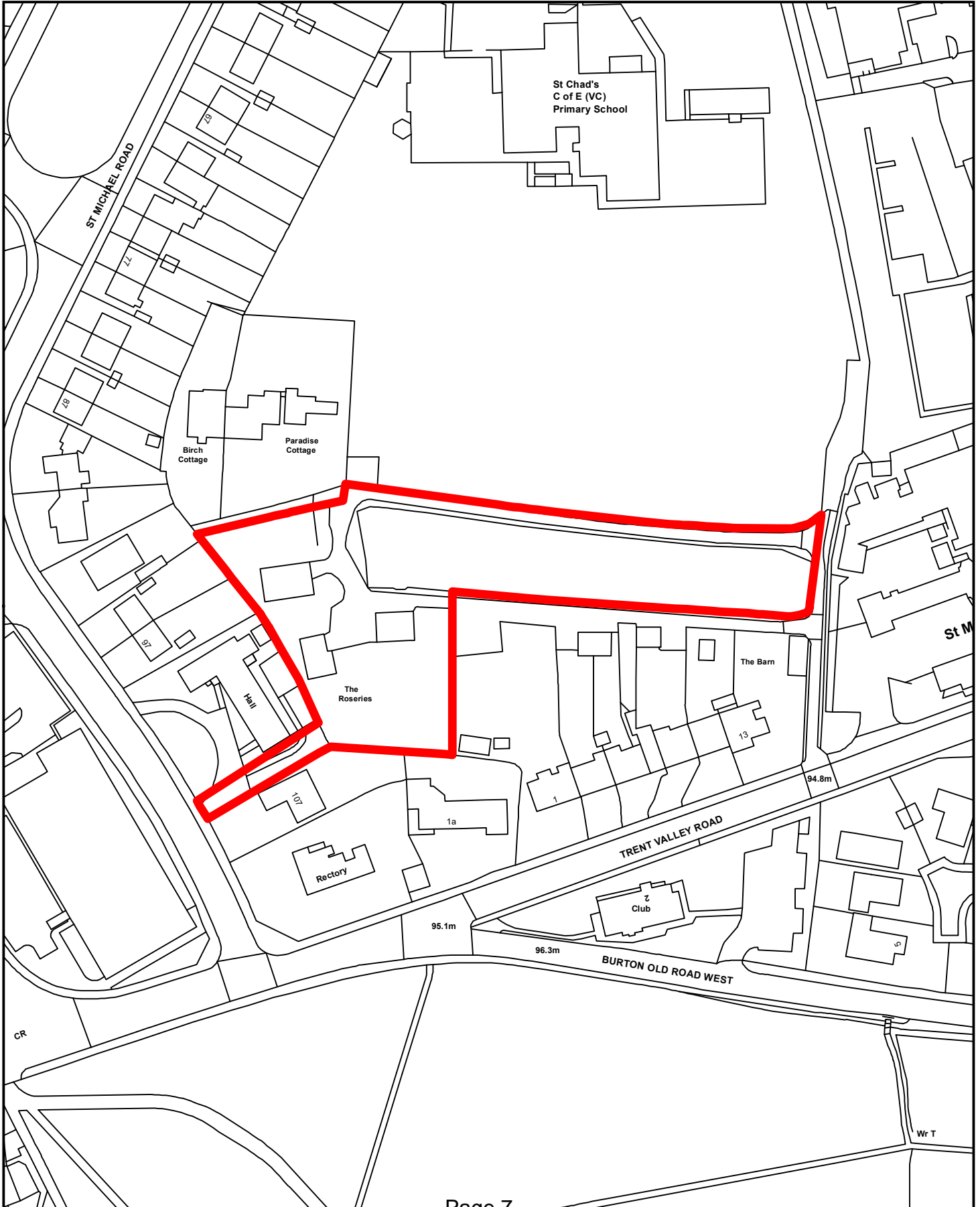
Dated: April 2022

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## 21/00288/FULM

**Demolition of existing buildings and the erection of 13 residential dwellings with associated road works, parking and landscaping.**

**Land at Rosaries, Trent Valley Road, Lichfield, Staffordshire  
FOR Mr B Johnson**

Registered 03/02/2021

**Parish: Lichfield City**

Note: This application is being reported to the Planning Committee, due to significant planning objections raised by Lichfield City Council and also due to a call-in request from Cllrs Lax and Greatorex.

The concerns raised by the City Council are summarised as follows:

- Failure to provide final drainage proposals.
- Overdevelopment of the site.
- Misrepresented ancient hedgerow forming the boundary with the Mount Pleasant Villas.
- Existing trees, sustainability and biodiversity concerns.
- Impacts on nearby electrical substation needs to be addressed
- Concerns regarding the bin collection point.
- Concerns regarding no EV points provided and parking provision.
- Conservation and historic environment requirements not addressed.
- Impractical proposal to install a barrier across the right of way.

The concerns of Cllrs Lax and Greatorex are summarised as follows:

- Density and over development of the site
- Overlooking and loss of privacy
- Highways safety and access concerns
- Inadequate parking arrangements
- Inadequate provision for storage of three wheelie bins
- Arboriculture and ecology related concerns
- Flooding, drainage and water pressure concerns
- No provision for EV points
- Rights of Way concerns

### **RECOMMENDATION:**

**Refuse**, for the following reasons:

### **REASONS FOR REFUSAL:**

1. It has not been demonstrated that trees protected by Tree Preservation Order 2021/00461/TPO would not be detrimentally compromised as a result of the proposals, which, given their positive visual contribution, would have a significant detrimental impact on the character of the area and the surrounding street scene contrary to the requirements of Core Policy 3 (Delivering Sustainable Development), Core Policy 13 (Our Natural Resources), Policies BE1 (High Quality Design) and NR4 (Trees, Woodland and Hedgerows) of the Lichfield Local Plan Strategy and the Trees, Landscaping and Development Supplementary Planning Document and the National Planning Policy Framework.



2. It has not been demonstrated that the development would not cause significant harm to existing habitats of protected species and, the scheme fails to demonstrate that a net gain to biodiversity can be achieved. As proposed the scheme of development therefore would cause harm to protected species and present a net loss to biodiversity and as such, fails to comply with the requirements of Core Policy 13 (Our Natural Resources), Policy NR3 (Biodiversity, Protected Species and their Habitats) of the Lichfield Local Plan, the Biodiversity and Development Supplementary Planning Document, the Natural Environment and Rural Communities Act and the National Planning Policy Framework.

The development is not considered to be of a sustainable form which complies with the provisions of paragraph 38 of the NPPF.

#### **NOTES TO APPLICANT:**

1. If the applicant is aggrieved by the decision of the Local Planning Authority to refuse planning permission they may appeal to the Planning Inspectorate, in accordance with Section 78 of the Town & Country Planning Act, 1990 (as amended), within six months of receipt of this notice, or in exceptional cases a longer period as the Planning Inspectorate may allow.
2. You must use a Planning Appeal Form when making your appeal, which is obtainable from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at <https://acp.planninginspectorate.gov.uk>. Only the applicant has the right of appeal.
3. The Inspectorate may publish details of your appeal on the internet. This may include a copy of the original planning application form and relevant supporting documents supplied to the Local Authority by you or your agent, together with the completed appeal form and information you submit to the Planning Inspectorate. Please ensure that you only provide information, including personal information belonging to you that you are happy will be made available to others in this way. If you supply personal information belonging to a third party please ensure you have their permission to do so. More detailed information about data protection and privacy matters is available at <https://acp.planninginspectorate.gov.uk>.

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#### **PLANNING POLICY:**

##### **National Planning Policy**

National Planning Policy Framework  
National Planning Practice Guidance

##### **Local Plan Strategy**

Policy CP1 – The Spatial Strategy  
Policy CP2 – Presumption in Favour of Sustainable Development  
Policy CP3 – Delivering Sustainable Development  
Policy CP4 – Delivering Our Infrastructure  
Policy CP5 – Sustainable Transport  
Policy CP6 – Housing Delivery  
Policy CP13 – Our Natural Resources  
Policy CP14 – Our Built & Historic Environment  
Policy H1 – A Balanced Housing Market  
Policy H2 – Provision of Affordable Homes  
Policy NR3 – Biodiversity, Protected Species & their Habitats  
Policy NR4 – Trees Woodland & Hedgerows  
Policy NR5 – Natural & Historic Landscapes  
Policy NR6 – Linked Habitat Corridors & Multi-functional Greenspaces

Policy NR7 – Cannock Chase Special Area of Conservation  
Policy SC1 – Sustainability Standards for Development  
Policy SC2 – Renewable Energy  
Policy ST1 – Sustainable Travel  
Policy ST2 – Parking Provision  
Policy BE1 – High Quality Development  
Policy Lichfield 1 – Lichfield Environment  
Policy Lichfield 2 – Lichfield Services and Facilities  
Policy Lichfield 4 – Lichfield Housing

#### **Lichfield Local Plan Allocations Document**

Policy BE2- Heritage Assets  
Policy LC1- Lichfield City Housing Land Allocations

#### **Lichfield City Neighbourhood Plan (2018)**

No relevant policies

#### **Supplementary Planning Document**

Sustainable Design SPD  
Biodiversity and Development SPD  
Historic Environment SPD  
Trees, Landscaping and Development SPD

#### **Lichfield District Local Plan 2040**

The emerging Lichfield District Local Plan 2040 has completed its Regulation 19 public consultation stage (August 2021) and is awaiting final updating and submission to the Secretary of State for the Department for Communities and Local Government for appointment of an independent Planning Inspector to undertake a public examination of the draft Local Plan. At this stage limited weight is given to the draft Emerging Local Plan Policies.

#### **RELEVANT PLANNING HISTORY:**

There is no relevant planning history.

#### **CONSULTATIONS:**

**Lichfield City Council:** Final Comments- Refusal is recommended. Failure to provide final drainage proposals. Overdevelopment of the site. Misrepresented ancient hedgerow forming the boundary with the Mount Pleasant Villas. Existing trees, sustainability and biodiversity concerns. Recommended to address concerns raised by the police on access through the site. Nearby electrical substation needs to be addressed. Concerns regarding the bin collection point. Still no EV points provided and tandem parking with the associated problems. Conservation and historic environment requirements not addressed. Totally impractical proposal to install a barrier across the right of way. (21.02.2022)

Updated comments- Previous comments still valid. In addition:

1. The Tree Planting Plan submitted 12 Nov 2021 fails to consider drainage and utility runs.
2. The temporary TPO's mean that planning is required for these mature trees.
3. The distance between the proposed new trees and building is inadequate.
4. A remote control barrier across the right of way is a substantial interference and no reference has been made to maintenance costs of same. (30.11.2021)

Updated comments- Recommend refusal on the basis of the revised comments:

1. Local Plan provides for an approximate dwelling yield of 9. 14 dwellings proposed which will result in unacceptable density and over-development of the site

2. Overlooking and loss of privacy causing adverse impact on the residential amenities of neighbouring properties. (The development site is in an elevated position relative to surrounding dwellings)
3. Continued Inadequate parking proposals and disregard for highway safety
4. Failure to address how residents of new dwellings will be prevented from using the existing right of way from Paradise and Birch Cottages to the public right of way and Trent Valley Rd. Vague statement on site plan gives no detail.
5. Continued failure to address the detrimental impact on existing trees and hedgerows, some 200 years old.
6. Failure to provide adequate waste storage (three Wheelie bins- joint waste report) and access for collection takes no account of parked vehicles.
7. No assessment of effect of development on surface and mains drainage and existing low water pressure on surrounding properties.
8. No provision for accessible EV points for each property. (05.08.2021)

Initial Comments- Recommend refusal on the following grounds:

1. Density and over-development of the site
2. Overlooking and loss of privacy causing adverse impact on the residential amenities of neighbouring properties
3. Inadequate parking proposals and disregard for highway safety
4. Detrimental impact on existing trees and hedgerows.
5. Failure to provide adequate waste storage and access for collection
6. No provision for accessible EV points for each property. (18.02.2021)

**Lichfield Civic Society:** Final comments- Previous concerns and objections have not been addressed. (01.03.2022)

Updated comments- Refusal recommended. Water supply, electrical supply and waste collection point concerns. Housing mix not policy compliant. The development would involve too many cars on the site. With regard to the proposed barrier, it is a poor answer to the problem of an existing right of way. It obstructs and therefore interferes with that right. Overall, gross over-development of the site. (23.02.2022)

Updated comments- Refusal recommended. The housing mix, cars and parking, water plan, location of substation, and waste bins remain of concern. (03.12.2021)

Initial comments - Refusal recommended. Concerns were raised in relation to over development of the site, the proposed density and lack of amenity space, parking, road width and strength, pedestrian safety and the use of bollards, impact on neighbour amenity and the housing mix. (05.03.2021)

**Severn Trent Water:** Final comments: Can the final drainage proposals please be provided; the plans submitted state soakaways need to be investigated still. (08.02.2022)

Initial comments- No objections raised subject to a pre-commencement condition to secure drainage details. (23.02.2021/ 04.08.2021/ 04.01.2021)

**Natural England:** No objection. The proposed development will not have significant adverse impacts on designated sites. (26.02.2021, 10.08.2021 & 03.03.2022)

**Sport England:** No objections. (16.02.2021/ 26.07.2021/ 18.11.2021)

**Western Power Distribution:** There may be Western Power Distribution assets in the vicinity of the development works. It is strongly advised that the developer contacts WPD prior to any of their works commencing. (10.02.2021/11.02.2022)

**Architectural Liaison Officer:** No objections. Recommendations and advice provided. (12.08.2021/24.02.2022/ 23.11.2021/ 24.02.2022)

**Environment Agency:** No comments to make on this proposal. (14.02.2022)

**Staffordshire County Council (Highways):** Final Comments- No objection to the proposal on Highways grounds. (21.02.2022)

Updated Comments- Following additional information, are now in a position to recommend approval subject to a number of conditions. (09.12.2021)

Initial Comments- Objects. The application should be refused as the access is substandard and increases the risk of highway danger and the application fails to provide suitable provision for both pedestrians and motorists within the site. (13.08.2021)

**Staffordshire County Council (School Organisation):** Final comments- The revised scheme would result in an education contribution of £184,332.56 (index linked) to be sought from the developer to mitigate the impact on education from the development. It would be acceptable from an education perspective subject to a S106 agreement which meets this requirement. (14.03.2022)

Updated comments- The revised proposals would not alter the financial contribution previously requested. (26.07.2021)

Initial comments- An education contribution of £229,641.84 (index linked) would be required to mitigate the impact on education from the development. This would fund 4 primary school places, 3 secondary school places and 1 Post 16 Place. (03.03.2021)

**Staffordshire County Council (Flood Team):** No objection, subject to relevant pre-commencement conditions. (07.03.2022)

Initial Comments- Insufficient information has been provided to demonstrate that an acceptable drainage strategy is provided. (12.08.2021/ 29.12.2021/ 25.02.2022)

**Staffordshire County Council (Rights Of Way Officer):** Final Comments- No Objections. The applicant has correctly identified the public footpath No.11 Lichfield City. Informatives to the applicant recommended. (15.11.2021)

Initial Comments- The application documents do not recognise the existence of Public Footpath No.11 Lichfield City which just outside the site boundary. Details are required regarding any proposed surfacing of the footpath which is something that the developer needs to be made aware of as the usage on the route is likely to be greater if the development is approved. The applicant needs to be reminded that although the access road to the development is private, the fact that the route is a public highway (footpath) takes precedence. The use by private vehicles is subject, and subordinate to, the public's right. (11.02.2021)

**Staffordshire County Council (Minerals and Waste):** No comments. (11.02.2021/ 26.07.2021)

**LDC Spatial Policy And Delivery Team:** In summary, whilst there are no policy objections to the principle of the proposed development, as part of the site it is identified within the Local Plan for residential development comprising approximately 9 dwellings, the mix of dwellings is not in accordance with that sought within Policy H1. (05.03.2021)

**LDC Economic Development:** No comments to make. (18.02.2021)

**LDC Ecology Team:** Final- The full Biodiversity Net Gain Assessment must be provided to determine pre/post development habitats, condition assessments, temporal factors, timings, strategic significance and difficulty factor calculations etc. None of this information is provided and there is

currently no evidence to justify the net gain scores. This information and justification needs to be provided prior to any planning decision being made otherwise the ecology team will have no choice but to advise that the scheme is currently a net loss to biodiversity and does not comply. (04.03.2022)

Updated- The additional information does not address the previous objections raised. (28.07.2021/24.08.2021/ 02.12.2021)

Initial- Object. Insufficient information has been provided to demonstrate that a biodiversity net gain would be achieved. Further bat surveys are also required as set out in the Preliminary Ecological Appraisal. (03.03.2021)

**LDC Conservation & Design Team: Final comments-** Whilst additional information has been submitted with regards to certain elements of the scheme, the information does not address the concerns raised in previous comments. Therefore previous comments remain germane. (11.03.2022).

Updated comments- No objections to the principle of the scheme, however concerns raised regarding specific plots and the impact on the Grade II Hospital building with specific reference to proposed boundary treatments and the bollards. (13.12.2021)

Updated comments- The revised plans incorporate previous comments, however there are still objections on urban design grounds to certain elements of the scheme. (05.08.2021)

Initial comments- The site is adjacent to Samuel Johnson Hospital and to the original St Michaels Hospital buildings which are Grade II listed buildings. The site of the Lichfield Union Workhouse and St Michaels Hospital are also considered to be a non-designated heritage assets. The previously undeveloped part of the site is allocated within the Local Plan. While there are no objections in principle to the proposed development, additional information is required. (01.03.2021)

**LDC Environmental Health Team:** Further unidentified noise information requested. (12.08.2021, 25.11.2021, 20.02.2022)

Initial- No objections in principle, however a noise assessment would be required prior to the determination of this application. This should consider the impact of the adjacent hospital on the proposed development and also the impact of the new access on existing homes. (04.03.2021)

**LDC Arboriculture Team: Final Comments-** Recommend refusal on the grounds of loss of protected trees and the scheme not being in compliance with adopted local plan policies NR4, BE1 and the adopted Trees, Landscaping and Development SPD. (07.03.2022)

Updated comments- The layout has been amended, however the impact on several trees has not been addressed. There is still substantial concern regarding shade constraints, usable exterior space for incoming residents, incursion into RPA's of retained trees and as a result the creation of unsustainable relationships with retained trees on first occupation. (01.03.2022)

Updated comments- A Tree Preservation Order (2021/00461/TPO) was served on the 18th of October 2021. The current proposals would reduce or potentially remove the visual amenity that the trees afford to the locality. In order to ensure that the trees are fully considered in the ongoing planning application process an Area designation has been used to protect all trees of whatever species. It is intended that this designation is temporary and that trees to be retained are designated either individually or in groups as appropriate prior to confirmation of the order. (02.12.2021)

Updated comments- The issue of shading is largely dealt with through the removal of trees. A landscaping plan is necessary to demonstrate that compensatory planting can be achieved. (16.08.2021)

Updated Comments- The additional information does not address the issues raised previously. (25.07.2021)

Initial- Concerns were raised in relation to the impact on trees and shading provided by existing trees. Landscaping does not meet with the Councils standards. A Tree Report, Protection Plan and Landscaping Plan are required. (11.02.2021)

**LDC Leisure And Parks:** The council would not be adopting any open space, hedgerows or verges etc, therefore, arrangements need to be made to ensure the future maintenance of areas are covered by a suitable management organisation and plan. (15.02.2021; 26.07.2021; 18.11.2021; 11.02.2022)

**LDC Housing Strategy:** There is no affordable housing requirement for this scheme as the site size is below 0.5 hectares and is for less than 14 properties. (16.11.2021 & 02.02.2022)

**LDC Property Services:** No objections, however observations were provided in relation to ensuring appropriate visibility splays are achieved, there is little information regarding the existing track which leads onto Trent Valley Road and the impact that parked cars could have on vehicle and pedestrian safety. (04.03.2021)

**LDC Joint Waste Management:** Developments of individual houses must include unobtrusive areas suitable to accommodate at least 3 x 240l wheeled bins. Residents will be expected to present their bins at the nearest appropriate highway on collection days. Unadopted roads/drives cannot be accessed by a collection vehicle if they are not constructed to an adoptable standard. A suitable bin collection point (BCP) may be required with due consideration to the distance from the residents' properties (maximum of 30m) and the main highway. (10.02.2021; 27.07.2021; 16.11.2021; 11.02.2022)

#### **LETTERS OF REPRESENTATION:**

Neighbour consultation carried out with regards to the initial planning application as submitted- 27 responses raising objections to the scheme were received from 20 neighbouring properties and St Chads Stowe Primary School. The comments are summarised as follows:

- Overdevelopment of the application site
- Detrimental impact on nearby heritage assets
- Neighbouring amenity implications
- Overbearing and overlooking issues
- Loss of sunlight and daylight at neighbouring properties
- Loss of neighbouring privacy and amenity
- Highway and access related concerns including highways safety
- Traffic and highway network implications
- Arboriculture implications with regards to loss of trees, greens space and hedgerows
- Bio-diversity and ecological implications
- Inadequate bin collection provision
- No provision for accessible EV charging points
- Inadequate regard to access and the public right of way
- Flooding, drainage and water pressure related concerns
- Pedestrian safety concerns

Neighbour re-consultation with regards to amendments to the proposed scheme of development including updated documentation including noise statement, transport statement, site layout, house types, and street-scenes provided for consideration. 9 responses were received from neighbouring occupiers raising objections to the scheme and reiterating the above points.

Neighbour re-consultation with regards to amendments to the proposed scheme of development. Updated proposed site layout, landscaping plan, arboriculture details and transport statement provided. Responses were received from 7 neighbouring properties, reiterating the original objections.

### **OTHER BACKGROUND DOCUMENTS**

The applicant has submitted the following documents in support of their application:

- Design and Access Statement
- Planning and Sustainability Statement
- Biodiversity Impact Assessment
- Transport Statement
- Arboricultural Method Statement
- Arboricultural Impact Assessment
- Preliminary Ecological Appraisal
- Noise Report
- Heritage Statement

### **PLANS/ DOCUMENTS CONSIDERED AS PART OF THIS RECOMMENDATION:**

30952 00 – Location Plan dated as received 26 January 2022  
30952 01 - REV E – Proposed Site Layout Plan dated as received 09 February 2022  
30952 02 - REV E - Proposed Site Layout Plan dated as received 09 February 2022  
30952 20 – Existing Site Layout dated as received 26 January 2022.  
30952 05 - HOUSE TYPE B V1 dated as received 26 January 2022  
30952 06 - HOUSE TYPE B V2 dated as received 26 January 2022  
30952 07 - HOUSE TYPE F V1 dated as received 26 January 2022  
30952 08 - HOUSE TYPE F V2 dated as received 26 January 2022  
30952 09 - HOUSE TYPE G dated as received 26 January 2022  
30952 10 - HOUSE TYPE K dated as received 26 January 2022  
30952 11 - HOUSE TYPE L V1 dated as received 26 January 2022  
30952 12 - HOUSE TYPE L V2 dated as received 26 January 2022  
30952 14 - HOUSE TYPE M V2 dated as received 26 January 2022  
30952 15 - HOUSE TYPE N dated as received 26 January 2022  
30952 16 - GARAGES dated as received 26 January 2022  
30952 03 - REV A - HOUSE TYPE A dated as received 09 February 2022  
30952 04 - REV A - HOUSE TYPE A+ dated as received 09 February 2022  
30952 05 - REV A - HOUSE TYPE B V1 dated as received 09 February 2022  
30952 15 - REV A - HOUSE TYPE N dated as received 09 February 2022  
30952 17 - REV C - STREET SCENES dated as received 09 February 2022  
30952 31 - Boundary Treatments Plan dated as received 09 February 2022  
575.4 - Landscaping Scheme dated as received 04 March 2022  
575.6 Tree Planting Plan dated as received 04 March 2022  
575TPP REV2 Tree Protection Plan dated as received 04 March 2022  
30952 30 - REV A – Tree Removal and Retention Plan dated as received 09 February 2022

### **OBSERVATIONS:**

#### **Site and Location**

This application relates to a site which is approximately 0.49 hectares in size located to the east of properties fronting onto St Michael Road, Lichfield. The site is bordered by existing development on three sides. To the north, the site is bound by St Chad's CE (VC) Primary School playing fields, to the East is St Michaels Court Hospital (Grade II Listed), and to the south and west are residential dwellings which front onto St Michael Road and Trent Valley Road.

The site comprises a single dwelling and associated storage buildings along with an area of vacant land. There are a number of mature trees both within and around the periphery of the site and hedging to the outer boundaries. In terms of land levels and gradients the application site slopes up from the southern and western direction and is situated at a higher land level in comparison to the surrounding neighbouring properties which front onto St Michael Road and Trent Valley Road.

The site is located within Lichfield City but outside of the Lichfield City Centre boundary. The site falls within the designated Lichfield City Neighbourhood Plan area, which was made on the 17th April 2018. Part of the site is allocated in the Local Plan Allocations document under L20 for residential development. The application site is situated within the 8-15km Cannock Chase Special Area of Conservation (SAC) zone of influence. The application site is currently subject to a Tree Preservation Order. Listed Buildings are currently found within relatively close proximity to the application site, the closest being to the east, at the address of St Michaels Court Hospital.

The site is within flood zone 1. Public Right of Way No.11 Lichfield City which links Trent Valley Road with St Michael Road to the North is located to the East of the application site.

### **Background**

Part of the site is allocated in the Local Plan Allocations Document under Policy LC1, reference L20 for the delivery of 9 dwellings. Key development considerations include the sensitive design and scale of the scheme to reflect nearby heritage assets and the Lichfield skyline and consideration of residential amenity in relation to nearby school fields.

A Tree Preservation Order (ref. 2021/00461/TPO) was confirmed on 18<sup>th</sup> March 2022. The TPO covers 4 No. mature trees within the site (English Oak, Sycamore, Monkey Puzzle and an Apple tree) along with a small group of Sycamore Trees.

### **Proposals**

The applicant is seeking planning permission for the proposed demolition of existing buildings and the erection of 13 No. residential dwellings with associated road works, parking and landscaping at the site under the address of Land at Rosaries, Trent Valley Road, Lichfield.

In terms of the proposed housing mix, the proposals comprise 4 No. 4 bed dwellings, 5 No. 3 bedroom dwellings and 4 No. 2 Bedroom dwellings. All dwellings would be two storey in height with the exception of 1 No. 2 bedroom bungalow. The dwellings are modern in design and comprise a mixture of render and brick elevations with gable roofs over.

Single storey garages are proposed to serve each of the proposed four bedroomed properties. A shed/ cycle storage facility would be provided for each of the properties without a garage. A bin storage area has been presented for each of the proposed plots. A relatively generous provision of off-street car parking is presented throughout the scheme of development. An area of open space is provided to the south of plot 12, which surrounds one of the protected trees.

Vehicular access is proposed from the west of the site via St Michael Road. To the east, a pedestrian access would be provided along an existing track off the Public Right of Way. A remote operated barrier is proposed on the existing access track in order to retain rights of access for existing residents only (Birch Cottage and Paradise Cottage both situated to the north of the site).

The application is supported by an ecological survey, arboriculture details and transport statements. The scheme has been amended at various stages during the course of the application in order to address concerns raised by officers, relevant consultees and neighbouring occupiers. Notably, the scheme of development has been reduced to 13.No properties from the 14 originally submitted and alterations have been made to the overall layout of the scheme and the design of individual dwelling houses.



## Determining Issues

1. Policy and Principle of Development
2. Housing Mix
3. Design and Impact on Heritage Assets
4. Residential Amenity
5. Access and Highway Safety
6. Arboricultural Impacts
7. Ecology
8. Drainage
9. Planning Obligations & Cannock Chase SAC
10. Other Issues
11. Human Rights

### 1. Policy and Principle of Development

- 1.1 Section 38 (6) of the Planning and Compulsory Purchase Act (2004) sets out that the determination of applications must be made in accordance with the development plan, unless material considerations indicate otherwise. The Development Plan for Lichfield District comprises the Local Plan Strategy (2008-2029), adopted in February 2015 and the Local Plan Allocations Document (2008-2029), adopted in July 2019. The Local Plan Policies Maps form part of the Local Plan Allocations Document. In this location, the Lichfield City Neighbourhood Plan was also made in 2018 and as such, also carries full material weight.
- 1.2 Paragraph 11 of the NPPF advises that plans and decisions should be considered in the context of the presumption in favour of sustainable development and that housing policies within the Local Plan should only be considered up to date if the Local Planning Authority is able to demonstrate a five year supply of housing.
- 1.3 The Five Year Housing Land Supply 2021 for Lichfield shows that the District Council can currently demonstrate a 13.4 year supply of housing land against the Local Housing Need (LHN), as calculated within the adopted Local Plan Strategy, and as a result the adopted Local Plan Strategy policies can be considered as up to date.
- 1.4 Policy CP1 of the Lichfield District Local Plan Strategy sets out that the council will contribute to the achievement of sustainable development to deliver a minimum of 10,030 dwellings between 2009 and 2029 within the most sustainable settlements, making best use of and improving existing infrastructure. The policy goes on to state that development proposals will be expected to make efficient use of land and prioritise the use of previously developed land.
- 1.5 Policy CP6 of the Lichfield District Local Plan Strategy sets out that a sufficient supply of deliverable/developable land is available to deliver around 478 new homes each year. Housing development will be focused upon the following key urban and rural settlements:
  - Lichfield City
  - Burntwood
  - Alrewas, Armitage with Handsacre, Fazeley, Fradley, Shenstone and Whittington
  - Adjacent to the neighbouring towns of Rugeley and Tamworth
- 1.6 Policy LC1 'Lichfield City Housing Land Allocations' of the Lichfield Local Plan Allocations Document sets out a number of sites within Lichfield, which, alongside strategic development sites identified within the Local Plan Strategy are allocated for residential development. These allocations are subject to 'key development considerations'. The policy notes that the key development considerations are not all encompassing, other matters may

arise during the planning process which the applicants will need to address. A significant part of the application site, 0.3 hectares, is site reference L20 under this policy.

1.7 Site allocation L20 provides for an allocation of 9 dwelling houses. The site is described as an area of incidental open space within a primarily residential area located directly adjacent to St Chads Primary School. Immediately adjacent to the sites eastern boundary are a number of Listed Buildings which front onto Trent Valley Road. Key development considerations for the site are:

- Sensitive design and scale of scheme to take account of location within close proximity to heritage assets including the Grade II\* listed St Michaels Church, and other listed buildings.
- Consideration of residential amenity given location adjacent to school playing fields.
- Design should consider setting of Lichfield Cathedral and St Michaels Church including historic views or skylines.

1.8 The proposed development is within the Zone of Influence for the Cannock Chase Special Area of Conservation. Policy NR7: Cannock Chase Special Area of Conservation requires that, before development can be permitted it must be demonstrated that alone or in combination with other development it will not have an adverse effect upon the integrity of the SAC having regard to avoidance or mitigation measures. This is considered in more detail later in the report.

1.9 The Lichfield City Neighbourhood Plan was made on 15 January 2018. It is not considered that any policies are of relevance to this application.

1.10 The site is within the sustainable settlement of Lichfield. A significant part of the site is allocated for residential development through the Local Plan Allocations Document and the site can be considered as an infill site, given the proximity and siting of surrounding residential development. In principle, the proposal is considered to be acceptable in terms of the policies set out in the Local Plan, by providing a residential development in a sustainable location.

## 2. Housing Mix

2.1 Policy H1: A Balanced Housing Market, of the Local Plan Strategy seeks the delivery of a balanced housing market through an integrated mix of dwelling types, sizes and tenures based on the latest assessment of local housing need. This reflects the approach in the NPPF, which sets out that Local Planning Authorities should deliver a wide choice of high quality homes with a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community. Policy H1 states that there is currently an imbalance of dwelling types within the District. To address this Policy H1 mentions that the District Council will actively promote the delivery of smaller properties, particularly 2-3 bedroom houses and 2 bedroom apartments to increase local housing choice and contribute to the development of mixed and sustainable communities. Therefore, a scheme which includes a range of properties, particularly 2 and 3 bed dwellings would be sought and supported by the Local Plan.

2.2 The dwelling mix identified under the requirements of Local Plan Strategy Policy H1, as necessary to address the imbalance in the District's housing stock is 5% one bedroom, 42% two bedroom, 41% three bedroom and 12% four bedroom and above. The mix identified for this application is for 4 No. four bed dwellings (31%), 5 No. three bed dwellings (38%), and 4 No. two bed dwellings (31%). Whilst this mix does not strictly meet with the housing mix required under Policy H1, officers are of the view that in this instance, given the smaller scale of the development that the precise mix set out in Policy H1 would be difficult to achieve, and given the site area could result in an over intensive form of development. Consequently,

the proposed mix of 2, 3 and 4 bedroom homes in this instance is considered to be acceptable and would provide a good choice of housing mix.

### 3. Design and Impact upon Heritage Assets

- 3.1 The NPPF (Section 12) advises that “good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people” and that “permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions”.
- 3.2 The NPPF also attaches great importance to the design of the built environment, which should contribute positively to making places better for people. As well as understanding and evaluating an area’s defining characteristics, it states that developments should:
- function well and add to the overall quality of the area;
  - establish a strong sense of place;
  - create and sustain an appropriate mix;
  - respond to local character and history, and reflect local surroundings and materials;
  - create safe and accessible environments; and
  - be visually attractive as a result of good architecture and appropriate landscaping.
- 3.3 The National Planning Practice Guidance has recently been amended to state that, “the design process continues after the granting of permission, and it is important that design quality is not diminished as a permission is implemented”. In addition the recently published National Model Design Code sets out clear design parameters to help local authorities and communities decide what good quality design looks like in their area.
- 3.4 The National Model Design Code advises that, *“In the absence of local design guidance, local planning authorities will be expected to defer to the National Design Guide, National Model Design Code and Manual for Streets which can be used as material considerations in planning decisions. This supports an aspiration to establish a default for local design principles and settings as part of forthcoming planning reforms that lead to well designed and beautiful places and buildings”*. The Council does not as yet have a local design guide and therefore the above noted documents are important resources for securing good quality design.
- 3.5 Local Plan Strategy Policy BE1 advises that “new development... should carefully respect the character of the surrounding area and development in terms of layout, size, scale, architectural design and public views”. The Policy continues to expand on this point advising that good design should be informed by “appreciation of context, as well as plan, scale, proportion and detail”.
- 3.6 Core Policy 14: Built and Historic Environment sets out that the significance of designated heritage assets and their settings will be conserved and enhanced and given the highest level of protection. Policy BE2: Heritage Assets of the Local Plan Allocations document sets out that development proposals which conserve and enhance our historic environment will be supported where the development will not result in harm to the significance of the heritage asset (including non-designated heritage assets) or its setting.
- 3.7 It is acknowledged that a range of design and conservation related concerns and associated implications have arisen during the consultation/consideration period. These points of concern have been carefully considered by officers in the assessment of this planning submission. The scheme has been revised by the applicants during the course of the application in order to address the issues raised.

- 3.8 The site is adjacent to Samuel Johnson Hospital and to the original St Michael's Hospital buildings which are Grade II listed buildings. These buildings are immediately adjacent to the eastern boundary of the application site. The site of the Lichfield Union Workhouse and St Michael's Hospital are also considered to be a non-designated heritage assets.
- 3.9 Two of the existing buildings on the site first appear on the 1966 OS map and the third structure appears on the 1975 map. From the design of the existing house which would be demolished as part of the proposals it appears to be c1950's. There are no objections to the demolition of these structures. The Conservation & Urban Design Officer has confirmed that there are no objections to the principle of residential development on this site.
- 3.10 In design terms, the scheme has been significantly improved during the course of the consideration of the application. The scale and appearance of the individual dwellings has been amended to achieve a high quality of design and cohesiveness which includes visual interest through the use of appropriate materials and design features such as chimneys. The reduction in overall number of dwellings has allowed for a suitable layout which ensures that sufficient parking and private amenity space can be accommodated.
- 3.11 Whilst some details of the landscaping has been provided, there are no details on the type of fences which would be used. It is considered that suitable fencing could be secured by means of an appropriately worded condition. Furthermore, the plans indicate that an electronic barrier would be used to allow private access along the track to the east of the site. The track links to the adjacent public footpath and is adjacent to the boundary with the Grade II listed Building. Again, details of this element of the scheme could be secured by condition. It is noted that the Conservation Officer has confirmed that the use of an automated gate would be preferable in this location and more in keeping with the character of the area than a single barrier.
- 3.12 Taking into consideration the revised form and layout of the proposed dwellings it is considered that the development would not cause any unacceptable harm to the significance of the adjacent Grade II listed buildings and non-designated heritage assets. Suitably worded conditions would however be required to ensure that appropriate high-quality materials and boundary treatments are used in the development and to achieve a suitable barrier along the track to the east of the site. If minded to approve the proposals, permitted development rights should also be removed for the new dwellings, in order to control future extensions/ alterations to the properties and further protect the historic setting of the site.
- 3.13 In conclusion regarding the heritage and design impacts of the revised scheme, the proposed dwelling houses are considered to be appropriate additions to the application site. The development, as revised will provide a unified and coherent form of development and would not have a detrimental impact upon the significance, setting, the character or appearance of the adjacent designated and non-designated heritage assets. As such, the scheme is considered to be acceptable on heritage and design grounds, in accordance with the requirements of the Development Plan and NPPF in this regard.

#### 4. Residential Amenity

- 4.1 Policy BE1 of the Local Plan Strategy states that development should have a positive impact upon amenity by avoiding development which causes disturbance through unreasonable traffic generation, noise, light, dust, fumes or other disturbance. Core Policy 3 also states that development should protect the amenity of residents and seek to improve overall quality of life. When assessing the impact of development on the nearest neighbouring properties reference should be made to Appendix A of the Sustainable Design Supplementary Planning Document (SPD). Contained within this are guidelines which assess the impact of development on the ability of neighbouring properties to receive daylight and sunlight.

- 4.2 The NPPF core planning principles include the requirement that planning should seek a good standard of amenity for all existing and future occupants of land and buildings. The Sustainable Design Supplementary Planning Document (SPD) sets out the Council's standards in regard to residential amenity, including separation distances to ensure that new dwellings do not result in overlooking or overbearing. The SPD guidelines require a minimum 21m between principal habitable windows which face each other and 6m between principal windows and residential amenity space. The SPD also sets requirements in terms of the size of private amenity space necessary to serve new dwelling houses. For 1 or 2 bedroom dwellings, a minimum garden size of 45 square metres should be provided, for 3 or 4 bed 65 square metres and for 5 bedroom dwellings 100 square metres. All gardens should have a minimum length of 10 metres.
- 4.3 It is acknowledged that neighbouring amenity implications, overbearing and overlooking issues, and loss of sunlight and daylight related concerns have been raised. These points of concern have been carefully considered by officers in the assessment of this planning submission.
- 4.4 The layout broadly complies with the requirements of the Supplementary Planning Document, and officers consider the proposals would not cause undue harm to residential amenity, although there are some minor deficiencies noted across the development. Notably, plots 10 and 11 have a garden depth of 9.04m and 9.06m respectively which falls short of the 10m guideline set out in the Sustainable Design SPD. Whilst the depth of the gardens to these plots falls slightly short of the depth required, it is noted that the plots over provide in terms of the overall area of garden space required. On balance, sufficient amenity space is provided to serve the future occupiers and the dwellings would not result in unacceptable impacts on privacy or overbearing impact to neighbouring properties. Overall, the scheme, as amended, meets with the separation and space about dwellings standards. Officers therefore consider the proposals are acceptable on grounds of amenity and its provision. The land gradients of the site and surroundings have also been noted and considered by officers in the assessment of this planning application. Should Members be minded to recommend planning approval, a pre-commencement planning condition requiring full details of slab and ground levels for the new dwellings should be incorporated, to ensure that the relationship between existing dwellings and the new development remains appropriate.
- 4.5 The layout of the scheme, given the above described circumstances will ensure an appropriate standard of living accommodation for future residents and therefore, the development will comply with the requirements of the Development Plan and NPPF in this regard.
- 4.6 It is noted that the Councils Environmental Health Team have requested additional information in relation to noise. Specifically, such information should consider the impacts of the adjacent hospital on the proposed development and also the impact of the new access into the proposed scheme on existing homes. Should the proposals be supported, it is recommended that a pre-commencement planning condition in this regard be incorporated which would secure any necessary mitigation.
- 4.7 Overall, the proposal would provide an acceptable level of residential amenity whilst causing no unacceptable harm to the existing amenities, such as light and privacy enjoyed by neighbouring occupiers. As such the development, subject to conditions, would be in accordance with the requirements of the Development Plan and NPPF, in this regard.
5. Access and Highway Safety
- 5.1 Policy ST1 'Sustainable Travel' sets out that the Council will seek to secure sustainable travel patterns through a number of measures including only permitting traffic generating

development where it is or can be made compatible with the existing transport infrastructure. The access and egress onto the public highway and maintaining highway safety are factors which should be given consideration.

- 5.2 Policy ST2 'Parking Provision' sets out a requirement for parking provision to serve new developments which is expanded upon with specific requirements in the Sustainable Design SPD. Policy ST2 also sets out a requirement for weatherproof cycle storage. The Sustainable Design SPD sets out the following the maximum parking standards for new dwellings which for 3 and 4 bed should have two spaces per dwelling, 2 bed homes require 1 space.
- 5.3 Policy BE1 of the Lichfield District Local Plan Strategy 2008-2029 seeks to protect existing amenity of residents by avoiding development which causes disturbance through unreasonable traffic generation, noise, light, dust, fumes or other disturbance. The National Planning Policy Framework sets out in paragraph 111 that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 5.4 The County Highways team have been consulted with regards to this planning submission and have advised that there are no objections on highway grounds, subject to relevant planning conditions to secure details of the remote access barrier to be installed along the track to the east of the site, the implementation of the access, parking and turning areas, the provision of cycle facilities to serve each dwelling house and a construction management plan.
- 5.5 The application site is considered to be in a sustainable location proximate to local amenities; including approximately 60m from the nearest bus stop, and has good access to both Lichfield Railway Stations. Along the eastern boundary of the site, public footpath (Lichfield City 11) links Trent Valley Road to St. Michael Road. The site is therefore considered to be sustainably located where the occupiers of the new properties would not be reliant on a car for transport. Further to the comments received from County Highways, it is not considered that the scheme would result in unreasonable traffic generation, and it should be noted that a significant part of the site has been allocated for up to 9 dwelling houses through the Local Plan Allocations Document.
- 5.6 It is acknowledged that highways related concerns and objections have been presented by local residents. Following the receipt of the professional County Highways advice it would however be considered unreasonable to suggest that the scheme of development would be unacceptable on highways related grounds having no technical evidence to the contrary.
- 5.7 In respect of the above, subject to conditions being applied to any planning approval to secure the relevant details set out, the development proposal is considered to be acceptable on highway grounds. As such, the development would be in accordance with the requirements of the Development Plan and NPPF, in this regard.

## 6. Arboricultural Impacts

- 6.1 Policy NR4 of the Local Plan Strategy states that Lichfield District's trees, woodland and hedgerows are important visual and ecological assets in our towns, villages and countryside. In order to retain and provide local distinctiveness in the landscape, trees, veteran trees, woodland, ancient woodland, and hedgerows, are of particular significance. Trees and woodland will be protected from damage and retained, unless it can be demonstrated that removal is necessary and appropriate mitigation can be achieved. Policy NR4 is supported by the Councils Tree's, Landscaping and Development SPD.
- 6.2 A Tree Preservation Order (ref 2021/00461/TPO) was served on the 18th of October 2021. The trees included in this order, which is an area designation, are located within the site and either visible from the surrounding road network or are visible from the adjacent properties,

school field, or shared access. The trees afford a good level of amenity to these viewpoints, and therefore should be retained.

- 6.3 Significant objections have been raised regarding the impact of the proposed development on trees within the plot and proposed removal of trees by the Councils Tree Officer. It is considered that the current proposals would reduce or potentially remove the visual amenity that the trees afford to the locality. Insufficient information has been provided to support the proposals in this respect and the presence of the existing good quality trees has not influenced the revised proposals. Furthermore, the submissions refer to the translocation of hedges, however no supporting detail has been provided. Whilst the existing hedges are not formally protected, they offer significant habitat and visual amenity. The Tree Officer has confirmed that a substantial redesign of the site would be required in order to achieve an acceptable scheme in arboriculture terms, where existing trees are retained and the objectives of policy NR4 and the adopted Trees, Landscaping and Development SPD are met.
- 6.4 These aforementioned grounds present the Local Planning Authority with strong reasoning to justify planning refusal. The development, currently subject to Tree Preservation Order 2021/00461/TPO, has not adequately addressed impacts of the proposal on trees within the plot, and proposes the loss of protected trees, which given their positive visual contribution, would have a significant detrimental impact on the character of the area and the surrounding street scene. The proposed scheme of development is therefore considered to be contrary to the requirements of Policies BE1 and NR4 of the Local Plan Strategy, the Trees, Landscaping and Development Supplementary Planning Document, and the National Planning Policy Framework and should be refused on such grounds.

## 7. Ecology

- 7.1 Core Policy 13 and policy NR3 of the Local Plan Strategy states that development will only be permitted where it protects, enhances, restores and implements appropriate conservation management of the biodiversity and/or geodiversity value of the land and buildings minimises fragmentation and maximise opportunities for restoration, enhancements and connection of natural habitats (including links to habitats outside Lichfield District) and incorporates beneficial biodiversity and/or geodiversity conservation features, including features that will help wildlife to adapt to climate change where appropriate. Policies within the Local Plan Strategy are supplemented by the Biodiversity and Development Supplementary Planning Document.
- 7.2 It is acknowledged that ecological related issues and concerns have been raised. These points of concern have been carefully considered by officers in the assessment of this planning submission. The Ecology team have been consulted and have provided formal consultation comments on this development proposal accordingly.
- 7.3 A Preliminary Ecological Appraisal has been submitted to support the application. The document sets out that the site contains a mosaic of habitats of low to moderate ecological value. It is acknowledged that the proposed development will lead to a loss of habitat, however it is considered that a net gain to biodiversity could be achieved. The appraisal also recommends that further survey work is required in relation to bats with respect of the demolition of the existing dwelling house.
- 7.4 The Councils Ecology team have requested details of the further bat surveys, which should be undertaken prior to any decision being made. Furthermore, full details of the Biodiversity Net Gain Assessment have been requested from the applicant to support the proposals. This information and justification needs to be provided prior to any planning decision being made otherwise the Ecology Team will have no choice but to advise that the scheme is currently a net loss to biodiversity and does not comply with the NERC Act 2006, Policy NR3 of the Local

Plan, the guidance and requirements of the Biodiversity and Development SPD or the requirements of the National Planning Policy Framework.

7.5 The above information has been requested, however the detailed information and relevant supporting surveys and evidence has not been provided. The scheme of development therefore does not incorporate the relevant aforementioned detailing to the satisfaction of the Ecology Team. Therefore this planning application cannot be supported on this basis. As such, it is considered that the proposed scheme presents a net loss to biodiversity and does not comply with the requirements of the NERC Act 2006, Policy NR3 of the Local Plan, the Biodiversity and Development Supplementary Planning Document, and the National Planning Policy Framework. Refusal is therefore recommended on such grounds.

## 8. Drainage

8.1 The National Planning Policy Framework seeks to ensure that new development is not at risk from flooding, or does not increase flood risk elsewhere. It advocates the use of a sequential test with the aim of steering new developments to areas with the lowest probability of flooding. The Environment Agency produces flood risk maps which classifies land according to probability of flooding. The areas of highest risk are classified as Flood Zone 3, with a 1 in 100 or greater annual probability of flooding, and the areas of lowest risk are classified as Flood Zone 1, with a less than 1 in 1000 annual probability of flooding. Core Policy 3 of the Local Plan Strategy expects all new development to incorporate Sustainable Drainage Systems (SUDS).

8.2 It is acknowledged that flooding, drainage and water pressure related concerns have been arisen during the consultation period. These points of concern have been carefully considered by the Local Planning Authority in the assessment of this planning submission. The application site is situated within Flood Zone 1 and as such there are no flooding concerns in principle. In terms of the relevant specialist consultations the County Council as Lead Local Flood Authority have stated that they have no objection, subject to relevant pre-commencement conditions being incorporated should planning permission be granted.

8.3 The Environment Agency have stated that they have no comments to make on this development proposal. Severn Trent Water have confirmed that they have no objections in principle, but require a pre-commencement drainage condition to be applied. This could feasibly be controlled via a relevant planning condition should approval be granted.

8.3 Overall, subject to details of drainage being secured by an appropriately worded condition, the development proposal is considered to be acceptable in this regard.

## 9. Planning Obligations & Cannock Chase SAC

9.1 Should Members be minded to grant permission, a Section 106 agreement would be required with regards to a range of required planning obligations to make the proposals acceptable.

9.2 Firstly, as recommended by the School Organisation Team at Staffordshire County Council should planning permission be granted an education contribution of £184,33256 (index linked) should be sought from the developer to mitigate the impact on education from the development. It has been noted by the School Organisation Team that the scheme would be acceptable from an education perspective subject to a S106 agreement which meets this requirement.

9.3 Should planning approval be recommended, as the Council would not be adopting any open space, hedgerows or verges etc. Arrangements would be required to ensure that the future maintenance of areas are covered by a suitable management organisation and plan. Such would be required as part of a Section 106 agreement should approval be recommended.



- 9.4 This development is likely to have an impact upon Cannock Chase SAC (CC SAC). Protection measures for the CC SAC are set out under Policy NR7 of the Local Plan Strategy. It has been determined that all developments resulting in a net increase of 1 or more dwellings within a 15km radius of Cannock Chase SAC would have an adverse effect on its integrity. From 1<sup>st</sup> April 2022, the Zone of Influence incorporates all dwellings within a 15km range of the Cannock Chase SAC. In this case, the development falls within the Zone of Influence and as such a financial contribution towards the Strategic Access Management Measures (SAMMs) would be required from this development at a rate of £290.58 per dwelling in mitigation. Subject to the agreement of the applicant, this contribution could be secured by means of a S106 agreement. Although without an agreement secured to ensure appropriate mitigation, the proposals are unacceptable, on such grounds.
- 9.5 The District Council adopted its Community Infrastructure Levy (CIL) on 19th April 2016 and commenced charging on 13th June 2016. A CIL charge will apply to all relevant applications determined after this date. This application falls within the higher charging area as identified on the CIL Charging Schedule and would be charged at a rate of £55 per square metre for residential development (not including indexation).
- 9.6 As noted within the consultation response from the Housing Manager there is no affordable housing requirement as part of this planning submission.
10. Other Issues
- 10.1 Should the Local Planning Authority be minded to approve, contrary to the officer recommendation, the comments and details outlined within the consultation responses received from the Architectural Liaison Team, the County Rights Of Way Team, and the Waste Management Team would need to be highlighted and referenced to as planning informatives for the attention of the applicant.
11. Human Rights
- 11.1 The proposals set out in the report are considered to be compatible with the Human Rights Act 1998. The proposals may interfere with an individual's rights under Article 8 of Schedule 1 to the Human Rights Act, which provides that everyone has the right to respect for their private and family life, home and correspondence. Interference with this right can only be justified if it is in accordance with the law and is necessary in a democratic society. The potential interference here has been fully considered within the report in having regard to the representations received and, on balance, is justified and proportionate in relation to the provisions of the policies of the development plan and national planning policy. Furthermore, the applicant has a right of appeal in accordance with Article 6.

## **Conclusion**

The proposed development has been revised during the course of the application in order to address issues raised. The principle of residential development on the site is considered to be acceptable and in accordance with the Development Plan. Whilst the overall design and layout of the scheme has been significantly improved and impacts on heritage assets and neighbouring amenity have been addressed, the scheme as revised fails to satisfactorily address ecological issues, and contributes a loss of protected trees with inadequate arboricultural protection. Also, Cannock Chase SAC mitigation has not been agreed.

The proposal therefore fails to accord with relevant policies within the Development Plan and the National Planning Policy Framework, and therefore this application is recommended for refusal, as set out above.

# LOCATION PLAN

20/01245/FULM  
Land South Of Main Road  
Haunton  
Tamworth

Scale: 1:13,000

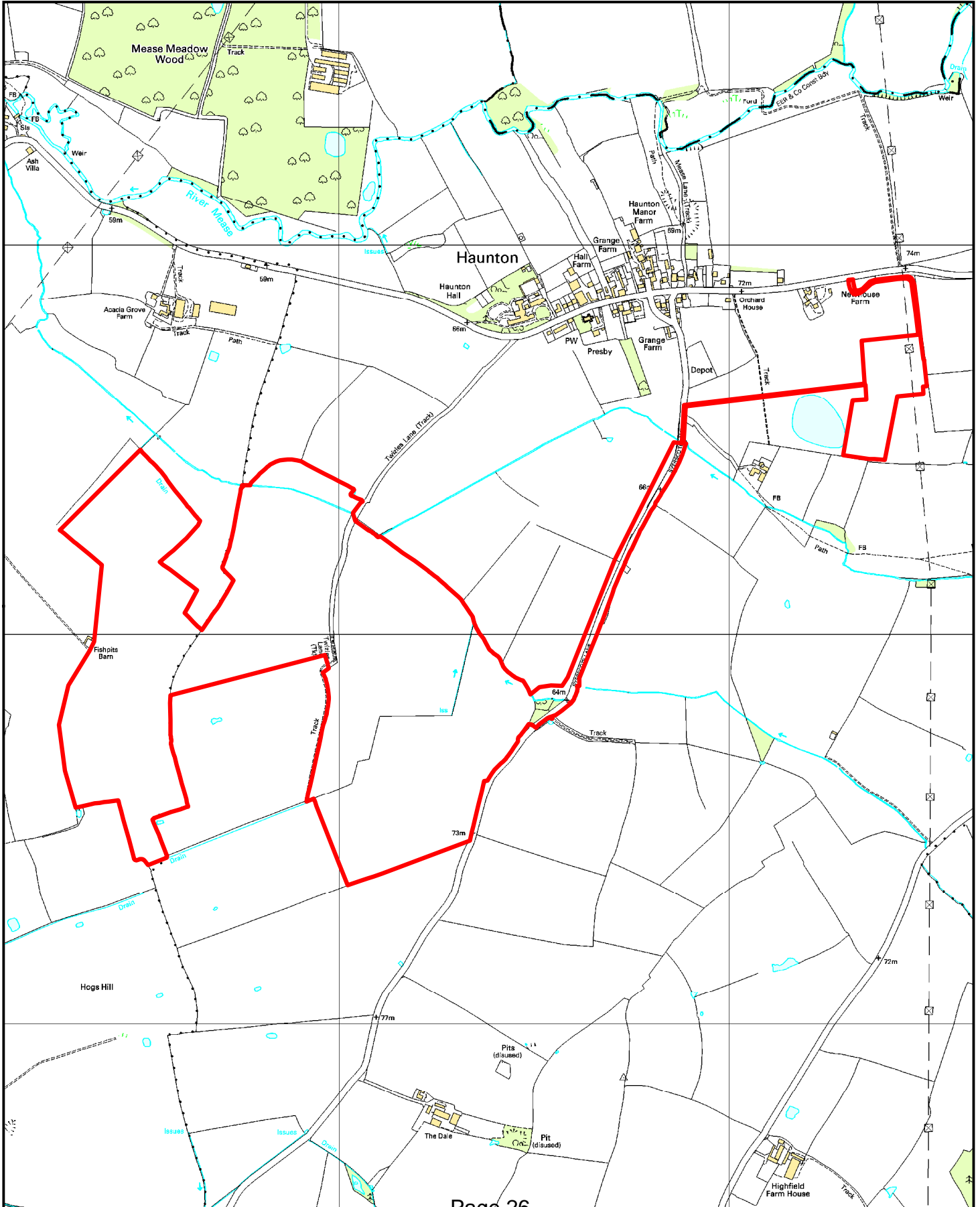
Dated: April 2022

Drawn By:

Drawing No:



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## 20/01245/FULM

Installation of a solar farm comprising ground mounted solar PV panels (143,000) with a net generating capacity (AC) of up to 49.9MW, including mounting system, battery storage units, inverters, underground cabling, stock proof fence, CCTV, internal tracks and associated infrastructure, landscaping and environmental enhancements for a temporary period of 40 years and a permanent grid connection hub.

Land South Of Main Road, Haunton, Tamworth, Staffordshire  
FOR Haunton Farmers Solar Ltd

Registered 27/11/2020

Parish: Clifton Campville

**Note:** This application is being reported to the Planning Committee, due to significant planning objections raised by Harlaston Parish Council on the grounds of the scale and size of the proposed development raising concerns about the visual impact on the local landscape and the potential for local traffic disruption while under construction.

**RECOMMENDATION: Approve, subject to the following conditions:**

### CONDITIONS:

1. The development hereby approved shall be begun before the expiration of three years from the date of this permission.
2. The development authorised by this permission shall be carried out in complete accordance with the approved plans and specification, as listed on this decision notice, except insofar as may be otherwise required by other conditions to which this permission is subject.
3. Within 40 years and six months following completion of construction of development hereby approved, or within six months of the cessation of electricity generation by the solar PV facility, or within six months following a permanent cessation of construction works prior to the solar PV facility coming into operational use, whichever is the sooner, the solar PV panels, frames, foundations, inverter modules and all associated structures and fencing approved shall be dismantled and removed from the site. The developer shall notify the Local Planning Authority in writing no later than five working days following cessation of power production. The site shall subsequently be restored in accordance with a scheme and timescale, the details of which shall be first submitted to and approved in writing by the Local Planning Authority no later than three months following the cessation of power production. (Note: for the purposes of this condition, a permanent cessation shall be taken as a period of at least 24 months where no development has been carried out to any substantial extent anywhere on the site).

**CONDITIONS to be complied with PRIOR to the commencement of development hereby approved:**

4. The development hereby permitted shall not be commenced until written confirmation has been secured from Staffordshire County Council (as the local highway authority) and submitted in writing to the Local Planning Authority that an inspection of the roads within the routing agreement, including a video survey has been provided to the satisfaction of the County Highway Authority under the Highway Acts.
5. Prior to the commencement of the development, notwithstanding the submitted details, an updated Construction Environment Management Plan (CEMP) shall be submitted to and

agreed in writing by the Local Planning Authority. The CEMP shall include details relating to construction access, hours of construction, delivery times and the location of the contractor's compounds, cabins, material storage areas and contractors parking and a scheme for the management and suppression of dust and mud from construction activities including the provision of a vehicle wheel wash. It shall also include a method of demolition and restoration of the site. The development shall only be undertaken in strict accordance with the approved details for the duration of the construction programme.

6. Prior to the commencement of the development, a Habitat Management Plan (HMP) shall be submitted to and agreed in writing by the Local Planning Authority. The HMP shall detail in full the future habitat creation works (and sustained good management thereof) to a value of no less than 183.04 Biodiversity Units. The development shall be carried out and managed in accordance with the approved details contained within the HMP.
7. The development shall be undertaken in strict accordance with all recommendations and methods of working detailed within the approved Arboricultural Impact Assessment (Ref 10869\_AIA.001) dated as received 24 March 2021. All protective fencing shall be erected in the defined positions set out within the tree protection plan before the development hereby approved commences and shall be retained at all times whilst construction works are taking place.

**CONDITIONS to be complied with PRIOR to the first use of the development hereby approved:**

8. The development hereby permitted shall not be brought into use until written confirmation has been secured from Staffordshire County Council (as the local highway authority) and submitted in writing to the Local Planning Authority, that a repeat inspection of the roads within the routing agreement, including a video survey with any necessary remedial works undertaken has been carried out to the satisfaction of the County Highway Authority under the Highway Acts.
9. The development hereby permitted shall not be brought into use until precise details of bird nesting and bat roosting facilities to be installed on the site have been submitted to and approved in writing by the Local Planning Authority. The approved ecological enhancement measures shall be installed prior to the first use of any of part of the development and thereafter made available at all times for their designated purposes.
10. The development hereby permitted shall not be brought into use until the visibility splays at the junction of the access with Main Road, Harlaston shown on plan ref. no 16424-HYD-XX-XX-DR-TP- 0005 Rev.P01.05 dated as received 04 February 2022 have been provided. The visibility splays shall thereafter be kept free of all obstructions to visibility over a height of 600 mm above the adjacent carriageway level for the life of the development.
11. The development hereby permitted shall not be brought into use until the visibility splays at the junction of the access with Syerscote Lane shown on plan ref. no 16424-HYD-XX-XX-DR-TP-0006 Rev. P01.05 dated as received 04 February 2022 have been provided. The visibility splays shall thereafter be kept free of all obstructions to visibility over a height of 600 mm above the adjacent carriageway level.
12. The development hereby permitted shall not be brought into use until the accesses to the site have been completed in accordance with the details shown on the drawing numbers 16424-HYD-XX-XX-DR-TP-0004-P1.05 and 16424-HYD-XX-XX-DR-TP-0006 Rev. P01.05 both dated as received 04 February 2022.
13. The development hereby permitted shall not be brought into use until surface water drainage interceptors, connected to surface water outfalls, have been provided across the Main Road, Harlaston and Syerscote Lane accesses immediately to the rear of the highway boundary.

14. The development hereby permitted shall not be brought into use until the Main Road, Harlaston and Syerscote Lane accesses rear of the public highway have been surfaced and thereafter maintained in a bound and porous material for a minimum distance of 10m back from the gates/site boundary in accordance with the approved plans.

**All other CONDITIONS to be complied with:**

15. The development shall be undertaken in strict accordance with all recommendations and methods of working detailed within the Ecological Impact Report (ref 13249\_R01) and the Biodiversity Net Gain Report (ref 13249/R02) both dated as received 27 November 2020.
16. All planting, seeding or turfing shown on drawing number 13249/P05 Opportunities and Constraints dated as received 27 November 2020 shall be carried out in the first planting and seeding season following the first use of the solar farm or the completion of the development; whichever is the sooner. 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 in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent, on application, to any variation.
17. Any gates shall be located a minimum of 17m rear of the carriageway boundary and shall open away from the highway.
18. There shall be no external lighting installed within the application site whatsoever other than with the prior written consent on application to the Local Planning Authority.
19. During the period of construction of any phase of the development, no works including deliveries shall take place outside the following times: 0730 and 1900 hours Monday to Friday and 0800 and 1300 hours on Saturdays and, not at any time on Sundays, Bank and Public holidays (other than for emergency works).

**REASONS FOR CONDITIONS**

1. In order to comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended.
2. For the avoidance of doubt and in accordance with the applicant's stated intentions, in order to meet the requirements of Policies CP1, CP3, CP5, CP7, CP13, CP14, SC1, SC2, BE1, NR1, NR3, NR4, NR5, NR8, NR9, ST1, ST2, Rural1 and Rural2 of the Lichfield Local Plan Strategy, Policy BE2 of the Lichfield Local Plan Allocations Document, The Sustainable Design SPD, the Rural Development SPD, the Trees Landscaping and Development SPD, the Biodiversity and Development SPD, the Historic Environment SPD and the National Planning Practice Guidance and the National Planning Policy Framework.
3. To ensure the achievement of satisfactory site restoration, in accordance with the requirements of Policies CP3, NR1, NR3, NR4, NR8, NR9 and BE1 of the Lichfield Local Plan Strategy and the National Planning Policy Framework.
4. In the interests of highway safety and to comply with the requirements of policy ST1 of the Lichfield Local Plan Strategy and the National Planning Policy Framework.
5. In the interests of ensuring there are no adverse impacts on the River Mease Special Area of Conservation, highway safety and to minimise the impact of construction activity on the surrounding environment, in accordance with the requirements of Policies CP3, NR1, NR8, BE1 and ST2 of the Lichfield Local Plan Strategy and the National Planning Policy Framework.

6. In order to encourage enhancements in biodiversity and habitat, in accordance with the requirements of Policy NR3 of the Lichfield Local Plan Strategy, the Biodiversity and Development SPD and the National Planning Policy Framework.
7. To ensure adequate measures are taken to preserve trees and hedges and their root systems whilst construction work is progressing, in accordance with Lichfield Local Plan Strategy Policy NR4, the Trees, Landscaping & Development SPD and the National Planning Policy Framework.
8. In the interests of highway safety and to comply with the requirements of policy ST1 of the Lichfield Local Plan Strategy and the National Planning Policy Framework.
9. In order to encourage enhancements in biodiversity and habitat, in accordance with the requirements of Policy NR3 of the Lichfield Local Plan Strategy, the Biodiversity and Development SPD and the National Planning Policy Framework.
10. In the interests of highway safety and to comply with the requirements of policy ST1 of the Lichfield Local Plan Strategy and the National Planning Policy Framework.
11. In the interests of highway safety and to comply with the requirements of policy ST1 of the Lichfield Local Plan Strategy and the National Planning Policy Framework.
12. In the interests of highway safety and to comply with the requirements of policy ST1 of the Lichfield Local Plan Strategy and the National Planning Policy Framework.
13. In the interests of highway safety and to comply with the requirements of policy ST1 of the Lichfield Local Plan Strategy and the National Planning Policy Framework.
14. In the interests of highway safety and to comply with the requirements of policy ST1 of the Lichfield Local Plan Strategy and the National Planning Policy Framework.
15. In order to safeguard the ecological interests of the site, in accordance with the requirements of Policy NR3 of the Lichfield Local Plan Strategy, the Biodiversity and Development SPD and the National Planning Policy Framework.
16. In order to provide a biodiversity net gain and to ensure that an approved landscaping scheme is implemented in a speedy and diligent way and that initial plant losses are overcome in the interests of the visual amenities of the locality, in accordance with Policies CP3, CP13, NR3, NR4 and BE1 of the Lichfield Local Plan Strategy, the Sustainable Design SPD, Trees, Landscaping and Development SPD, the Biodiversity and Development SPD and the National Planning Policy Framework.
17. In the interests of highway safety and to comply with the requirements of policy ST1 of the Lichfield Local Plan Strategy and the National Planning Policy Framework.
18. The site lies in open countryside where uncontrolled artificial lighting would be prejudicial to the rural character of the landscape resulting in a diminution of dark sky value, therefore the condition is required to ensure compliance with policy BE1 of the Lichfield Local Plan Strategy and with the National Planning Policy Framework paragraph 185(C) 2021.
19. To protect the amenities of local residents and the locality in general in accordance with Policies CP3 and BE1 of the Lichfield Local Plan Strategy and the National Planning Policy Framework.

**NOTES TO APPLICANT:**

1. The Development Plan comprises the Lichfield District Local Plan Strategy (2015) and Lichfield District Local Plan Allocations (2019).

2. The applicant's attention is drawn to The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2017, which requires that any written request for compliance of a planning condition(s) shall be accompanied by a fee of £34 for a householder application or £116 for any other application including reserved matters. Although the Council will endeavour to deal with such applications in a timely manner, it should be noted that legislation allows a period of up to 8 weeks for the Local Planning Authority to discharge conditions and therefore this timescale should be borne in mind when programming development.
3. The development is considered to be a sustainable form of development which complies with the provisions of paragraph 38 of the NPPF.
4. Please be advised that Lichfield District Council adopted its Community Infrastructure Levy (CIL) Charging Schedule on the 19th April 2016 and commenced charging from the 13th June 2016. A CIL charge applies to all relevant applications. This will involve a monetary sum payable prior to commencement of development. In order to clarify the position of your proposal, please complete the Planning Application Additional Information Requirement Form, which is available for download from the Planning Portal or from the Council's website at [www.lichfielddc.gov.uk/cilprocess](http://www.lichfielddc.gov.uk/cilprocess).
5. The applicant is advised to read and action the advice of the Police Liaison Officer in their response dated as received 07 February 2021 which outlines crime prevention advice.
6. The applicant is advised that the Habitat Management Plan required to be submitted under condition 6 above should and expand upon the information provided within the Biodiversity Net Gain Plan, Ecological Impact Assessment and Biodiversity Metric 2.0 dated 11/02/2021 and must detail:
  - Current soil conditions of any areas designated for habitat creation and detailing of what conditioning must occur to the soil prior to the commencement of habitat creation works (for example, lowering of soil pH via application of elemental sulfur)
  - Descriptions and mapping of all exclusion zones (both vehicular and for storage of materials) to be enforced during construction to avoid any unnecessary soil compaction on area to be utilized for habitat creation.
  - Details of both species composition and abundance (% within seed mix etc) where planting is to occur.
  - Proposed management prescriptions for all habitats for a period of no less than 25 years, including a detailed landscaping/habitat creation plan.
  - Assurances of achievability.
  - Timetable of delivery for all habitats.
  - A timetable of future ecological monitoring to ensure that all habitats achieve their proposed management condition (to be submitted to the LPA every 5 years) as well as description of a feedback mechanism by which the management prescriptions can be amended should the monitoring deem it necessary.
7. The applicant is advised that conditions requiring off-site highway works shall require a Highway Works Agreement with Staffordshire County Council. The Applicant is requested to contact Staffordshire County Council in order to secure the Agreement. The link below is to the Highway Works Information Pack including an application form. Please complete and send to the address indicated on the application form or email to [road.adoptions@staffordshire.gov.uk](mailto:road.adoptions@staffordshire.gov.uk). The applicant is advised to begin this process well in advance of any works taking place in order to meet any potential timescales.

<https://www.staffordshire.gov.uk/Highways/highwayscontrol/HighwaysWorkAgreements.aspx>

The applicant will have responsibility and costs in respect of re-locating or protecting, as necessary, any Statutory Undertakers apparatus which is located within the proposed access crossings. Please contact the appropriate company for advice.

8. The applicant is advised that if temporary directional signing to the proposed development is required, you must ensure that prior approval is obtained from Staffordshire County Council's Strategic Community Infrastructure Manager for the size, design, and location of any sign in the highway. It is likely that any sign erected in the Highway without prior approval will be removed.
9. The applicant is advised that Public Footpaths Harlaston 2, Harlaston 8 and Clifton Campville 28 which surround the site should not be obstructed or extinguished as a result of this development either during or after construction.

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## **PLANNING POLICY**

### **National Planning Policy**

National Planning Policy Framework  
National Planning Practice Guidance

### **Local Plan Strategy:**

CP1 – The Spatial Strategy  
CP2 – Presumption in Favour of Sustainable Development  
CP3 – Delivering Sustainable Development  
CP5 – Sustainable Transport  
CP7 – Employment & Economic Development  
CP13 – Our Natural Recourses  
CP14 – Our Built & Historic Environment  
SC1 – Sustainability Standards for Development  
SC2 – Renewable Energy  
BE1 – High Quality Development  
NR1 – Countryside Management  
NR3 – Biodiversity, Protected Species & their Habitats  
NR4 – Trees, Woodland & Hedgerows  
NR5 – Natural & Historic Landscapes  
NR8 – River Mease Special Area of Conservation  
NR9 – Water Quality  
ST1 – Sustainable Travel  
ST2 – Parking Provision  
RURAL 1 – Rural Areas  
RURAL 2 – Other Rural Settlements

### **Local Plan Allocations**

Policy BE2 – Heritage Assets

### **Neighbourhood Plan**

N/a

### **Supplementary Planning Document**

Rural Development SPD  
Trees Landscaping and Development SPD  
Biodiversity and Development SPD  
Historic Environment SPD  
Sustainable Design SPD



## **Other**

Baseline Report Climate Change Adaptation & Mitigation Staffordshire County Council (dated 20<sup>th</sup> November 2020)

Planning Practice Guidance for Renewable and Low Carbon Energy (March 2014)

AONB Management Plan 2014-2019

UK Solar PV Strategy Part 1: Roadmap to a Brighter Future (2013)

UK Solar PV Strategy Part 2 (2014)

Climate Change Act (2008)

The Environment Act (2021)

## **Emerging Lichfield District Local Plan 2040**

The emerging Lichfield District Local Plan 2040 has completed its Regulation 19 public consultation stage (August 2021) and is awaiting final updating and submission to the Secretary of State for the Department for Communities and Local Government for appointment of an independent Planning Inspector to undertake a public examination of the draft Local Plan. At this stage limited weight is given to the draft Emerging Local Plan Policies.

## **RELEVANT PLANNING HISTORY**

**20/00944/SCREE-** Screening Opinion in respect of a proposed solar farm development- EIA not required 11.09.2020.

**13/00017/REF-** Erection of two wind turbines with hub height of 75m and overall height to tip of 102m and associated facilities and works- Refused, Appeal Dismissed 14.03.2016

**12/00078/FULM-** Erection of two wind turbines with hub height of 75m and overall height to tip of 102m and associated facilities and works- Refused 09.04.2013.

**10/00750/FULMEI-** Construction of four wind turbine generators with overall height to tip of 125m and associated crane hard standing areas, access tracks, substation building, 80m meteorological mast, temporary construction compound and associated electrical infrastructure. Withdrawn 14.03.2011

## **CONSULTATIONS**

**Harlaston Parish Council-** Raise concerns/objections related to:

- The scale and size of the proposed development- concerns are raised about the visual impact on the local landscape and the potential for local traffic disruption while it is under construction. Also suggestion made that the development has increased in size since it was first proposed.
- The timing and nature of the consultation- the Covid pandemic, along with the fact that the application was submitted in the run-up to Christmas, led to local people feeling that they had little time to digest and make meaningful comment. Also some confusion over which households in the village received letters from LDC about this and how this was decided. (07.1. 2021)

**Severn Trent Water-** No objections and no drainage conditions required. (07.12.2020)

**Historic England- Final Comments-** Raise concern regarding the assessment of the impact of the proposals on heritage assets. This is required for the Local Planning Authority to be able to weigh this against public benefits. Strongly urge this is addressed and, due regard given to the specific issues and concerns raised by your authority's own specialist conservation advisers. (17.09.2021)

**Initial Comments-** Have concerns, as the proposed solar farm has the potential to harm a large number of designated and non-designated heritage assets, and associated historic landscape. Therefore recommend that further detailed information is provided by the applicant. (23.12.2020)

**Natural England- Final Comments**- No objections raised; confirmation provided that the Habitat Regulation Assessment and the Appropriate Assessment is acceptable. (23.03.2022)

Initial comments- As submitted, the application could have potential significant effects on the River Mease SSSI and Special Area of Conservation (SAC). Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation. (21.12.2020)

**National Highways**- No objections. (18.2.2021 & 06.9. 2021)

**Police Liaison Officer**- No objections, crime prevention advice provided. (16.2. 2021)

**Environment Agency**- No objections. (18.12.2020 & 10.9.2021)

**SCC Highways**- Final comments- Further to the additional information submitted in relation to the proposed access points, no objections are raised subject to conditions. (18.02.2022)

Further comments- Raise objections on the basis of the proposed visibility splays and the Construction Management Plan. (11.1.2022)

Further comments- Ask for further clarification regarding the routing for construction traffic, details of vehicle tracking and access arrangements. (21.4.2021)

Initial comments – Requested further information, including a Construction Management Plan and details of operational traffic. (23.2.2021)

**SCC Flood Risk Team- Final Comments**- Further to the submission of additional information, have no objections. No drainage conditions are required. (06.5.2021)

Updated comments- Additional drainage calculations are required to support the drainage strategy. (09.4.2021)

Initial comments- Insufficient drainage information has been provided. The proposed development may present risks of flooding on-site and/or offsite if surface water runoff is not effectively managed. The absence of an adequate drainage strategy is therefore sufficient reason in itself for a refusal of planning permission. (05.3.2021)

**SCC Minerals and Waste Planning**- No comments to make on the application. (03.12.2020)

**SCC Public Rights of Way Officer**- No objections, noting that no rights of way cross the proposed application site. (08.12.2020)

**SCC Archaeology**- Taking into consideration the above and below ground impacts of the proposals, raise no archaeological concerns with the proposed scheme. (21.12.2020 & 20.9.2021)

**LDC Spatial Policy and Delivery Team**- No objections to the principle of the development. The scheme would make a valuable contribution to the amount of renewable energy generated within the District. (14.12.2020)

**LDC Conservation & Urban Design Officer- Final Comments**- An amended heritage statement has been submitted with regards to the application. Whilst more information has been provided, there are still conservation objections to the proposed scheme. The latest heritage statement states that there is no harm to heritage assets, which is not agreed. (02.12.2021)

Updated comments - Additional information submitted does not address all of the concerns raised. (15.9.2021 & 08.3.2021)

Initial comments - Insufficient information has been provided to allow for a full assessment of the impact of the proposed solar farm on all the relevant heritage assets. Further documentation needs to be submitted. (21.12.2020)

**LDC Tree Officer- Final Comments**- Following receipt of additional information the impact on retained trees and hedges from the proposed solar farm site is limited. In addition, the submitted report indicates where protective measures will be used during construction to ensure successful retention and to avoid damage. Due to the cessation of cultivation the change of use of the site may benefit some of the tree and hedge population due to improved soil conditions. It is also noted that there is proposed to be some additional/remedial planting of hedgerow and buffers. On balance, the proposal may be slightly beneficial from an arboriculture perspective and –contingent on the works being carried out in accordance with the submitted details there are no objections raised. (31.3.2021)

Initial comments - Whilst the site does not appear to be within or affect any designated conservation areas and also we do not think there are currently any TPO's, it does appear that there are a large number of large trees affected some of which may be on third party land. Further tree report and impact/ protection plans are required. (06.12.2020)

**LDC Ecology- Final Comments**- Satisfied with the methodology and information provided within the submitted Ecological Surveys, Ecological Impact Assessment and additional ecological information. They concur with the conclusions of the survey in that (given the data provided) it can now be considered unlikely that the proposed works would negatively impact upon a European Protected Species. However, all recommendations and methods of working detailed within the Ecological surveys and Ecological Impact Assessment must be made a condition of any future planning approval. (28.9.2021)

Further comments- Welcome the submission of the Biodiversity Net Gain Plan and Construction Environment Management Plan. However, request further information regarding impacts on protected species and the River Mease SAC. (08.4.2021)

Initial comments – There is insufficient information in respect of the impacts to Biodiversity. A biodiversity metric or biodiversity impact calculator has not been provided for the site to demonstrate measurable net gains to biodiversity or to ensure that the development will not cause a net loss to biodiversity. This information should be submitted prior to any planning decision being made. Further information regarding the impacts on the River Mease Special Area of Conservation is also required. (21.12.2020)

**LDC Waste Management** - No comments in relation to Waste Management. (03 .12.2020)

**LDC Environmental Health Officer**- No objections, subject to a condition limiting the hours of construction. (17.12.2020)

### **LETTERS OF REPRESENTATION**

33 letters of representation have been received in respect of this application.

Of these, 1 has been submitted in support of the application, based on the viewpoint that the proposal will play a critical role in helping the District to achieve its climate change commitments, and that the construction traffic phase will account for only a fraction of the development's total lifespan.

The remaining 32 representations submitted raise objections to the application. The comments are summarised as follows:

- Local residents have not been adequately consulted on the proposals and the intention to submit a planning application / consultation letters sent out too close to the consultation expiry date;

- The proposals are too big for village context and therefore will have an impact on surrounding landscape and conservation area setting;
- Obstruction of clear views with industrial type facilities, which will impact any enjoyment or recreation gained from within the area;
- The proposal is incompatible with the Management Plan for Haunton Conservation Area;
- Solar panels are not in keeping with local heritage, architecture and archaeology;
- The proposals are visually unacceptable from adjacent roadways and higher ground;
- Negative impact on the local wildlife in hedgerows, woods and fields such as barn owls and badgers;
- Solar panels and associated componentry on an industrial scale can have health risks such as electromagnetic radiation which would be detrimental to local residents;
- Solar panels will be a fire hazard in a dry summer;
- Would set a precedent for other large-scale developments in the countryside/in close proximity to a conservation area;
- Syerscote Lane and Main Road inadequate to accommodate construction traffic;
- Construction traffic would be hazardous to walkers, cyclists, farmers and school children;
- Proposed construction route will be circumvented / not complied with;
- Drainage issues, potential flooding;
- Photos used within the application do not adequately represent surrounding views;
- Incorrect reference to there being no PROWs through the site; designated footpath exists through the site via Twizzels Lane onto Syerscote Lane ;
- Omission of 'fallen' listed building known as 'Fishpits Barn and Crewyard';
- Glint and glare would have an impact on military and private aircraft which often fly within the area at low altitudes;
- Capacity limit of 49.9MW is intentional to avoid Secretary of State scrutiny;
- Information on protected species differs to the EIA that was submitted for the previous wind turbine application;
- Effect on the National Grid pipeline that crosses the site not been considered;
- Concern over proximity of electricity pylon and grid connection hub to the village of Haunton;
- Impact of additional light pollution will influence the experience of the landscape;
- Detrimental impact on enjoyment of the area by tourists, contrary to Strategic Policy 10;
- The site is vulnerable to theft/crime due to access via a remote, single track, gated road;
- Neighbouring properties will be devalued;
- Energy produced by the solar farm will not be made available to those affected by it;
- Proposal cannot be justified in the context of previous refusal for wind turbines;
- Lifespan of 40 years cannot be described as temporary;
- Cumulative assessment needed due to proposals for other solar farms in the locality.

#### **OTHER BACKGROUND DOCUMENTS**

The applicant has submitted the following documents in support of their application:

- Planning Statement
- Landscape and Visual Impact Assessment
- Ecological Impact Assessment Report
- Biodiversity Net Gain Report
- Heritage and Archaeological Assessment
- Flood Risk Assessment
- Transport Statement
- Arboricultural Impact Assessment
- Agricultural Land Classification Report
- Glint and Glare Assessment
- Tree Survey Report
- Landscape and Ecological Management Plan
- Outline Construction and Environmental Management Plan

- Statement of Community Involvement

## **PLANS CONSIDERED AS PART OF THIS RECOMMENDATION**

20.10\_100 E Site Location Plan dated as received 27 November 2020  
 20.10\_101 Existing Block Plan dated as received 27 November 2020  
 20.10\_102 Existing Block Plan (DNO Area) dated as received 27 November 2020  
 20.10\_301 A Proposed Block Plan dated as received 01 April 2021  
 20.10\_302 A Proposed Block Plan (DNO Area) dated as received 01 April 2021  
 460625/01A Typical Details (Component Elevations) dated as received 22 December 2020  
 460625/02 Typical Details (Grid Yard Elevations) dated as received 27 November 2020  
 460625/04 Gate Fence Road Details dated as received 22 December 2020  
 460625/05 Inverter Transformer Station dated as received 22 December 2020  
 460625/06 Mounting Structure Details dated as received 22 December 2020  
 16424-HYD-XX-XX-DR-TP-0001-P1.05 - Swept Path Analysis - 16.5m Articulated Vehicle dated as received 04 February 2022  
 16424-HYD-XX-XX-DR-TP-0002-P1.05 - Swept Path Analysis – 12m Rigid Truck dated as received 04 February 2022  
 16424-HYD-XX-XX-DR-TP-0004-P1.05 - Proposed Site Access Design off Main Road Harlaston in line with Granted Planning Permission 12/00044/FUL dated as received 04 February 2022  
 16424-HYD-XX-XX-DR-TP-0005-P1.05 - Proposed Site Access Main Road Harlaston Visibility Splays dated as received 04 February 2022  
 16424-HYD-XX-XX-DR-TP-0006-P1.05 - Operational Site Access Design off Syerscote Lane with Swept Path Analysis - Light Van dated as received 04 February 2022  
 16424-HYD-XX-XX-DR-TP-0009-P1.05 - Swept Path Analysis - Route to Substation 16.5m Articulated Vehicle dated as received 04 February 2022  
 10869\_AIA.001 Arboricultural Impact Assessment dated as received 24 March 2021  
 13249\_R01 Ecological Impact Report dated as received 27 November 2020  
 13249/P05 Opportunities and Constraints dated as received 27 November 2020  
 13249/R02 Biodiversity Net Gain Report dated as received 27 November 2020

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## **OBSERVATIONS**

### **Site and Location**

The application site relates to irregularly shaped agricultural fields, each separated and contained by established hedgerows with occasional trees, amounting to approximately 196 acres (79 hectares). The site is currently in arable agricultural use and accessed over farm tracks from Syerscote Lane. The extent of the site means it also comprises small areas of sunflower, grassland and boundary ditches and drains. Agricultural land bounds the site to all boundaries, except for Syerscote Lane, which runs parallel to the eastern site boundary, and a farm yard and building on the western site boundary.

An Agricultural Quality Report submitted as part of the application confirms that 28% of the site area can be classified as ‘best and most versatile agricultural land’ (i.e. within grade 1, 2 and 3a of the Agricultural Land Classification).

The site’s ground levels are relatively flat, but do fall northwards across the site, with the site’s northern boundary defining the base of the Mease Valley.

There are no structures across the site at the present, the nearest being Fishpits Barn, which is marked on early nineteenth century mapping. Twizles Lane runs through the central portion of the site; which is a gravel track, before turning into a grass track.

There are Public Rights of Way located to the south west and north east of the site, but no Public Rights of Way run through the site itself.

The majority of the site is within Flood Zone 1, which has the lowest probability of flood risk, with a small portion which follows the course of a ditch network at the northern boundary of the site falling into Flood Zone 2 and 3.

The area within which the site is located is characterised by large fields and represents a managed agricultural landscape. The site is connected directly to the local highway network via Main Road, which runs through the nearby villages of Haunton and Harlaston, that lie approximately 500m to the north east and 700m to the north west of the site respectively. Further afield, the villages of Clifton Campville and Thorpe Constantine are located within 2km to the north east and south east respectively.

It should be noted that an application (ref. 22/00110/FULM) for solar farm development has also recently been submitted for land at Highfields Farm, off Clifton Lane, to the west of Thorpe Constantine, which is within approximately 700m of this application site's boundary with Syerscote Lane. The proposal seeks installation of solar photovoltaic panels on a 176 acre site, generating an energy capacity equivalent to this application of up to 49.9MW.

## **Background**

As required under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017), a Screening Opinion was undertaken, prior to the submission of this application. It was determined under planning ref. 20/00944/SCREE that an Environmental Impact Assessment was not required.

## **Proposals**

This application seeks permission for the installation of a solar farm, comprising ground mounted solar PV panels (143,000) with a net generating capacity (AC) of up to 49.9MW. It also includes proposed mounting system, battery storage units, inverters, underground cabling, stock proof fence, CCTV, internal tracks and associated infrastructure, landscaping and environmental enhancements for a temporary period of 40 years.

A grid connection point is also proposed. The grid connection point is located approximately 1.2km to the north east of the main area of the site where the solar panels would be located. The connection point will comprise of electrical transmission componentry, with a cable connection being made to the adjacent existing 132Kv Pylon. The solar farm and the connection point would be connected by underground cables. The grid yard would also include an access track, a step-up transformer and a storage cabinet, all of which is proposed to be secured with security fencing and CCTV. It should be noted that the grid connection infrastructure is proposed as a permanent installation and therefore would not be decommissioned at the end of the site's 40-year lifespan of the solar farm.

The solar panels will have a maximum height of up to 2.8m, with a gap of approximately 0.8m at their lowest edge to the ground. The solar panels will be static (non-rotating) and they will be spaced to avoid shadow and elevated on an angled steel frame supported by pile-driven stakes. They will also be sited to achieve optimum exposure for solar energy absorption, and distanced such in a way that surface water runoff does not over accumulate. Inverter units are proposed to be positioned to the edge of the arrays or around the perimeters of the panelled fields in cabinet housing. They will allow for output from the panels to be converted to a format that can be fed into the National Grid.

The proposed access to the solar farm site is onto Main Road, Harlaston. This is an unrestricted Class III road. Access to the grid connection point is proposed to be achieved via an existing farm track off Main Road, Haunton which is a 'C' classified road.

The solar panels will allow for the capacity to generate up to 49.9MW of electricity during daylight hours, which is to be fed into the National Grid. It is noted by the applicant that the scheme will be delivered without any support from government subsidy and as such, the scale of the site is required to accommodate the quantum of solar array to ensure a viable proposal. It is also noted that the proposal will generate power to fulfil the last of the remaining capacity locally on the existing grid infrastructure.

Whilst the panels are proposed to sit within the field margins, the land around the margins will be seeded with a wildflower mix, along with enhancement of hedgerows through infill planting and long-term ecological management. A 5m buffer is also to be applied along the watercourse to the north of the site in order to preserve the habitat along this corridor. Further ecological enhancement measures, including bat and bird boxes, log piles and a designated area for breeding bird habitat, are set out within the Landscape and Ecological Management Plan (LEMP) submitted with the application.

## Determining Issues

1. Policy & Principle of Development
2. Design, landscape and heritage impacts
3. Residential Amenity
4. Access and Highway Safety
5. Ecology and Impact on Trees
6. River Mease Special Area of Conservation
7. Drainage and Flooding
8. Other Issues
9. Human Rights

### 1. Policy & Principle of Development

1.1 Section 38 (6) of the Planning and Compulsory Purchase Act (2004) sets out that the determination of applications must be made in accordance with the development plan, unless material considerations indicate otherwise. The Development Plan for Lichfield District comprises the Local Plan Strategy (2008-2029), adopted in February 2015 and the Local Plan Allocations Document (2008-2029), adopted in July 2019. The Local Plan Policies Maps form part of the Local Plan Allocations Document.

#### *National Planning Policy and Guidance*

1.2 The UK Government is committed to increasing domestic renewable energy provision to address the projected growth in global energy demand and address the concern over long term fossil fuel supplies. At the heart of the National Planning Policy Framework (NPPF) lies the presumption in favour of sustainable development in decision-making. The NPPF sets out an approach that is proactive towards renewable energy developments. A key paragraph within the NPPF for consideration alongside this application is Paragraph 152 where it states that: *'The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure'.*

1.3 Paragraph 158 of the NPPF goes on to state that, when determining planning applications for renewable and low carbon development, local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy and recognise that even small scale projects provide a valuable contribution to cutting greenhouse emissions and approve applications of its impacts are (or can be made) acceptable.

- 1.4 The presumption in favour of sustainable development and support of the transition to a low carbon future reflects the wider national and European policy and legislative framework, including the Renewable Energy Directive 2009/28/EC and the European Council 2030 Climate and Energy Framework. Domestic policy such as the Climate Change Act 2008, National Policy Statement for Energy (EN-1) and the Clean Growth Strategy represent the UK's commitment to achieving the targets set by the European Council 2030 Climate and Energy Framework to achieve at least a 40% reduction in greenhouse gas emissions by 2030. In addition, on May 1st 2019, the UK Government declared an Environment and Climate Change Emergency with further commitments to reducing the anthropogenic impacts on the climate and biodiversity.
- 1.5 The Environment Act is also a material consideration as part of this application. The Act has arisen from the governance gaps produced by Brexit and as an opportunity to provide measures for the significant environmental challenges faced. Royal Assent was received in November 2021, meaning that it is now an Act of Parliament and significant new governance structures for managing and improving the environment together with more specific measures on water and resources, air quality, water and nature and biodiversity are in place.
- 1.6 In addition to specific planning guidance, the Government has also issued the 'UK Solar PV Strategy Part 1: Roadmap to a Brighter Future' in October 2013 and the 'UK Solar PV Strategy Part 2' in April 2014. These documents set out the four guiding principles, which form the basis of Government's strategy for solar PV. These principles are:
- Support for solar PV should allow cost-effective projects to proceed and to make a cost effective contribution to UK carbon emission objectives in the context of overall energy goals – ensuring that solar PV has a role alongside other energy generation technologies in delivering carbon reductions, energy security and affordability for consumers;
  - Support for solar PV should deliver genuine carbon reductions that help meet the UK's target of 15 per cent renewable energy from final consumption by 2020 and in supporting the decarbonisation of our economy in the longer term – ensuring that all the carbon impacts of solar PV deployment are fully understood;
  - Support for solar PV should ensure proposals are appropriately sited, give proper weight to environmental considerations such as landscape and visual impact, heritage and local amenity, and provide opportunities for local communities to influence decisions that affect them; and
  - Support for solar PV should assess and respond to the impacts of deployment on: grid systems balancing; grid connectivity; and financial incentives – ensuring that we address the challenges of deploying high volumes of solar PV.

#### *Local Planning Policy*

- 1.7 Core Policy 3: Delivering Sustainable Development lists a number of key issues that future development proposals should address in order to achieve sustainable development. Below are the key issues relevant to this application:
- protect and enhance the character and distinctiveness of Lichfield District and its settlements;
  - use our natural resources prudently and conserve, enhance and expand natural, built and heritage assets and improve our understanding of them wherever possible;
  - minimise levels of pollution or contamination to air, land, soil or water, including noise and light pollution;
  - maximise opportunities to protect and enhance biodiversity, geodiversity and green infrastructure;
  - facilitate energy conservation through energy efficiency measures as a priority and the utilisation of renewable energy resources wherever possible.
- 1.8 Development Management Policy SC2: Renewable Energy has targets within it which have been largely superseded by changes to Government targets and, there have been changes to



Government Policy set out above through the NPPG. However, the policy has within it a target that the District should strive to meet a minimum of 10% of its energy demand through renewable energy sources by 2020 through a variety of technologies including solar. It also sets out various criteria for assessing renewable energy developments. Whilst the targets for renewables and the date has changed the criteria for assessing renewable energy developments are still relevant. The criteria include:

- The degree to which the scale and nature of the proposal reflects the capacity and sensitivity of the landscape or townscape to accommodate the development;
- The impact on local amenity, including residential amenity;
- The impact of the proposal on sites of biodiversity value, ancient woodland and veteran trees;
- The impact on the historic environment, including the effect on the significance of heritage assets and their setting and important views associated with valued landscapes and townscapes; and
- The proximity to, and impact on, transport infrastructure and the local highway network.

1.9 Lichfield District Council is one of many Local Authorities that have declared a Climate Emergency, and have set target dates for achieving Net Zero emissions. Whilst the target dates for Net Zero vary from Authority to Authority, Lichfield District Council are targeting 2050.

1.10 As shown in Table 4.7. which has been taken from “Baseline Report Climate Change Adaptation & Mitigation Staffordshire County Council (dated 20November 2020), Lichfield had an estimated total of 11.9 MW LZC electricity capacity installed as at the end of 2018 with a total generation of 16,061 MWh. Of these installations there are a total of 1,424 photovoltaics, which are estimated to account for around 57.5% of LZC electricity generation in Lichfield.

*Table 4.7. Renewable electricity generation (as at end of 2018) - Lichfield*

	Total Installations	Installed Capacity (MW)	Total Generation (MWh)
Photovoltaics	1,424	9.5	9,237
Onshore Wind	8	1.9	4,061
Hydro	1	<0.1	9
Anaerobic Digestion	1	0.5	2,754
<b>Total</b>	<b>1,434</b>	<b>11.9</b>	<b>16,061</b>

1.11 Solar Photovoltaic (PV) energy generation is a renewable power technology that uses solar panels to convert light from the sun directly into electricity. The electrical output of the panels is dependent on the intensity of light they are exposed to, this part of the Country experiences good light levels that make solar panels an efficient form of renewable energy production. Photovoltaic cells do not need to be in direct sunlight to work, as such on overcast days the panels will still generate a limited level of energy output.

1.12 Battery storage units will allow power to be stored and released to the grid during periods of peak demand and lower power output. For instance, during the winter, the peak demand is between 4pm and 7pm and therefore the batteries will enable the release of stored power during that period when the panels may have stopped generating power due to darkness. The batteries enable the ‘peak and trough’ of power output to be flattened off and enable the scheme to provide a more reliable and consistent power to the grid to match periods of high demand, thereby maximising the efficiency of and output from the land.

1.13 The proposal seeks to generate 49.9MW of energy, this will contribute, it is estimated, enough energy to power 1,125 homes, and would make a contribution to meeting the Council’s target for energy production from renewable sources. There are relevant policies within the adopted Local Plan to support each of the criteria namely NR1: Countryside Management: which

recognises the important economic role of the countryside and seeks to support development proposals which (at bullet point 3) provide for the sensitive use of renewable energy resources (in conjunction with Core Policy 3 and Development Management Policies SC1 and SC2), NR3: Biodiversity, Protected Species and their Habitats, Policy NR4: Trees, Woodland and Hedgerows, NR5: Natural and Historic Landscapes, Core Policy 14: Our Built and Historic Environment and BE1: High Quality Development.

1.14 The proposed development is within the catchment of the River Mease SAC. Policy NR8: River Mease Special Area of Conservation requires that, before development can be permitted it must be demonstrated that alone or in combination with other development it will not have an adverse effect upon the integrity of the SAC having regard to avoidance or mitigation measures. This is considered in more detail later in the report.

1.15 As such, it is clear from the above that both national and local planning policies support renewable energy generation, including solar farm developments, and therefore, subject to general development management criteria, including the impact on the character of the area, biodiversity, amenity and heritage assets, the principle of including solar power generation within this scheme, is supported. The following sections of this report consider the specific impacts of the development.

## 2. Design, landscape and heritage impacts

2.1 The NPPF in Section 12 sets out that Government attaches great importance to the design of the built environment, which should contribute positively to making places better for people. As well as understanding and evaluating an areas defining characteristics, it states that developments should:

- Function well and add to the overall quality of the area
- Establish a strong sense of place
- Achieve appropriate densities
- Respond to local character and history, and reflect local surroundings and materials
- Create safe and accessible environments
- Be visually attractive as a result of good architecture and appropriate landscaping.
- Opportunities should be taken to incorporate trees

2.2 With regard to conserving and enhancing the natural environment, paragraph 174 states that: 'The planning system should contribute to and enhance the natural and local environment, protecting and enhancing the valued landscapes.

2.3 Core Policy 3 and Policy BE1 of the Local Plan Strategy advises that new development should provide an explanation of how the built form will respond to the topography of the site and maintain long distance countryside views and, the need for a landscape framework that integrates the development within the landscape. Policy BE1 sets out requirements in order to achieve high quality developments.

2.4 As part of the consideration of the application, Officers have commissioned Crestwood Environmental Ltd, a registered practice of the Landscape Institute, to review the submissions, including the Landscape and Visual Impact Assessment, in relation to landscape and visual impacts. Following their initial response, further detailed information; which included a revised assessment, plans and additional representative views and a Landscape and Ecology Management Plan was submitted, which was subject to a subsequent review by Crestwood Environmental on behalf of the Council.

2.5 The methodology for undertaking the Landscape Assessment surrounds the assessment of visual sensitivity and magnitude of effect on views. At a local level, the site is identified as being located within the Estate Farmlands Landscape Character Type (LCT). The application site displays many of the attributes and characteristics of this LCT, namely a gentle rolling

landform of arable fields set amongst an enclosure pattern of medium to large, closely cropped hedgerows. The LCT descriptor identifies the landscape as being of 'moderately high inherent sensitivity' and this is correctly identified within the LVIA as "Inherent: Moderate and Visual: Moderate" and is therefore used as a basis for the assessment on potential effects on landscape character.

- 2.6 The impacts at site level are considered to be of moderate significance. The wider landscapes' character is 'medium sensitivity' and given the relatively small scale of the proposed development within the wider landscape character type. Crestwood Environmental agree that there would be a Minor magnitude of change resulting in a Slight Adverse level of effect on the wider character of the area.
- 2.7 Views assessment of the development have been undertaken from 20 locations within the submitted Landscape and Visual Assessment, these views have been categorised and reviewed by Crestwood Environmental on behalf of the Council. The assessment criteria provides for the following impact levels: Neutral, Slight, Slight/ moderate, moderate, moderate/large, large and very large. The views are also considered 'over time' where allowances for growth in vegetation are given weight. It is generally considered that an effect which is of 'Large' to 'Very Large' significance or above, is likely to be a pertinent 'material consideration' in the decision-making process.
- 2.8 Whilst views of parts of the development would be visible from a number of locations, Crestwood Environmental concur with the submitted LVIA that the character and characteristics of the wider landscape would not be materially, substantially or fundamentally harmed. They state, as a matter of professional opinion that whilst the significance of visual effect has been determined as moderate to very large from three locations the overall the degree of harm would be at Moderate at worse.
- 2.9 Crestwood Environmental acknowledge that the effects on the wider landscape character of adjacent areas, decreases with distance. The potential influence of the development over the rising landscape north of the site is now represented by 20 viewpoints illustrated within the LVIA addendum. There are no existing solar farms within 5km of the site. Whilst it is noted that there are current applications for solar farms in the vicinity, these have not yet been determined and as such it falls upon this application to be decided upon its' individual merits.
- 2.10 As such having due regard to the LVIA and the comments of the Councils Environmental Consultants, it is considered that the proposals are acceptable and no undue visual harm would result on the landscape, including the AONB. Therefore, subject to other development management criteria the development would be in accordance with the Development Plan.
- 2.11 Turning to heritage impacts. Paragraph 189 of the National Planning Policy Framework states that Local Planning Authorities should recognise that heritage assets are an irreplaceable resource and they should be conserved in a manner appropriate to their significance.
- 2.12 Under Paragraph 199 of the NPPF, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 200 goes onto state that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Paragraph 201 provides that, where the harm caused by a development proposal to the significance of a heritage asset will be less than substantial, that harm should be weighed against the public benefits of the proposal. Paragraph 203 of the Framework provides a requirement for the effect of an application on a non designated heritage asset to be taken into consideration, with a balanced judgement required having regard to the scale of any harm or loss and the significance of the heritage asset.

- 2.13 In determining planning applications with respect to any building or other land in a Conservation Area, local planning authorities have a statutory duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. Case law has established that this means that considerable importance and weight has to be given to that statutory duty when balancing the proposal against other material considerations. Where a proposed development will lead to substantial harm to, or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss.
- 2.14 Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 2.15 In terms of the Local Plan Strategy, Core Policy 14: Built and Historic Environment sets out that the significance of designated heritage assets and their settings will be conserved and enhanced and given the highest level of protection. Policy BE2: Heritage Assets of the Local Plan Allocations document sets out that development proposals which conserve and enhance our historic environment will be supported where the development will not result in harm to the significance of the heritage asset (including non-designated heritage assets) or its setting. Policies within the Local Plan are supplemented by the Historic Environment Supplementary Planning Document.
- 2.16 The application is supported by a Heritage Statement which has been updated during the course of the application in response to objections raised by the Councils' Conservation Officer and Historic England. Initial responses required further information regarding the significance and impacts on heritage assets which may be affected by the proposals. The latest heritage statement confirms that within 2km of the site, there are 59 Listed Buildings and 3 Conservation Areas in Haunton, Harlaston and Clifton Campville. The Heritage Statement submitted identifies no harm to any of the identified heritage assets.
- 2.17 The application site does not contain any heritage assets and none would be physically affected by the development. The County Council's Archaeologist has been consulted on this planning application and advises that the scheme is unlikely to impact on any archaeological interest within the area, as such no safeguarding conditions are required in this respect. Any effects of the proposal are therefore to the setting of assets in the locality.
- 2.18 The Councils Conservation & Urban Design Officer disagrees with the conclusions reached in the latest Heritage Statement submitted. 'No harm' is an extremely high bar and implies that the proposals will preserve the setting and significance of the heritage assets. The scale and location of the solar farm will have an impact upon the setting of assets such as the Grade I listed St Andrews Church in Clifton Campville and the Haunton and Harlaston Conservation Areas in particular. Views of the development will be visible in the context of these assets and would affect the relationship with the surrounding rural countryside setting.
- 2.19 It is considered that the proposal will lead to less than substantial harm to the significance and setting of the Grade I Listed church and the Haunton and Harlaston Conservation Areas. In line with the requirements of the NPPF, this harm must therefore be weighed against the public benefits of the proposal, including securing the optimum viable use of the land. There is a balance to be struck between the conservation of the historic built environment and the promotion of opportunities for renewable and low carbon energy generation and the wider economic benefit to the economy of a business operating.

2.20 In terms of public benefits, it should be noted that the site has been selected on the basis that this is a preferable location to deliver the development which would assist in energy generation and contribute towards reducing Co2 emissions. All electricity generated would feed directly into the National Grid and the 49.9 MW capacity will generate clean renewable power for over 15,000 homes, and substantial Co2 savings of 21,500 tonnes of Co2 per annum, making a meaningful contribution to meeting the UK's greenhouse gas emission targets. The proposal will also deliver economic benefits in the form of a healthy ground rents for the landowners, enabling them to diversify their income. The construction and future maintenance of the solar farm will also create employment. In addition, the proposal would deliver a net gain in ecological habitat across the site, which is discussed further on in this report.

2.21 It is noted that no direct heritage benefits which would arise from the scheme. However, it is considered that significant weight can be afforded to the development in terms of the public benefits of the scheme, which are set out above and reach beyond the immediate locality of the site. Therefore, on balance, the harm to heritage assets associated with the scheme is considered to be outweighed by the public benefits. In heritage terms, on balance, the scheme is considered accordingly to be acceptable in this regard.

### 3. Residential Amenity

3.1 The NPPF core planning principles include the requirement that planning should seek a good standard of amenity for all. Policies CP3 and BE1: High Quality Development of the Local Plan Strategy states that new development should have a positive impact on amenity, by avoiding development which causes disturbance through unreasonable traffic generation, noise, light, dust, fumes or other disturbance.

3.2 Given the separation distances and the relationship with the nearest residential properties, it is considered that the proposals would not lead to a loss of light or overbearing impact. The application is supported by a 'Glint and Glare' assessment which concludes that there would be no significant impacts on nearby residential properties.

3.3 The solar panels are inert and as such emit no noise, dust or vibrations. The substation, located within the grid connection point would generate a low level noise resulting from the transmission of power to the national grid, however in the context of the existing pylon and the substantial distance to any residential properties, it is not considered that the scheme would give rise to any unacceptable noise impacts.

3.4 In terms of impacts on residential amenity, the proposal is therefore considered to be acceptable.

### 4. Access and Highway Safety

4.1 The NPPF sets out under paragraph 111 that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

4.2 In terms of the Local Plan, Core Policy 5 sets out that new development should be supported by the appropriate infrastructure and new facilities should be designed so that they are integrated and accessible. Policy ST1 confirms that the Council will seek to ensure that sustainable travel patterns are achieved and policy ST2, supplemented by Parking Standards in the Sustainable Design SPD sets out parking requirements for new development.

4.3 The construction access to the solar farm site is off a track from Main Road, Harlaston. This is an unrestricted Class III road. Once operational, an access off Synerscote Lane will be used. Access to the grid connection point is proposed to be achieved via an existing farm track off Main Road, Haunton which is a 'C' classified road. This access would also be used for on-going

operational requirements. The application is supported by a transport statement which details the construction and operational requirements of the site. The Transport Statement has been updated during the course of the application and provides confirmation that during the construction phase, which is anticipated to last up to 4 months, there would be no requirements for vehicles carrying abnormal invisible loads to the site. Once construction is complete, the site would attract less vehicular movements than the existing agricultural use. The Transport Statement also provides details of the routing for construction vehicles from the strategic road network/ the M42.

- 4.4 Updated plans have been provided to indicate improvements to the access points and to demonstrate that the accesses can accommodate the vehicles required during the construction phase. The County Council Highway Officer has reviewed the revised submissions and concurs with the views set out in the Transport Statement that, the impacts on the local road network would not have an impact on highway safety. The County Highway Officer recommends a before and after video survey of the surrounding road network, to be agreed with the Highway Authority in order that any consequent remedial works can be identified and carried out by the developer. This can be secured via condition.
- 4.5 In terms of the existing access points to the solar farm and the grid connection point, the existing access to the solar farm in particular (via a track off the Main Road, Harlaston) is inadequate. This access point is proposed to be used for construction purposes and will need to be upgraded. Details of the viability splays, radii, surfacing and drainage have subsequently been provided. The County Highway Officer has confirmed that these details are acceptable and a Major Highway Works agreement will be required under a separate process to ensure the works are carried out appropriately.
- 4.6 Conditions requiring an updated Construction Management Plan to include further details; as requested by the Highways Officer, are also recommended. Subject to additional conditions to ensure that the works are carried out in accordance with the revised details submitted, the County Highways Authority raise no objections to the scheme. In terms of National and Local Planning Policies relating to the accesses and highway safety to the local and wider road networks, subject to conditions, the scheme is acceptable.

## 5. Ecology and Impact on Trees

- 5.1 To comply with the guidance contained within Paragraphs 9, 174 and 179 of the NPPF and the Council's biodiversity duty, as defined under section 40 of the NERC Act 2006, new development must demonstrate that it will not result in the loss of any biodiversity value of the site.
- 5.2 In line with these requirements, Local Plan Strategy Policy 13 'Our Natural Environment' supports the safeguarding of ecological networks. Local Plan Strategy Policy NR3 sets out that development will only be permitted where it protects, enhances and restores the biodiversity and geodiversity value of the land and buildings and requires all development within the district to provide a net gain to biodiversity. Should an application be submitted full regard must be had to any protected/priority species which may be affected. Details of any avoidance of harm/mitigation/compensation/habitat improvements must be incorporated within the proposed development. Local Plan Policies are supplemented by the Biodiversity and Development SPD which provides further advice in relation to ecological matters.
- 5.3 The Councils Ecology team are satisfied with the methodology and the information provided in the various surveys and consider that it is unlikely that the proposed works will impact on protected species. The submitted biodiversity metric has assessed the site's biodiversity value. The Ecology Team considers that the quantitative data within this document is an accurate depiction of value/s of the habitat currently on the site (as regards total area, type, distinctiveness and condition). The Local Planning Authority is therefore in a position to demonstrate compliance with regulation 9(3) of the Habitat Regs. 1994 (as amended 2017),

which places a duty on the planning authority when considering an application for planning permission, to have regard to its effects on European protected species. It is also deemed that the Local Planning Authority has sufficient understanding to discharge its Biodiversity Duty (as defined under section 40 of the Natural Environment and Rural Communities (NERC) Act 2006). Conditions are attached to ensure that the works are carried out in accordance with the recommendations and methods of working detailed in the surveys submitted.

- 5.4 Furthermore, subject to conditions requiring a Habitat Management Plan to be submitted, which will include future habitat creation works, it will ensure a net gain to biodiversity is achieved in line with the requirements of Policy NR3 of the Local Plan Strategy. In ecological terms, it can be concluded that sufficient information has been provided and the objectives of the policies as set out are met.
- 5.5 Paragraph 180 of the NPPF advises that permission should be refused for development resulting in the loss of aged or veteran trees, unless the benefits of the development outweigh the harm.
- 5.6 Paragraph 131 of the Framework sets out that trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change. Planning policies and decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible.
- 5.7 The site does not contain any protected trees. During the course of the application further arboricultural detail, including an impact assessment and method statement have been submitted. This includes substantial detail including any requirement for tree or hedge removal, tree protection plans, details of surfacing within RPA's and details of remedial work. From this report the Councils Tree Officer has confirmed it is clear that impact on retained trees and hedges on the proposed solar farm site is limited. In addition, the report indicates where protective measures will be used during construction to ensure successful retention and to avoid damage. Due to the cessation of cultivation of the land, the change of use of the larger part of the site to a solar farm may also benefit some of the tree and hedge population due to improved soil conditions. Additional/remedial planting of hedgerow and buffers are also proposed.
- 5.8 Given the above assessments, it is concluded that the development will not, subject to conditions, have an adverse impact upon trees and hedgerows and is therefore compliant with the requirements of the Development Plan and NPPF in this regard.

## 6. River Mease Special Area of Conservation

- 6.1 The site falls within the water catchment zone of the River Mease. Under Policy NR8 development will only be permitted where it can be demonstrated that it will not indirectly or directly lead to an adverse impact on the integrity of the River Mease Special Area of Conservation. Issues such as drainage and potential runoff of pollutants during construction and operational phases needs to be considered, as well as potential impacts (both directly and indirectly) to the populations of the qualifying features of the SAC (i.e. otters, spined loach, bullhead, crayfish etc.).
- 6.2 An appropriate assessment has been undertaken and it is considered, that with mitigation specifically to be employed during the construction phase of the development that this proposal would cause no adverse effects on the integrity of the River Mease SAC. Natural England have been consulted and confirm that the contents of the appropriate assessment (including the mitigation measures) are acceptable. A condition is attached to ensure that an updated Construction Environment Management Plan is provided in order to secure the

mitigation measures proposed. Subject to condition, the proposals are therefore acceptable in this regard.

## 7. Drainage and Flooding

7.1 Section 14 of the National Planning Policy Framework seeks to ensure that new development is not at risk from flooding or does not increase flood risk elsewhere. It advocates the use of a sequential test with the aim of steering new developments to areas with the lowest probability of flooding. The Environment Agency produces flood risk maps which classifies land according to probability of flooding. The areas of highest risk are classified as Flood Zone 3, with a 1 in 100 or greater annual probability of flooding, and the areas of lowest risk are classified as Flood Zone 1, with a less than 1 in 1000 annual probability of flooding.

7.2 The majority of the site is located within Flood Zone 1, however a small portion of the site is located in Flood Zones 2 and 3 where there is a greater probability of fluvial flooding. This flooding is associated with the ditch network to the northern end of the site. Whilst a portion of the 'main' site will comprise proposed panels, the remainder of the site area will comprise grassed spacing between rows, field margins, and retained hedgerows. However, the nature of photovoltaic panels means that the area represented by the proposed panels is not considered impermeable, as the ground beneath all panels will be grassed and as such remains permeable. The panels are designed to allow rainfall to the ground at various points, as such rainfall will drain freely off the panels onto the ground beneath the panels where the surface remains permeable.

7.3 The Environment Agency, Severn Trent Water and the Lead Local Flood Authority have been consulted and raise no objections to the scheme. Confirmation has also been provided that no drainage conditions would be required in this instance. In drainage and flooding terms, the proposals are therefore considered to be acceptable.

## 8. Other Issues

### *Public Rights of Way*

8.1 The application submission recognises that there are Public Rights of Way to the South West (Harlaston 8) and the North East (Harlaston 2/ Clifton Campville 28) of the site, but no Public Rights of Way run through the site itself. From the information provided, Officers are satisfied that the development will not directly affect the Public Rights of Way, however the attention of the applicant will be drawn to the requirement that any planning permission does not construe the right to divert, extinguish or obstruct any part of the public footpaths.

### *Best and most versatile agricultural land and soils*

8.2 Under the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) Natural England is a statutory consultee on development that would lead to the loss of over 20ha of 'best and most versatile' (BMV) agricultural land (land graded as 1, 2 and 3a in the Agricultural Land Classification (ALC) system, where this is not in accordance with an approved plan.

8.3 The land has been surveyed an agricultural quality report has been submitted. Land of grades 2 (7%) and subgrades 3a (39%) and 3b (52%) have been identified across the site. 2% of the site was identified as non-agricultural being formed of farm tracks, water bodies and an existing area of hard standing. It is therefore not considered that the proposal would lead to the loss of any grade 1 agricultural land and soil. Furthermore, it is noted that the land surrounding the solar panels can still be used for agricultural purposes, for the grazing of sheep for example. Natural England have raised no objections on the grounds of the loss of best and versatile agricultural land. The proposal is therefore considered to be acceptable in this regard.



## 9. Human Rights

- 9.1 The proposals set out in the report are considered to be compatible with the Human Rights Act 1998. The proposals may interfere with an individual's rights under Article 8 of Schedule 1 to the Human Rights Act, which provides that everyone has the right to respect for their private and family life, home and correspondence. Interference with this right can only be justified if it is in accordance with the law and is necessary in a democratic society. The potential interference here has been fully considered within the report in having regard to the representations received and, on balance, is justified and proportionate in relation to the provisions of the policies of the development plan and national planning policy.

### **Conclusion**

The NPPF states that there are three dimensions to sustainable development, namely economic, social and environmental and that these should be considered collectively and weighed in the balance when assessing the suitability of development proposals.

It is considered that the LVIA and Appraisal in support of the application offers an overall fair appraisal of the degree of landscape and visual harm. Overall, the findings of the LVIA are agreed in that it is considered the proposed development is unlikely to result in major or unacceptable harm to the landscape and visual amenity in its surroundings.

The proposal is a large-scale solar farm, located in a rural location. Whilst solar panels are alien to the rural character, a considerable area of natural landscaping is proposed to be retained and enhanced around the boundaries of the site. Solar panels are predominantly low-lying features that follow the contours of the land. The underlying character is preserved in respect of the prevailing field pattern, with hedgerow boundaries preserved and enhanced through the proposals. Thus, the landscape character is fully restorable upon decommissioning (albeit likely to be 40 years in to the future), and the wider landscape enhancements will also afford benefit in the long term. No particularly highly sensitive or rare/unusual landscape features have been identified that may be unduly lost to development.

Whilst the proposals will form a noticeable addition in the landscape at the site, on balance, it is not considered that the adjacent rural landscape character will be deteriorated to a significant or unacceptable degree. It is noted that objections have been raised by Historic England and the Councils' Conservation Officer in relation to the harm identified to the significance of heritage assets in the vicinity of the site. The submissions indicate that no harm would be caused to any heritage assets, however it is considered that the scheme would lead to less than substantial harm to the character and setting of the Haunton and Harlaston Conservation Areas and the Grade I listed Church of St Andrew, Clifton Campville. In line with the requirements of the NPPF, this harm has been weighed against the public benefits of the scheme, and is considered, on balance, to outweigh the harm caused, as set out above.

It is not considered that the proposed development, with appropriate mitigation measures in place during the construction period, will have a detrimental impact on the River Mease Special Area of Conservation and there are no technical issues in terms of Highway Safety or Drainage which cannot be overcome by condition.

Consequently, it is recommended that this application be approved, subject to conditions, as set out above.

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# Tree Preservation Order No

## 2021/00455/TPO

Cabinet Member	Cllr Iain Eadie
Date:	4 <sup>th</sup> of April 2022
Agenda Item:	5
Contact Officer:	Gareth Hare
Tel Number:	01543 308207
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Key Decision?	NO
Local Ward Members	Cllr Richard Cox, Cllr Richard Cross, Cllr Thomas Marshall, Armitage with Handsacre Ward.



**PLANNING  
COMMITTEE**

### 1. Executive Summary

- 1.1 To seek members decision regarding the confirmation of Tree Preservation Order no 2021/00455/TPO

### 2. Recommendations

- 2.1 That the Committee confirm the Tree Preservation Order with modifications.

### 3. Background

- 3.1 A tree preservation order was made on the 14<sup>th</sup> of May 2021 (the original as set out below). A further order was served on the 29<sup>th</sup> of October 2021 for the reasons set out below:

The trees included in this order are prominent within the landscape when viewed from Westfield Road, Running Hills and Rectory Lane. The section known locally as the 'Holly Walk' (designated W1) has historical associations with 'The Towers' a property now known as 19 Rectory Lane and was part of the structural landscaping for that house. A previous order was made in response to works carried out to some of the trees. Further works would reduce or potentially remove the considerable visual amenity that the trees afford to the locality. The original order was designated as three Areas and these have now been re-designated to Groups, Individuals and one Woodland (W1) which protects the section known as the Holly Walk. Government guidance requires a new order to be made if an Area designation is changed to a Woodland as this is viewed as a substantial change. Therefore it is thought expedient on the grounds of amenity to make a tree preservation order in respect of the tree/s.

The TPO document is located at Appendix A at the end of the report.

- 3.2 Objections to the order from one party were received and raised a number of points. Correspondence was entered into regarding the objections. However, the objections have not been negotiated away.
- 3.3 The objections are detailed below and are dealt with in context for ease of reference:

Summary of objections:

- a) An objection is raised to the designation of W1 as a woodland.
- b) The inclusion within W1 of trees that were formerly managed as a hedge.
- c) The larger trees within W1 should be specified individually.
- d) The Horse Chestnut within W1 should be removed from the TPO on the grounds of its condition.
- e) The specimens within G1 should be re-specified as individual trees.
- f) The TPO is not defensible when assessed against a structured amenity assessment.

### **Objection a. The designation of W1 as a woodland.**

The objection to the designation of W1 as follows:

The area designated W1 is a hedgerow containing a dense thicket of holly, with a few mature thorn and four mature trees. It is clearly not a woodland.

Guidance is provided in the government publication available on line "Tree Preservation Orders: A Guide to the Law and Good Practice". Section 2.2 makes the point that the Act does not define the term "woodland". Neither does it define the term "tree", but for the purpose of a TPO, it states that the High Court has held that a "tree" is anything which ordinarily one would call a tree. Similarly, we can assume that, if tested, the High Court would rule that the "woodland" classification should only be used for areas which ordinarily one would call "woodland".

The best objective definition of the term "woodland" is probably that included in the National Forest Inventory Woodland 2015, published by the Forestry Commission and last updated in August 2020. This defines woodland as:-

A minimum of 0.5ha under stands of trees with, or with the potential to achieve, tree crown cover of more than 20% of the ground. Areas of young trees, which have the potential to achieve a canopy cover of more than 20%, will also be interpreted as woodland and mapped. The minimum width for woodland is 20 m....

The area designated as W1, as shown shaded on the plan attached, extends to approximately 0.1ha and for much of its length is only approximately 8m in width. Any protection should not therefore refer to woodland but to individual trees and groups.

The objection letter is available to view via:

[https://lichfielddc.ezyportal.com/TPORegister/GetTPORegisterDocument?tpo\\_no=532&documentID=762](https://lichfielddc.ezyportal.com/TPORegister/GetTPORegisterDocument?tpo_no=532&documentID=762)

### **Response to objection a.**

As detailed within the objection, the current government guidance on tree preservation orders

<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#making-tree-preservation-orders>

does not define the term 'woodland' and is not prescriptive in the use of the designation in relation to the area or width of a woodland to be protected. The definition produced by the Forestry Commission (referenced within the objection) in relation to the NFI and referenced within the objection is at the following link:

<https://www.forestresearch.gov.uk/tools-and-resources/national-forest-inventory/about-the-nfi/>

However, within the above linked page it also states:

*We are also interested in smaller areas of woodland. This includes smaller woods (0.1 to 0.5 hectares), trees in linear features (hedges), trees in groups and single trees. Data for these 'small woods' are based on sample field survey and/or newly emerging high resolution remote sensing data.*

Being 0.1 ha, W1 falls within the definition of a 'small wood'.

The W1 designation was applied after full consideration of the tree cover as a whole within the previously applied Area designation A3 and is considered to be the correct designation for the trees

within. It is not possible to modify a tree preservation order from an Area to a Woodland prior to confirmation as this is viewed as a substantial change. Therefore the order served on the 29<sup>th</sup> of October 2022 was made to replace the original order in full compliance with the government guidance.

### **Objection b: The inclusion within W1 of trees that were formerly managed as a hedge**

#### **Response to objection b:**

The area encompassed by W1 is known as the 'Holly Walk' locally and appears contemporary with landscaping carried out during the development of the property known as 'The Towers'. The Holly Walk appears to have come into existence in the period between 1841 (the date of the Armitage Tithe Map) from which the Holly Walk and the landscaping at The Towers are absent and the first edition Ordnance Survey map in 1884 which shows both.

The tithe map is available here:

<https://www.search.staffspasttrack.org.uk/details.aspx?ResourceID=42309&ExhibitionID=42310&PageIndex=1&SearchType=2&ThemeID=774>

An extract of the first edition Ordnance Survey map is at Appendix B

The objection asserts –should the TPO not be confirmed- that the mature Holly and Thorn within W1 would be protected by the Hedgerow regulations. A previous hedgerow removal notice on an adjacent piece of land allowed detailed assessment of the regulations in this regard and it can be confirmed that the Holly and Thorn in question would not be classed as 'important' should a hedgerow removal notice be submitted and could therefore be removed.

The original intention of the planting is unknown but believed to be a part of the landscaping for The Towers as above referenced. It is acknowledged that many of the Holly trees have previously been reduced to approximately 1m in height as this exhibited in the form of their main stems. However, this management ceased many years ago and the trees have regrown crowns which are typical of their species. It is also acknowledged that there are edging stones and remnants of former fences within W1 which appears to support the idea of a landscaped feature. However, these are indications of a former use and have long fallen into disrepair.

The TPO guidance states –in relation to hedges:

*Authorities may only use an Order to protect anything that may ordinarily be termed a tree. This would not normally include shrubs, but could include, for example, trees in a hedge or an old hedge which has become a line of trees of a reasonable height.*

The Hollies in question have certainly become trees of a reasonable height and therefore fall within the terms of the guidance.

### **Objection c: The larger trees within W1 should be specified individually**

#### **Response to objection c.**

Specifying the larger trees within W1 individually is not necessary as they are detailed as species within the schedule description for W1 and therefore afforded the protection of the TPO. They form an integral part of W1 and therefore should be treated and specified as such.

**Objection d**      The Horse Chestnut within W1 should be removed from the TPO on the grounds of its condition

#### **Response to objection d**

The Horse Chestnut is in failing condition and therefore there is no objection to the total removal of the tree or it's retention as a reduced stem for wildlife habitat. Therefore the reference to 'Horse Chestnut' within W1 of the schedule has been removed and the order thus modified.

## **Objection e: The specimens within G1 should be re-specified as individual trees**

### **Response to objection e**

G1 contains four trees that have contiguous crowns and clearly present as a group in the landscape. G1 is a clear and unambiguous designation as there are no other trees in the group save the ones identified within the schedule. As such it is considered to be an appropriate designation.

## **Objection f: The TPO is not defensible when assessed against a structured amenity assessment**

### **Response to objection f:**

The validity of the TPO is questioned in relation to an assessment of the trees via TEMPO (Tree Evaluation Method for tree Preservation Orders). The objection report on this aspect is available to view via

[https://lichfielddc.ezyportal.com/TPOResister/GetTPOResisterDocument?tpo\\_no=532&documentID=76](https://lichfielddc.ezyportal.com/TPOResister/GetTPOResisterDocument?tpo_no=532&documentID=76)  
1

TEMPO is a structured assessment tool for TPO suitability and the guidance note can be found here: <http://www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf>

Essentially it considers the amenity, retention span, visibility/suitability plus other relevant factors of the subject tree or trees and the expediency of making a TPO, with scores allocated to each section. It then compares the resulting total scores to a decision guide.

The TEMPO assessment produced to support the objection attributes a score of 11 for each Tree/Group or Woodland of 2021/00455/tpo which, when compared with the TEMPO decision guide, indicates that the trees do not merit a TPO.

It should be noted however, that TEMPO (as detailed within the guidance notes) is not prescriptive and merely recommends a course of action. It is acknowledged that TPO's may or may not be made irrespective of the outcome of a TEMPO assessment.

However, an assessment carried out by the Principal Arboricultural Officer indicates the following values:

T1: 16  
G1:19  
T2: 16  
W1: 17

These scores, when compared to the TEMPO decision guide, indicate that the trees definitely merit a TPO.

In conclusion it is considered that the trees fulfil the criteria to merit the protection of a tree preservation order and this is supported by the outcome of the in-house TEMPO assessment.

- 3.4 Applications can be made and determined under the TPO (if confirmed) and if those applications are refused by Lichfield District Council then the applicant has recourse to appeal to the Planning Inspectorate (PINS).
- 3.5 As per 2.1 and taking the above into account it is recommended that Committee confirm the order with the modifications detailed.

Alternative Options	1. The Committee may choose not to confirm the Tree Preservation Order.
Consultation	1. There is a duty to consult the owner of the affected property and all neighbouring properties (who may have common law rights to work on trees protected by the TPO) when the TPO is made. A copy of the order is served on all affected properties and owners/occupiers are invited to comment or object within 28 days of the date of the order.
Financial Implications	1. Tree Preservation Orders make provision for the payment by the Local Planning Authority, of compensation for loss or damage caused or incurred, within a twelve month period from the date of their decision, as a result of their refusal of any consent under the Tree Preservation Order or their grant of consent subject to conditions. There are no financial implications in the confirmation of a Preservation Order.
Legal Implications	1. There is the potential for High Court Challenge (after confirmation), however this is mitigated by ensuring that the TPO is within the powers of the Act and that the requirements of the Act and Regulations have been complied with in relation to the TPO.
Contribution to the Delivery of the Strategic Plan	1. Assists in ensuring that Lichfield remains a clean, green and welcoming place to live.
Equality, Diversity and Human Rights Implications	<p>1. The proposals set out in the report are considered to be compatible with the Human Rights Act 1998. The proposals may interfere with an individual's rights under Article 8 of Schedule 1 of the Human Rights Act, which provides that everyone has the right to respect for their private and family life, home and correspondence. Interference with this right can only be justified if it is in accordance with the law and is necessary in a democratic society. The potential interference here has been fully considered within the report and on balance is justified and proportionate in relation to the administration of the tree preservation order.</p> <p>2. There are not considered to be any specific implications in relation to the Public Sector Equality Duty.</p>
Crime & Safety Issues	1. There are no specific crime and safety issues associated with 2021/00455/TPO
Environmental Impact	1. If a tree preservation order is not confirmed then trees may be lost. This may negatively impact on the potential within the District for carbon capture and delay progress towards net zero.
GDPR	1. The requirements of GDPR are considered to be met both in the service and administration of the TPO and the presentation of information in the report.

	Risk Description & Risk Owner	Original Score (RYG)	How We Manage It	Current Score (RYG)
A	High Court Challenge (after confirmation) LDC	Green	Ensuring that the TPO is within the powers of the Act and that the requirements of the Act and Regulations have been complied with in relation to the TPO.	Green

	<b>Background documents</b>
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	See end of report
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	<b>Relevant web links</b>
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	<a href="https://lichfielddc.ezyportal.com/">https://lichfielddc.ezyportal.com/</a>
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**TOWN AND COUNTRY PLANNING ACT 1990**

**The Lichfield District (Armitage with Handsacre) Tree Preservation Order (2021/00455/TPO)  
2021 (AS MODIFIED)**

**Land To The North West, Westfields Road, Armitage**

The Lichfield District Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

**Citation**

1. This Order may be cited as the Lichfield District (Armitage with Handsacre) Tree Preservation Order (2021/00455/TPO) 2021

**Interpretation**

2.— (1) In this Order “the authority” means the Lichfield District Council  
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

**Effect**

3.— (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.  
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—  
(a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or  
(b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

**Application to trees to be planted pursuant to a condition**

4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this .....29th October 2021.....

Signed on behalf of the Lichfield District Council



**SCHEDULE**

**SPECIFICATION OF TREES**

**Land To The North West, Westfields Road, Armitage**

**Tree Preservation Order No 2021/00455/TPO**

**Trees Specified Individually  
(encircled in black on the map)**

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
T1	Common Ash,	Grid Ref: SK-07780-15814
T2	English Oak,	Grid Ref: SK-07704-15747

**Groups of Trees  
(within a broken black line on the map)**

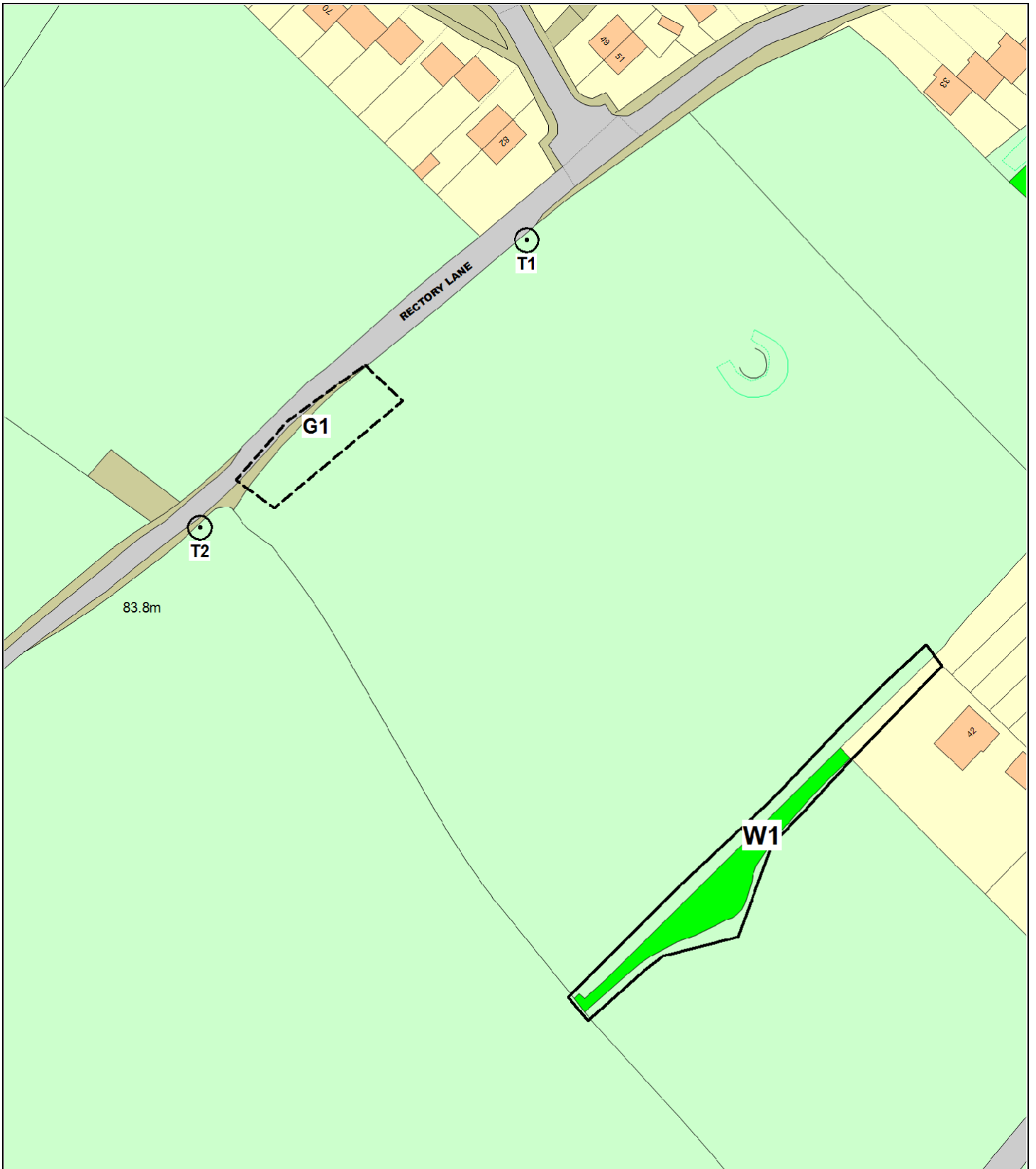
<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
G1	Common Beech (2), English Oak (2),	Grid Ref: SK-07731-15771

**Woodlands  
(within a continuous black line on the map)**

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
W1	Mixed woodland comprising mainly the following: Hawthorn <i>Crataegus monogyna</i> Common Holly <i>Ilex aquifolium</i> English Oak <i>Quercus robur</i> Small-leaved Lime <i>Tilia cordata</i>	Grid Ref: SK-07834-15675

**Trees specified by reference to an Area  
(within a dotted black line on the map)**

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
NONE		



**TPO Ref: 2021/00455/TPO**  
**Land To The North West, Westfields Road, Armitage**

**Lichfield District Council**



*The scale shown is approximate and should not be used for accurate measurement.*

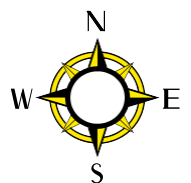
**Scale**

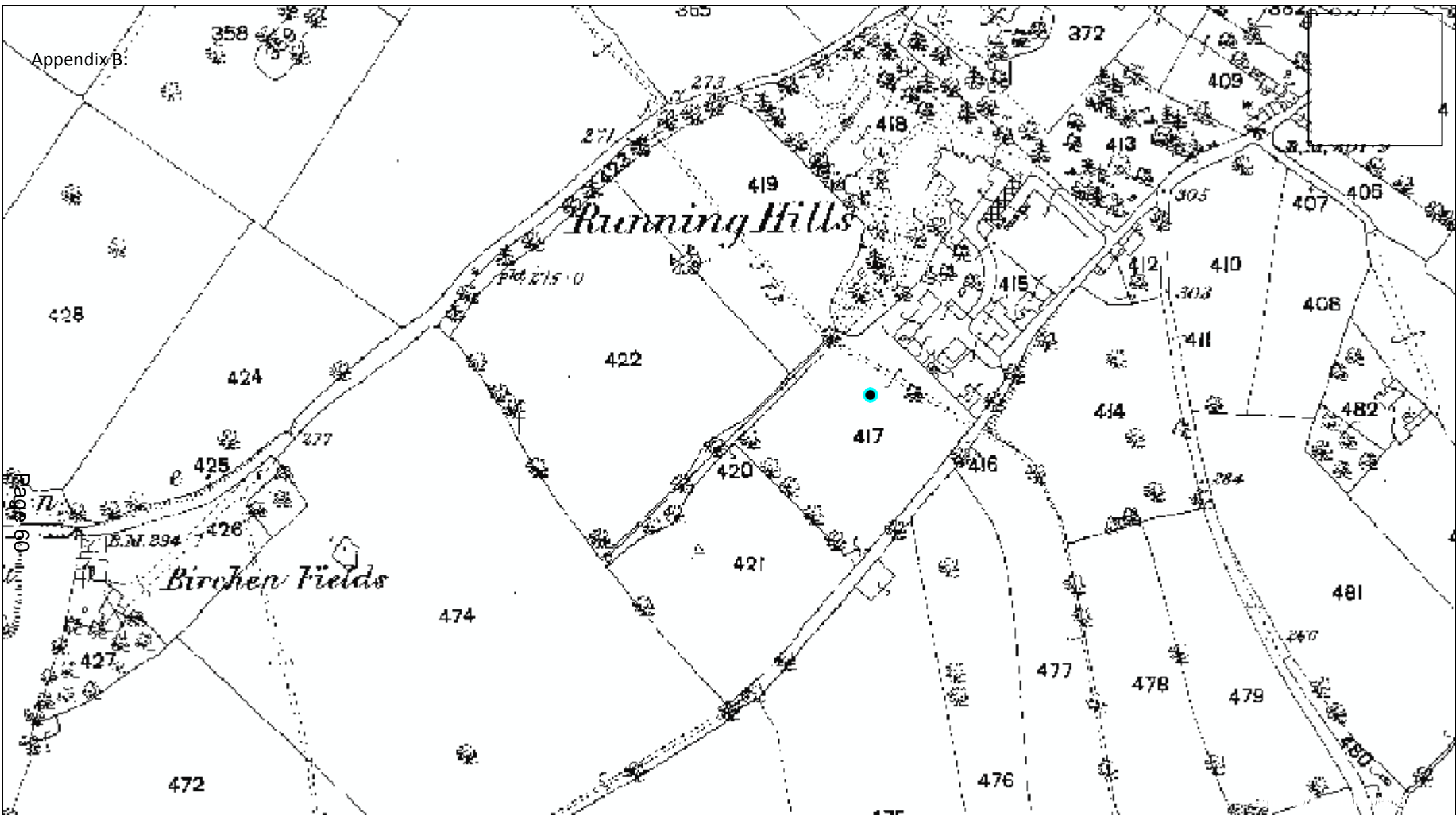
**1:1250**

**Date**

**23/03/2022**

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## REVIEW OF THE ENFORCEMENT PLAN

Councillor Lax Cabinet Member for Regulatory, Housing & Health

Date:	4th April 2022
Agenda Item:	6
Contact Officer:	Claire Billings/Andrew Dudley
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Key Decision?	NO
Local Ward Members	N/A



## PLANNING COMMITTEE

### 1. Executive Summary

- 1.1 Planning Committee approval is sought to an updated version of the planning Enforcement Plan as set out in Appendix A.
- 1.2 An in-depth review has been undertaken of the existing adopted Enforcement Plan (2018) resulting in the attached proposed revised version of the Plan. The review has been undertaken to ensure it is in line with current National legislation and guidance, reflects the resources within the Planning Enforcement Team and be a more customer friendly document.

### 2. Recommendations

- 2.1 That Planning Committee agree the updated Enforcement Plan April 2022, as set out in Appendix A and that the Plan is adopted with immediate effect.

### 3. Background

- 3.1 The LDC Enforcement Plan was originally adopted in 2013 and was further updated in December 2018 to reflect national policy and guidance changes.
- 3.2 The National Planning Policy Framework (July 2021) states that authorities should consider publishing a local enforcement plan, it states at para 59 that: *“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate.”*
- 3.3 The proposed revised Enforcement Plan (April 2022) sets out how the Council carries out its planning enforcement function, explaining how we deal with complaints and enquiries about alleged breaches of planning control. The Plan outlines the main legislative powers, how enquiries will be prioritised and investigated, and how the Council shall determine whether it is expedient to take formal enforcement action.
- 3.4 The updates to the Enforcement Plan have sought to ensure that the Plan carries forward the Council and enforcement teams’ drive to be more customer focussed and transparent in its dealings with all stakeholders. Along with better use of IT systems, the Plan establishes a definitive set of performance targets in terms of responses to enquiries, site visits and inspections and responses to enquiries. It also

carries forward the existing target of seeking to conclude investigations of 80% of all enquiries received within 12 weeks of receipt.

- 3.5 The revised Plan set out a clearer set of priorities for complaints received, ensuring that those cases which pose a serious and immediate threat to the environment, historic environment and public amenity are dealt with swiftly and those trivial or technical breaches of planning control that have simpler resolution or have no harm to the environment have least priority. Nevertheless, it is important to understand that it remains a part of the Plan that all enquiries and complaints received will be followed through to a conclusion.
- 3.6 The format and design of the Plan has also been updated so it is more succinct and customer/user friendly, providing a link to more information that can be found on the Council’s website.

Alternative Options	<ol style="list-style-type: none"> <li>1. Do not update the Enforcement Plan 2018. The current Plan is 4 years old and is out of date in terms of legislative requirements and resources.</li> <li>2. Adopt a complete new Enforcement Plan. It is considered that the current Enforcement Plan was already a good basis on which to develop a revised plan and a review of the document was considered to be appropriate. Also, a complete new Plan would require widespread consultation and research with all stakeholders and would significantly delay the adoption of a new Plan to replace the out of date Plan. The proposed updated plan ensures relevant legislative matters are clearly set out.</li> <li>3. Withdraw the Enforcement Plan/have no Plan. This option would be contrary to the guidance within the National Planning Policy Framework and would not meet with the objectives of the Council’s Strategic Plan 2020-2024.</li> </ol>
Consultation	<ol style="list-style-type: none"> <li>1. No consultations have been carried out as the priorities have not changed. Consultation with Ward Members and Parish Councils was carried out in the writing of the original plan in 2012/2013.</li> </ol>
Financial Implications	<ol style="list-style-type: none"> <li>1. There are no financial implications. Although the adoption of the revised Enforcement Plan should benefit the planning enforcement team in terms of efficiencies and management of resources by following the priorities and targets set out in the Plan.</li> <li>2. The proposed revised plan seeks to provide for a more responsive and transparent approach, such that this would hopefully limit corporate complaints and Local Government Ombudsman enquiries.</li> </ol>
Approved by Section 151 Officer	N/A
Legal Implications	<ol style="list-style-type: none"> <li>1. Whilst there are potential legal implications in regard to the possible actions of the Enforcement Team in regard to their enforcement powers and the taking of enforcement action, there has been no fundamental change in the Enforcement Plan and there has been no change to the powers available to officers set out within the approved Scheme of Delegation.</li> </ol>
Approved by Monitoring Officer	N/A
Contribution to the Delivery of the Strategic Plan	<ol style="list-style-type: none"> <li>1. The revised Enforcement Plan seeks to deliver high level outcomes for the community of District of Lichfield.</li> <li>2. The revised Enforcement Plan will enable people to better understand the planning enforcement process and help people to engage with the enforcement service.</li> <li>3. The Enforcement Plan and the actions of the planning enforcement team are</li> </ol>

	<p>integral to the Development Management process. The enforcement team also coordinate with other Council teams and agencies seeking to negotiate acceptable outcomes from complaints, which ensures the District is a clean place to be; that the character and amenity of the area is maintained; and that it is within the parameters of National legislation.</p> <p>4. The revised Enforcement Plan builds upon the outgoing plan by being more transparent and ensures the accountability of the service when dealing with customers. The plan identifies how the enforcement service will respond to customers, including how it deals with enquiries, setting clear priorities and targets for the service.</p>
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Equality, Diversity and Human Rights Implications	<ol style="list-style-type: none"> <li>1. The policies and procedures set out within the proposed Enforcement Plan 2022 do not discriminate, nor disadvantage any person or group protected under the legislation.</li> <li>2. The proposed policies and procedures set out in the Enforcement Plan 2022 are consistent with Government legislation and national guidance and are considered to be compatible with the Human Rights Act 1998.</li> </ol>
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Crime & Safety Issues	<ol style="list-style-type: none"> <li>1. The Enforcement Plan 2022 identifies and underpins the Council’s duty in seeking to prevent crime and disorder. Whilst the majority of the planning enforcement teams’ activities do not result in criminal offences, the Plan does identify those matters that include criminal activity and how these matters should be dealt with within the powers laid down in legislation and guidance.</li> </ol>
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Environmental Impact	<ol style="list-style-type: none"> <li>1. There is no negative environment impact envisaged from the adoption of this updated Enforcement Plan.</li> </ol>
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GDPR / Privacy Impact Assessment	<ol style="list-style-type: none"> <li>1. The Enforcement Plan 2022 sets out that customer’s personal details will be held confidentially at all times, unless it would be required for investigations by the Local Government Ombudsman or in cases that are escalated to the Courts for criminal proceedings.</li> <li>2. Customer’s details will be kept on record indefinitely. Only in cases where the Council receives a request to erase the details shall the details be removed.</li> </ol>
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Risk Description & Risk Owner	Original Score (RYG)	How We Manage It	Current Score (RYG)
Enforcement Plan not adopted/ updated the Plan will not align with current national policy and guidance and will hold less weight. Outdated document is not customer friendly. Planning Development Manager	Impact: Yellow Likelihood: Yellow Severity: Yellow	Ensure the Enforcement Plan is updated on a regular basis or when legislation and guidance is changed. Ensure officers are fully trained and aware of the Plan and that this is provided and noted to all customers through publishing on the Council’s website.	Impact: Yellow Likelihood: Green Severity: Yellow

	<p><b>Background documents</b></p> <p>Adopted Local Planning Enforcement Plan 2018.  <a href="https://www.lichfielddc.gov.uk/downloads/file/1054/planning-enforcement-plan">https://www.lichfielddc.gov.uk/downloads/file/1054/planning-enforcement-plan</a></p>
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	<p><b>Relevant web links</b></p> <p><a href="https://www.lichfielddc.gov.uk/planning-enforcement">https://www.lichfielddc.gov.uk/planning-enforcement</a></p>
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## **ENFORCEMENT PLAN**

Reviewed April 2022



## **Contents**

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6. Enforcement Priorities
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9. Monitoring the Implementation of Planning Permissions
10. Enforcement Powers
11. Other Powers
12. Other Investigations
13. Review of the Enforcement Plan

## 1. Introduction

- 1.1 All planning decisions that are made by a local planning authority, from deciding whether to build a new shopping centre or housing development or an extension to an existing house and, whether a local planning authority should take enforcement action or not are all assessed against planning policy and guidance and other material planning considerations.
- 1.2 Planning policy includes both national and local adopted planning policy. Nationally there is the National Planning Policy Framework (NPPF). Local planning policy is contained within the development plan. The development plan comprises a series of documents, including principally the Lichfield District Local Plan, which includes the Local Plan Strategy document, Local Plan Allocations document and any relevant made Neighbourhood Plans.
- 1.3 Paragraph 59 of the National Planning Policy Framework (July 2021) states that: **“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate.”**
- 1.4 This plan sets out how Lichfield DC, as the local planning authority carries out its planning enforcement function, explaining how we deal with complaints and enquiries about alleged breaches of planning control. The Plan outlines the main legislative powers, how enquiries will be prioritised and investigated, and how the Council shall determine whether it is expedient to take formal enforcement action.
- 1.5 Importantly, the Council considers that the disregard of planning regulations is a serious matter and appropriate action shall be taken in accordance with this Plan, where it is deemed reasonable and necessary. The objective of planning enforcement is about compliance, not punishment. Many breaches of planning control can be resolved effectively without the necessity of resorting to formal action through negotiation, persuasion and providing good clear advice.
- 1.6 The Council adopts a firm but fair approach to the investigation of enforcement matters. We seek to strike a sensible balance between the need for effective control and the need to be reasonable and proportionate in our response to such matters. The Council is committed to the Government’s Enforcement Concordat and the Regulators’ Compliance Code (see Appendix A). The principles set out in these codes are intended to ensure:
- Openness about how we carry out our work
  - Helpfulness in terms of providing advice and assistance
  - Proportionality i.e. any action we take will be proportionate to the harm caused by the breach, and,
  - Consistency i.e. our duties will be carried out in a fair and consistent manner.

- 1.7 This Plan seeks to promote efficient and effective approaches to regulatory inspection and enforcement which, in turn, improves regulatory outcomes without imposing unnecessary burdens on individuals or businesses. This is in accordance with the Regulators' Compliance Code.
- 1.8 This Plan covers all planning enforcement activities carried by the Council. The purpose is to provide an enforcement standard that respects the principles of the Enforcement Concordat and the Regulators' Compliance Code and meets with the requirements of all other relevant legislation (including those listed in Appendix B) and guidance published by central government.

This Enforcement Plan and further information on Planning Enforcement can be viewed on the Council's website at:

[www.lichfielddc.gov.uk](http://www.lichfielddc.gov.uk)

And/or on the Planning Portal at [www.planningportal.gov.uk](http://www.planningportal.gov.uk)

## 2. Enforcement Activities

- 2.1 The Town & Country Planning Act 1990 (as amended) gives discretion to the local planning authority in the exercise of its powers for the control of unauthorised development.
- 2.2 The enforcement of the planning regulations is one of the functions of the local planning authority. The planning enforcement team's principal duty is to investigate alleged breaches of planning control. Unfortunately, it is inevitable that breaches of planning control will occur and a purpose of this Plan is to ensure that all breaches are investigated in a consistent, balanced, transparent and fair way. The Plan has been written to ensure that the planning enforcement officers will be open about its actions, demonstrate fairness and impartiality, take a consistent, yet flexible approach, be considerate to complainants, treat matters with proportionality and assist service users whenever possible.
- 2.3 The enforcement activities referred to in this document relate to the following principal Acts of Parliament:
  - Town and Country Planning Act, 1990 (as amended)
  - Planning and Compensation Act, 1991 (as amended)
  - Localism Act, 2011
  - Planning (Listed Buildings and Conservation Areas Act) 1990 (as amended)
  - Part 8 of the Anti-Social Behaviour Act 2003 (High Hedges)
  - Human Rights Act 1998
  - Together with Regulations, Orders and guidance produced under these Acts.
- 2.4 The majority of planning enforcement related functions are delegated to Officers to deal with; as detailed in the Council's Constitution and agreed under a Scheme of Delegation, a copy of which is available on the Councils' website.
- 2.5 The planning enforcement team is part of the Development Management service and enforcement officers work closely with colleagues in Development Management,

Conservation and Urban Design, Arboriculture, Spatial Policy & Delivery and Environmental Health. This is generally in relation to the submission and determination of planning applications submitted to regularise unauthorised development; the monitoring and discharge of conditions; formal high hedge complaints, unauthorised works to listed buildings and protected trees. Enforcement Officers also work closely with the Council's legal team who provide essential support and advice, ensuring that decisions taken about whether or not to pursue enforcement action are consistent with current planning case law, that notices are served correctly and that, any notice is an appropriate response to the breach of planning control under investigation.

- 2.7 This Enforcement Plan will be reviewed when there are significant changes in national planning policy and relevant planning law. We will also review the operational delivery of the Plan following any operational experience and feedback from individuals and businesses.
- 2.8 The Council may from time to time identify priority areas or projects where proactive enforcement action and intervention could have a substantial public benefit. For example, we could carry out an area based action on untidy land and buildings, target illegal advertising and flyposting or work with colleagues in Conservation and Urban Design on a project to coincide with the making of an Article 4 direction.

### 3. **Definitions of Enforcement Action**

- 3.1 Under the provisions of Section 171A of the Town and Country Planning Act 1990, as amended, a breach of planning control is defined as:

(a) Carrying out development without the required planning permission; or

(b) Failing to comply with any condition or limitation subject to which planning permission has been granted.

- 3.2 For the purposes of this Enforcement Plan, enforcement action means:

- Serving Statutory Notices
- Serving of Injunctions
- The issue of a Simple Caution
- Legal proceedings in a Court of Law,
- Taking Direct Action

### 4. **Complaints Procedures**

- 4.1 These procedures relate to all planning enforcement complaints received by the Council, including those received from Members of Parliament, Elected Councillors, Parish Councils, Officers, other agencies and members of the public.

- 4.2 During an investigation into an alleged breach of planning control, we will:

- Investigate all alleged breaches of planning control reported to the Council that have been submitted in writing, by e-mail, by telephone or in person. Where necessary, complainants may be requested to confirm their complaint in writing, provide photographs or evidence of activities taking place. Any complaints that are received anonymously will not be investigated unless the complaint refers to matters of very high priority, such as damage to a Listed Building or works/removal of trees subject to a Tree Preservation Order;
- Keep personal details of the complainant confidential at all times. The only time that we may have to disclose such details would be if it is deemed necessary to disclose them as part of Court proceedings, or to the Local Government Ombudsman. Necessary information will be kept indefinitely, unless the Council receives an erasure request. It is considered that the retention of information is justified so that the Council can fulfil its statutory duty in dealing with breaches of planning control;
- Register a complaint and provide an acknowledgement to the complainant normally within 5 working days of receipt. This will include an enforcement case reference number and a named officer as the point of contact;
- Prioritise cases in accordance with the priorities identified in Section 6 of this Plan;
- Seek to carry out a site visit or have contact with the developer responsible for the alleged breach of planning control normally within 10 working days; but this is dependent on the severity and priority of the alleged breach of planning control;
- Endeavour to keep any complainant informed of progress that is made about the case and of any decisions that are made with regard to whether to take action or explain what action will be taken and likely timescales involved;
- Seek to remedy any breach through discussion and negotiation with the contravener, providing an opportunity for them to resolve the breach themselves first i.e. by removing the unauthorised development, ceasing works or submitting an application to retain the works etc.;
- Consider serving a Temporary Stop Notice where immediate enforcement action is deemed to be expedient and necessary, where the alleged breach could have serious consequences and cause irreparable harm or where an activity is having a serious detrimental effect on an area and it would be considered to be in the public interest commence proceedings;
- Actively pursue a complaint to a conclusion. This could be that no breach has been found, that a planning application is submitted to regularise the breach, or the breach has been remedied, with or without the need for formal action.

4.3 Investigations into alleged breaches of planning control may take some time to conclude, however we seek to conclude 80% of cases within 12 weeks from the date of receipt. A conclusive result may include the receipt of a planning application to regularise the breach, a decision to pursue/not to pursue formal action, agreement of a remedial action with the developer, or close a case as there is no breach of planning control occurring/evidenced.

- 4.4 There will be cases where a breach of planning control is discovered, but the harm caused by the breach is considered to be insufficient to warrant formal action. In such cases we will notify the complainant of the reason for not taking any further action and close the case.
- 4.5 Whilst Officers will seek to negotiate with those responsible for any breach of planning control, offering them the opportunity to resolve the matters of concern before considering whether formal action would be necessary, there may be circumstances where the breach is considered to be so serious that it warrants immediate action or where our negotiations become protracted and there is deemed to be no real likelihood of a successful resolution, in such cases the matters will be considered for formal action.
- 4.6 The planning enforcement team will not take the lead in investigating complaints that relate to possible breaches of planning control that occur on Council owned land, premises or the public highway (County Council owned land). In these cases, the complaints shall be forwarded to the relevant Council service area or outside agency for their investigation and resolution.

## 5. **Targeting Resources**

- 5.1 Taking formal enforcement action can be complex, time consuming and expensive. Where a breach of planning control has been discovered, resources will be targeted primarily towards unauthorised development which is considered to give rise to serious harm to public interests.
- 5.2 In deciding whether to take enforcement action the Council will have regard to national and local planning policy and guidance and any other material planning considerations. Enforcement action will only be taken where it is expedient to do so and, the action taken will be proportionate to the nature of the breach. Where a trivial or small technical breach of planning control has occurred, consideration will be given to the impact of the unauthorised development on public amenity and/or interests. In taking a decision on whether or not to pursue enforcement action, each case will be assessed in accordance with its' individual planning merits.
- 5.3 Perceived harm caused to private interests, for example, the loss of value of a neighbouring property; competition to or from another business; loss of an individual's view or trespass onto someone else's land, are not matters which can be taken into account as part of the planning process, although in certain circumstances there may be redress through civil laws. Such civil matters would need to be pursued by the private individual/s involved.

## 6.0 **Enforcement Priorities**

- 6.1 When complaints and enquiries are received alleging unauthorised development they will be prioritised initially according to the criteria set out below. A case may be given a higher or lower priority once a site visit or discussion with the developer/contravener has been undertaken, depending on the nature of the breach.

## 6.2 **Level 1 – High Priority**

This applies where the breach relates to unauthorised development which poses a serious threat to the environment or public amenity, for example, by causing a serious traffic hazard, or it poses permanent damage to the environment, for example, unauthorised work affecting a Listed Building or the loss of a protected tree.

In such circumstances a member of the team will visit the site as soon as practicable (usually within 48 hours) after the receipt of the enquiry to identify the appropriate course of action; which could be commencing injunctive or legal proceedings or issuing statutory Notices.

High priority cases can include:

- Breaches that impact Listed Buildings.
- Breaches affecting trees subject of Tree Preservation Orders or trees that are protected due to Conservation Area status, where those tree/s are likely to be lost or permanently damaged.
- Breaches of Conservation Area control where the breach would cause immediate irreparable damage.
- Breaches of planning control or conditions within 6 months of a 4 or 10 year immunity deadline.
- Breaches of planning control or conditions that result in serious harm or loss of amenity to a neighbourhood.
- Existing cases that are the subject of appeal deadlines or court action.

## 6.3 **Level 2 – Medium Priority**

Cases where the breach of planning control relates to development where planning permission is unlikely to be granted without substantial modification or removal, for example, development in Sites of Special Scientific Interest, the Green Belt and/or Conservation Areas.

We will seek to contact the relevant owners and occupiers as soon as possible (usually within 10 working days of the receipt of the complaint) to arrange to meet to discuss the matter and negotiate a solution.

Formal enforcement action will generally only be considered if negotiations and measures taken to remedy the issues fail to address the harm arising from the development. Examples of medium priority cases include:

- Breaches of planning control that are contrary to policies of the development plan.
- Breaches of planning control that may cause demonstrable nuisance to the residential enjoyment of neighbouring properties.
- Advertisement control in Lichfield City Centre or Conservation Areas.
- Advertisement control concerning large fly-posting campaigns in the District.
- Other breaches of planning control not included in other priority categories.

#### 6.4 **Level 3 – Low Priority**

Technical and trivial breaches of planning control and unauthorised development which give limited rise to problems that may be simply resolved by limited modification, for example, by the imposition of conditions on a planning approval, where the complaint relates to untidy land or buildings and simple breaches of conditions on existing planning permissions. Such cases also include matters that would be granted unconditional planning permission on the submission of an application.

In these circumstances, Officers will contact the owners and occupiers and give advice on what measures are required to address the issues, and give a reasonable timescale (usually 28 days of the meeting) for them to carry out any necessary work or submit a planning application to rectify the matter. Examples of low priority cases include:

- Individual advertisement problems not covered in Level 2.
- Technical breaches of planning control where there is no significant harm to adopted development plan policies or objectives.
- Temporary breaches of planning control that will resolve themselves without formal action.
- Breaches of planning control that would be recommended for unconditional approval if a regularising application were submitted.

#### 6.5 **Level 4 – Pro-active Investigations**

These investigations have no specific priority, but will be undertaken as and when required and if resources allow. Such investigations may be checking compliance with conditions (where no complaints received), monitoring developments and targeted area based projects.

### 7. **Management of the Investigation Process**

7.1 Planning Enforcement officers will follow the following basic principles when deciding how and when to investigate an alleged breach of planning control:

- All legitimate complaints regarding breaches of planning control will be investigated
- Complaints will be prioritised, dependent on their urgency and potential environmental harm (as identified above).
- Complainant's identities will be kept confidential, unless subsequent Court action warrants their evidence being made public. Complainants will be kept informed of progress of investigations and of eventual outcomes.
- Enforcement action is discretionary and will only be taken where it is expedient to remedy environmental harm and when it is in the public interest to do so.
- Any formal action will be proportionate to the breach and will generally be held in abeyance whilst valid planning applications or appeals are determined.
- All aspects of the process will follow the principles of the "Enforcement Concordat".



- The Council will be pro- active in initiating investigations where it is clear that a serious breach has occurred and in ensuring compliance with conditions imposed on planning permissions.

7.3 Complainants will be kept informed:-

- All complaints will be acknowledged within 5 working days.
- With priority cases, a site visit will be undertaken and the Council will try to advise the complainant of how it intends to deal with the matter within 10 working days of receiving the complaint. However, it may not be possible at this stage to state precisely what action can be taken.
- For urgent cases, officers will seek to respond within 20 working days of receiving the complaint.
- For non-urgent cases, a response or update will be provided within 30 working days.
- Further updates will be sent when progress is made in a case thereafter.

7.4 If it is clear and likely that a breach has occurred upon checking the Council's records, Officers will visit the site and establish if a breach is actually occurring. Advice will be given to the developers regarding the need for planning permission and/or compliance with conditions, where appropriate. This will be followed up in writing and timescales will be set for any relevant actions, for example, ceasing any activity; removing the development; or submitting a planning application.

7.5 In the correspondence, informal advice will be given about:

- the case officer dealing with the matter and their contact details
- the nature of the breach and ways in which it can be resolved
- follow up actions and timescales
- the likelihood of planning permission being granted
- the type of enforcement action which could be pursued.

7.6 Where a breach of planning control cannot be resolved and the unauthorised development is causing material harm, formal enforcement action may be taken, in line with the Councils' procedures and officer delegated authority. The action will be reasonable and proportionate to the breach that is occurring. The details of the types of Notices and the rights of appeal, and other powers which may be used, are set out below in this Plan.

7.7 Where it is appropriate, officers will try to resolve the matter through negotiation or by the submission of a planning application, which can control the impact of the development through the imposition of conditions. If further information is required about the ownership of the land or the nature of the breach, a Planning Contravention Notice or Requisition for Information may be served.

7.8 Where a breach of planning control is occurring, but there is no resulting harm to public amenity or interests, a decision will likely be taken that it is not expedient to take enforcement action, in line with the Councils' procedures and delegated authority. Ward Members will be

notified of these decisions. The approach set out above is consistent with Government guidance entitled:<https://www.gov.uk/guidance/ensuring-effective-enforcement> “Enforcement and post-permission matters – Responding to suspected breaches of planning control”.

7.9 All investigations will be carried out in accordance with other relevant legislation, which cover privacy, surveillance and evidence.

## 8. Enforcement Investigation Procedures

8.1 On receipt of a complaint, it will be prioritised and a preliminary investigation carried out in accordance with the timetable stated above, to establish if a breach of planning control has occurred.

8.2 Initial Desktop investigation includes:

- Input complaint on computer database.
- Check planning/enforcement/building control history for the site including conditional requirements of planning permissions and Section 106 Agreements.
- Check site constraints by reference to digital mapping systems and computer based records.
- Identify the main planning policy considerations relevant to the alleged unauthorised development.
- Check legislation i.e. does the alleged breach constitute “development”? Could it be “permitted development”? What needs to be checked/measured on site?

8.3 Initial site visit

The first site visit is crucial and the approach should be carefully considered and sensitively handled. Often more information can be gained on this visit than later when attitudes may have hardened.

- Enforcement officers will identify themselves when on site, and explain the reason for the visit. (NB. if it is suspected that an offence has been committed the investigating officer must have regard to the provisions of Section 66 and 67(9) of the Police and Criminal Evidence Act 1984 in relation to cautioning suspected offenders).
- Obtain the identity of owner/occupier/person responsible for the activity/development taking place and interview, if possible.
- Record names and addresses of all persons who have a material interest in the land.
- Take and record any necessary measurements/photographs.
- Record a brief site description including a description of the alleged unauthorised development.
- Identify neighbouring properties likely to be affected by the activities/development.

- If breach of control has clearly taken place then (depending on the nature of the breach) the owner/occupier/person responsible should be informed straight away and advised to stop until the matter is resolved. They should be advised that any further activity/development carried out would be entirely at their own risk and may be subject to enforcement action.

#### 8.4 Action following the initial site visit

- Advise owner/occupier/person responsible for the alleged unauthorised development of intended action or options available to resolve the matter or seek further information to determine whether a breach has occurred.
- Advise complainant in writing of findings and proposed action (if any).
- Where appropriate ask complainant to take photographs or keep a diary of events for use as evidence if matter proceeds to formal enforcement action.

#### 8.5 Further investigation/obtaining information

- Monitoring to collect further information or evidence about an alleged breach may be undertaken.
- A Planning Contravention Notice (PCN) may be served. This requires the recipient to provide information requested, within 21 days, relating to any breach of planning control alleged by the Council.
- Land Registry search to establish ownership of the land (if registered).
- Seek information and advice from Parish Council's, Councillors, neighbouring residents and other agencies, if deemed appropriate.
- A requisition for information (Section 330 Notice) may be served in order to identify all owners, occupiers and any other persons with an interest in the land.
- Liaise with other service areas/external agencies within or outside the Council as deemed appropriate.
- Any covert surveillance, directed or use of a covert human intelligence source, will be undertaken strictly in accordance with the provisions of the Corporate Policy and Procedures based upon the Regulation of Investigatory Powers Act 2000 (RIPA) and the Home Office Codes of Practice on Covert Surveillance and Acquisition of Communications Data. (It is extremely rare that a local planning authority would consider the need for covert surveillance measures and any such surveillance must have the relevant RIPA Authorisation)

#### 8.6 Results of Investigations

- Complaints may relate to a non-planning matter. In which case, no action will be taken. Such non-planning matters include disputes over land ownership and boundaries; covenants and legal agreements; moral and ethical concerns; and competition and private interests.
- In any case where a non-planning complaint can be dealt with by another Council service or another authority then the relevant information will be passed on to the appropriate organisation.

- A complaint may relate to an activity, building or operational works that constitute a matter of “permitted development” or are lawful in planning terms. In these circumstances, no further action can be pursued.
- Complaints may relate to a very minor or trivial breaches of planning control, which could be regarded as being “de-minimis” which means that there would be no grounds to justify any formal action.
- Investigations may conclude that a breach of planning control has occurred and further investigation needs to be taken.

## 9. Monitoring the Implementation of Planning Permissions.

9.1 Many planning permissions are granted subject to conditions which are required to be complied with before the development commences on site. Compliance with these conditions is important as they can have a major impact on the form of the completed development. These conditions may include, for example:

- the erection of protective fencing around important protected trees, shrubs and hedges which must be retained as part of the development;
- the approval of external materials;
- the approval of joinery details, mortar, external finishes and materials (particularly in regard to the development of Listed Buildings and developments taking place in Conservation Areas);
- the survey for and removal/remedial measures of contaminated material on previously developed or brownfield sites;
- protected species surveys and protection/mitigation measures.

9.2 The Enforcement Team do not routinely monitor ongoing developments owing to the significant resource implications. Where it is deemed appropriate Officers may identify sites with planning permission that include important pre-commencement conditions and write to the developer to advise about the importance of complying with the conditions before work commences on site.

9.3 Where it is noticed that works have commenced on a site without pre-commencement conditions being complied with, either by site visit or via complaint, the developer will be contacted and at that stage may be advised that works should cease, depending on the nature of the breach of condition, for example, if tree protection in the form of protective fencing is required for trees covered by a Tree Preservation Order and the continuation of the works threatens the long term life of the trees or if the works affect a Listed Building or a Conservation Area. If a developer ignores requests to stop work voluntarily then officers may consider serving a Temporary Stop Notice. Any action considered or taken will be proportionate to the breach and a clear explanation will be given why action is being considered or pursued.

## 10. Planning Enforcement Powers (see Appendix C)

10.1 The planning enforcement team investigates the following breaches of planning control;

- unauthorised advertisements,
- unauthorised use of houses for multiple occupancy/flats etc,
- the unauthorised running of a business from home,
- unauthorised development domestic e.g. house extension,
- unauthorised development taking place within commercial premises,
- works being carried out contrary to that approved by determined planning applications,
- potential breaches of planning conditions,
- the unauthorised commencement of development,
- unauthorised development within Conservation Areas,
- unauthorised development taken place to, at or in the grounds of a Listed Building.
- High Hedge complaints

Note- this list is not exhaustive, as the remit of the Town and Country Planning Act covers many different types of breaches of planning law associated with development and use.

10.2 Following the identification of a breach of planning control there are likely to be a number of options available for the authority. These include: -

- The Local Planning Authority will take no further action;
- The Local Planning Authority will request the submission of a planning application and will determine it accordingly in conjunction with various consultees;
- The Local Planning Authority will negotiate a resolution of the breach of planning law;
- The Local Planning Authority will instigate the taking of further enforcement action.

It should be noted that although “the taking of further enforcement action” is defined in the Town and Country Planning Act to mean the issue of an Enforcement Notice or the service of a Breach of Condition Notice, enforcement action may include the service of other Notices to elicit information.

10.3 During a planning enforcement investigation, it is often necessary to gather the details of the owners of the land, any person with an interest in the land and/or details appertaining to the alleged breach of planning control being investigated. In order to gather information relating to the breach, a local planning authority may use one of three methods:

### **Planning Contravention Notices**

The use of Planning Contravention Notices (PCN) is primarily investigative and enables the Council to gather facts and information in respect of alleged breaches of Planning Law. Through the effective use of the Notice a warning can be served on a person responsible for a breach that formal action is being considered whilst also offering them an opportunity for

an application to be submitted or for compliance with the Council's requests/requirements for remedial action.

Planning Contravention Notices can be served when it "appears" that a breach may have occurred. The notice shall specify the alleged breach and make specific requests for information to ascertain if such a breach has occurred. A PCN cannot be used as a fishing exercise to obtain information which does not relate to the alleged breach of planning control to be taking place.

### **Section 330 Notices**

These notices allow the Council to require information from the occupier of any premises and any person receiving rent therefrom, for the purpose of enabling the Local Planning Authority to make any order or to issue or serve a Notice. The details that can be sought are the nature of the interest in the land, the purpose of the use of the land, when the use began, details of anyone having used the land for that purpose and when activities began.

### **Section 16 Notice (Local Government (Miscellaneous Provisions) Act 1976**

These notices are not often used in the line of enforcement investigations. They are similar to section 330 notices in the information, although they cannot seek details of use or activity.

## 10.4 **Enforcement Notice**

An Enforcement Notice may require a wide range of steps to be taken to make a development comply with the terms of a planning permission or for removing or alleviating any injury to amenity caused by the unauthorised development. It is important that a delegated officer report is written in regard to any proposed enforcement action and this must cover the alleged breach, reasons for expediency for action and consideration and impact on the developer's rights. A notice shall: -

- (1) specify the breach of planning control;
- (2) specify the measures to be taken to remedy the breach;
- (3) specify the date on which it is to take effect (this must be more than 28 days following service);
- (4) specify the period for compliance;
- (5) specify the authority's reasons for requiring compliance with the notice;
- (6) identify the land on which the breach has occurred/ is occurring
- (7) specify that the householder's property may be at risk if the Notice is not responded to.

The wording of notices must clearly state the measures to be taken to remedy the breach of planning control to enable the recipient to understand what the breach of planning control is, why the enforcement notice has been served, what is required to comply with the enforcement notice and the timescales to comply.

There is a right of appeal against the serving of an Enforcement Notice on any of the following grounds: -

- (a) in respect of any breach of planning control, which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the Enforcement Notice were not served as required by Section 172,
- (f) that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or, as the case may be, to remedy any injury to amenity which has been caused by any such breach,
- (g) that any period specified in the notice in accordance with Section 173(9) falls short of what should reasonably be allowed.

A fee may be payable for an appeal submitted under ground (a) (deemed application for planning permission).

#### 10.5 **Breach of Condition Notice**

Where there has been a failure to comply with the requirements of a condition attached to a planning permission the authority may choose to serve a Breach of Condition Notice (BCN). Alternatively, formal action can be taken in the guise of an enforcement notice alleging that breach of the condition. The service of a BCN is considered to be a more simple alternative to the use of an Enforcement Notice to ensure compliance with a condition. There can only be a breach of condition where;

- (i) a planning condition is in force,
- (ii) it is a valid condition, and,
- (iii) it is enforceable.

A condition takes effect only when the planning permission is implemented, or that part of the development has been reached. It is important that all conditions attached to a grant of planning permission meet six tests to ensure that it is a valid condition, which are:

- (i) necessary;
- (ii) relevant to planning law;
- (iii) relevant to the development to be permitted;
- (iv) enforceable;
- (v) precise;
- (vi) reasonable in all other respects.

Any breach of condition notice served shall:

- (i) state the condition(s) which has not been complied with,

- (ii) require compliance with the condition(s),
- (iii) specify the measures to be taken to ensure compliance,
- (iv) allow a minimum period of 28 days for compliance,
- (v) be served on the person 'responsible' for the breach.

There is no right of appeal against a Breach of Condition Notice although there can be defence pleas should the matter result in a court prosecution. It is important, therefore, that the condition against which action is being taken meets the six tests outlined above.

#### 10.6 **Stop Notice**

The effect of an Enforcement Notice is suspended if an appeal is lodged. When the effects of unauthorised activity are seriously detrimental, a Stop Notice can be used to ensure that the unauthorised activity does not continue should an appeal be lodged against the Enforcement Notice. Where the Authority considers it expedient that any unauthorised use or activity should cease before the end of compliance period of an Enforcement Notice, they may serve a Stop Notice. There is no right of appeal against a Stop Notice. The advantage of the use of a Stop Notice in relation to building operations is that it has the effect of 'freezing' the development at the time of service.

The Stop Notice must be served at the same time as an Enforcement Notice or thereafter, but it may not be served where the Enforcement Notice has taken effect.

The Notice shall:

- (1) refer to the Enforcement Notice to which it relates;
- (2) specify a date when it takes effect, which should be at least three clear days after the date of first service and not more than 28 days thereafter;
- (3) be served on any person appearing to the Local Planning Authority to have an interest in the land, or to be engaged in any activity prohibited by the Notice.

The recipient of a Stop Notice may be entitled to be compensated by the local planning authority for any loss or damage directly attributable to service of the Stop Notice, if the Stop Notice or Enforcement Notice is withdrawn or if any appeal against the Enforcement Notice succeeds on certain grounds.

#### 10.7 **Temporary Stop Notice**

Where the local planning authority consider that there has been a breach of planning control and it is necessary in order to safeguard the amenity of the area that the activity that amounts to the breach should stop immediately, Section 171E of the TCP Act 1990 enables the local planning authority to issue a Temporary Stop Notice.

This differs from the Stop Notice powers because service of a Temporary Stop Notice does not have to wait for an accompanying Enforcement Notice to be issued. In addition, the effect of a Temporary Stop Notice will be immediate, it will not be necessary to wait three days



before the requirements of the Notice take effect or give reasons why the Temporary Stop Notice will take effect immediately.

The decision to use a Temporary Stop Notice is at the discretion of a local planning authority, if they think that there has been a breach of planning control and they consider that it is expedient that the activity is stopped immediately.

The Temporary Stop Notice must be:

- (i) In writing and must set out the activity that the local planning authority thinks is a breach of planning control. It must prohibit the carrying on of the activity and set out the local planning authority's reasons for issuing the Temporary Stop Notice;
- (ii) Served upon any person who appears to be carrying out the activity prohibited by the Temporary Stop Notice, anyone who seems to be an occupier of the land to which the notice relates, or anybody who appears to have an interest in the land. It is for the local planning authority to decide which is the appropriate person or persons. In cases where such persons cannot immediately be located, or refuse service of the Temporary Stop Notice, a copy of the Notice on the site will suffice.

The local planning authority must also display a copy of the Temporary Stop Notice on the site with a statement that the Notice has been served and failure to comply with the Notice is an offence. The site notice extends the effect of the Temporary Stop Notice to any person contravening it.

The site notice publicising the Temporary Stop Notice must state the date that the Notice has been served, the activity that has to cease and that any person contravening the Notice may be prosecuted for an offence under section 171G. A Temporary Stop Notice takes effect on the day that the site notice is displayed.

The Temporary Stop Notice expires 28 days after the display of the Notice on the site, or any shorter period set out in the Notice, or if it is withdrawn by the local planning authority. The maximum length of time that the Temporary Stop Notice will have effect is for a period of 28 days. During this period the local planning authority must decide whether it is appropriate to take enforcement action. At the end of the 28 days there is the risk of the activity resuming if an enforcement notice is not issued and a stop notice served.

The activities that a Temporary Stop Notice may prohibit include: a use of the land which is ancillary, or incidental to the unauthorised main use of the land; or a particular activity taking place only on part of the land; or an activity which takes place on the land intermittently or seasonally.

Therefore, the activity need not be taking place on the entire site. It might be confined to a specific area of the site, for example, a particular building from which noise, fumes and dust are being emitted; or a part of the site where open storage of scrap materials is unacceptable because of the height at which the scrap is piled.

In deciding whether to limit the Temporary Stop Notice to only part of the site, the local planning authority will need to consider whether the activity to be prohibited is capable of readily being moved around to any other part of the site, e.g., open storage of pallets. If so, it will usually be prudent to make the Temporary Stop Notice apply to the entire site to prevent the prohibited activity from being carried out on another part of the site.

An “activity” which the Temporary Stop Notice may prohibit is defined in section 171E(1) of the 1990 Act as, “the activity (or any part of the activity) which amounts to the breach.”

Because a Temporary Stop Notice is prohibitory, it is not appropriate for use in any circumstances that require some positive action to be taken in response to it. A Temporary Stop Notice can only require an activity to cease, or reduce or minimise the level of an activity. The “immediate” cessation of activities should allow for the shutting down or making safe any activity. Where building operations are stopped allowance should be made for any work necessary to make the site safe. A Temporary Stop Notice may prohibit an unauthorised activity, which is ancillary or incidental to the change of use of land.

A Temporary Stop Notice may be served in cases where planning permission has been granted subject to conditions, which if not complied with can result in serious harm, and those conditions have not been complied with. Examples of these types of conditions include: archaeological surveys required before works commence on the site; tree protection required before works commence on the site; tree surveys indicating trees to be retained before works commence on the site; and wheel washing equipment for vehicles on the site.

### **Temporary Stop Notice restrictions**

The primary legislation makes clear that a Temporary Stop Notice may not prohibit the use of a building as a dwelling house.

The Town and Country Planning (Temporary Stop Notice) Regulations 2005 make clear that a Temporary Stop Notice may not prohibit the continued stationing of a caravan on land where the caravan is the main place of residence of the occupier of the caravan, subject to the qualifications referred to below.

The Town and Country (General Permitted Development) Order 2015 Schedule 2 part 5, Class A sets out permitted development rights for the use of land as a caravansite. , Schedule 1 to the Caravan Sites and Control of Development Act 1960, sets out where there is no need to obtain a caravan site licence.

## **11. Other Powers**

### **11.1 Prosecutions**

Failure to comply with any requirement of a statutory Notice is a criminal offence. There are a number of options available to the Council depending on the harm caused and the circumstances of the case, which include prosecution, an injunction, direct action or indeed, taking no further action. Prosecution is generally the most common form of initial further

action, but there may be circumstances where direct action, or an injunction, may be considered to be the most expedient and appropriate action and it does not necessary follow that the Council will always chose to prosecute first, before considering the other options available.

The Council will always consider what would be the most appropriate form of further action that should be taken in these circumstances. Key questions in considering whether or not to take further action and what form that action should take are: would the action be proportionate to the breach of planning control; would the intended action be in the public interest; would the action be likely to resolve the issue and whether or not there is sufficient evidence to progress the case.

Officers have been given the delegated authority to instigate formal legal proceedings in such cases. Nevertheless, any possible prosecution in regard to a breach of a statutory notice or other offence i.e. a breach of Listed Building control would involve discussion with the Council's Solicitor and agreement of the Planning Development Manager or Principal Officer. However, should the use of direct action be considered, such action would require authorisation from the Council's Planning Committee.

Should it be deemed to be in the public interest, further legal action would be normally considered against persons or companies who appear to blatantly disregard the requirements of a notice or where their actions severely affect public amenity or put the environment at risk.

### 11.1 Simple Cautions

The "Simple Caution", may be used, in certain circumstances, as an alternative to prosecution (Ministry of Justice guidance, Simple Cautions for Adult Offenders (April 2015))

Simple Cautions are used to:

- Offer a proportionate response to low-level offending, where the offender had admitted the offence.
- To deliver swift, simple and effective justice that carries a deterrent
- To record an individuals' criminal conduct for possible reference in future criminal proceedings or in a criminal record or other similar checks,
- Divert less serious offences away from the Courts.
- To reduce the likelihood of re-offending.

### 11.2 Direct Action/Action in Default

Provision is made in the Town and Country Planning Act 1990 (as amended), under Section 178 in relation to unauthorised development, and Section 219 in relation to Notices served to require the maintenance of land, for the District Council to take 'Direct Action' to enter the land and remedy the problem.

Direct Action will only be taken after consultation with and authorisation from the Council's Planning Committee. Reports to Planning Committee on such matters will be held in private session to ensure that staff safety is not compromised. However, all avenues will be explored with the contravener to avoid having to take such action. No prior notice of the date and time of such action needs to be given to the offender.

If Direct Action is taken the cost to the Council can be considerable. A charge in favour of the Council for the cost of the action will be registered on the land to ensure that money raised by any future sale will be used to recoup the Councils' costs. The monetary charge on the land would also be subject to favorable annual interest increases.

### 11.3 **Injunctions**

Legal powers are available for the local authority to apply to the Courts for an injunction to restrain an actual or alleged breach of planning control. Injunctions are a discretionary power and an assessment should be made of the likely outcome prior to commencing proceedings. Legal advice should be sought at an early stage so as to assess the viability of such a course of action.

An injunction can be: -

- (1) prohibitory - requiring the defendant to refrain from doing a specific act;
- (2) mandatory - requiring the defendant to carry out a specific act;
- (3) interlocutory – a provisional measure taken as a measure of urgency;
- (4) substantive or final - granted by the Court following a full trial.

## 12. **Other Investigations**

12.1 Some breaches of planning control are the subject of separate legislation. These include:

- Listed buildings
- Advertisements
- Trees & Hedgerows
- Land adversely affecting public amenity

### 12.2 **Listed Buildings**

The Council attaches particular importance to ensuring that any alterations to listed buildings are properly authorised. The statutory provisions for the preservation of buildings of special architectural or historic interest are contained in the Planning (Listed Buildings and Conservation Areas) Act 1990.

It is an offence under Section 9 of this Act to carry out unauthorised works to a listed building that would affect its character. The owner of a listed building, those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained retrospectively or the unauthorised works later made satisfactory.

There is no time limit upon the District Council to pursue Listed Building Enforcement Action.

A Listed Building Enforcement Notice may also be served requiring remedial works to the building within a certain time scale. There is a right of appeal the service of a Listed Building Enforcement Notice, but failure to comply with the Notice is an offence.

## 12.2 Advertisements

The display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended)

There are 3 categories of advertisement consent:

- Those permitted to be displayed without either deemed consent or express consent from the local planning authority;
- Those which have deemed consent (granted by the Regulations);
- Those which require the express consent of the local planning authority (upon submission of an application for consent).

The Advertisement Regulations are complicated and seek to control, amongst other things, the height, size and illumination of advertisements.

Anyone who displays an advertisement, without the consent required for it, is acting illegally. It is open to the local planning authority to take a prosecution in the Magistrates Court for an offence under S224 of the Town and Country Planning Act 1990. Unless the offence is particularly flagrant or repeated, the planning authority may not initially consider it necessary to prosecute for an advertisement offence. Instead, they may invite the advertiser to apply for the consent he needs, and, if refused, there will be a right of appeal the decision. Displays of an advert after consent has been refused, and any appeal dismissed will, subject to satisfactory evidence being obtained, result in prosecution.

Fly-posting is display of posters, bills or stickers advertising, usually advertising events, that are displayed without the property owner's permission, often on highway structures. Any form of fly-posting an offence, which is open to prosecution or to the removal or obliteration if the Council decide to take such action. If the advertisement identifies the advertiser the Council must give 2 days' notice before obliteration or removal takes place. Joint working with other related services, particularly Environmental Health and Highways, to tackle the problem of fly-posting.

## 12.3 Trees

Under Section 198 of the Town and Country Planning Act 1990 the local planning authority has the right to make provision for the preservation of trees in their area by issuing a Tree Preservation Order. Any unauthorised works to such protected trees is an offence under Section 210 of the Act. It is an offence to cut down, uproot, or wilfully destroy a protected

tree, or wilfully damage, top or lop a protected tree in such a manner as to be likely to destroy it. Trees in Conservation Areas are similarly protected, under Sections 211 and 212 of the Act.

Consent is generally not required for the following works to trees the subject of a tree preservation order:

- Works to trees that are dying or dead or have become dangerous.
- Works to trees authorised by the grant of planning permission.
- Works to trees cultivated for the production of fruit where such work is in the interests of that business or trade.

#### 12.4 **Hedgerows**

Section 7 of the Hedgerow Regulations 1997 makes the removal of certain hedgerows without Local Authority consent, an offence (subject to a number of exceptions).

#### 12.5 **Land Adversely Affecting the Amenity of the Neighbourhood – Untidy Sites**

Section 215 of the Town and Country Planning Act 1990, provides a local planning authority with powers, in certain circumstances, to take steps to require land or buildings to be tidied up when its condition adversely affects the amenity of the area. The local planning authority may serve a notice on the owner and occupier of the land requiring steps to be taken within a specified period. The notice becomes effective after 28 days.

There is a right of appeal to the Magistrates Court and then to the Crown Court, during which time the notice has no effect pending the outcome of the appeal, but once the notice takes effect it is an offence not to carry out the steps required. If the notice is not complied with the local planning authority may prosecute the owner for the offence of non-compliance with the notice, or enter the land, carry out the required works and recover all costs from the owner. The Council also have powers under Environmental Health legislation that can also be used to resolve untidy site problems. The Planning Enforcement section will normally liaise with other sections within the Council to ensure that the most appropriate and effective remedy is sought.

### 13. **Review of the Enforcement Plan**

13.1 In common with most formal documents, regular reviews of this Enforcement Plan will be necessary to ensure its status remains current, within the framework of the most up-to-date legislation and guidance issued by Government.

13.2 Reviews will take place when:

- Current legislation and/or guidance changes or;
- When comments received from residents, customers, businesses and visitors to the District can improve how the policy is being developed and used.

## APPENDIX A

### Our Commitment to the Regulators Compliance Code & the Enforcement Concordat

Lichfield District Council is committed to good enforcement practice.

Our work is primarily to protect the public interests and the environment. Carrying out this work in a fair, practical and helpful manner helps to achieve this while promoting a thriving local economy. We will encourage economic progress and only intervene in the operation of a business when there is a clear case for protection.

#### 1. Information & Advice

- We provide information setting out our approach to enforcement both in general and in particular areas.
- Clear, concise and accessible information, advice and guidance, will be provided to help individuals and businesses meet their legal obligations.
- Clear distinctions will be made between legal requirements and guidance

If you need advice or assistance on a planning enforcement issue, either ring or ask for general help or take the question up with the case officer. Full contact details will be given on any correspondence.

#### 2. Resources

Resources will be targeted towards development which gives rise to serious harm to public interests.

#### 3. Visits

- No inspection will take place without reason.
- Some visits will be advisory and we will give you help to meet your obligations by suggesting and advising.
- Where appropriate, this will include giving you a chance to discuss and remedy problems before action is taken.
- When action is required, then you will be given proper details of the action and fully advised of any right of appeal or review of the matter. Sometimes such action is required immediately for public protection and if it is, we will need to take it straight away.
- If a prosecution is required the Council will normally consider whether it is in the public interest to proceed. Where it is appropriate you will be given the opportunity to contribute information to help us reach an informed decision.

#### 4. Our Complaints Procedure

Details of the District Councils' Corporate Complaints procedure is available on the Council's website.

5. Proportionality

We will only require or take action that is proportionate to the risks involved and where we have taken account of all the circumstances of the case to minimise the costs of compliance. However, we must comply with the law where necessary.

6. Consistency

All of our planning enforcement work will aim to be consistent and transparent, although we will have due regard to the circumstances of each individual case. This will be achieved through the use of our enforcement plan and procedures.

Regulators' Code, April 2014, Department for Business Innovation and Skills.

Website: <http://bre.berr.gov.uk/regulation>



## **APPENDIX B**

### **Other Relevant Legislation and Codes of Practice**

Police and Criminal Evidence Act 1984

Regulation of Investigatory Powers Act 2016

Criminal Procedure and Investigations Act 1996

Human Rights Act 1998

General Data Protection Regulation 2018

Data Protection Act 2018

Freedom of Information Act 2000

Code of Practice of Crown Prosecutors

Anti-Social Behaviour Act 2003

## **APPENDIX C – Statutory Notices**

Statutory Notices are legal documents, normally requiring the recipient to carry out works to ensure compliance with an Act of Parliament.

### **Main Definitions**

The main definitions and Notices referred to below, relate to the principal legislation used by Development Services.

### **Planning Contravention Notice (PCN)**

Served under Section 171C of the Town and Country Planning Act 1990. Used where the District Council considers there may be a breach of planning control and further information is required about the development or the ownership of land. It requires responses to specific questions about the development. A PCN can be used to establish the facts of a case and let the owner/occupier/operator know that the Council is seriously concerned about an alleged breach. It is intended to act as both an information-gathering tool and a statement of intent.

### **Requisition for Information Notice (RFI)**

Used to obtain information about the ownership of land. Served under Section 330 of the Town and Country Planning Act 1990, in relation to Listed Buildings and the Display of Advertisements (for which a Planning Contravention Notice cannot be used).

### **Breach of Condition Notice**

Served under Section 171A of the Town and Country Planning Act 1990. Used where conditions imposed on the grant of planning permission have not been complied with or a limitation set out in Regulations has been exceeded. It sets out requirements to be complied with and a timetable for the required works to be carried out. There is no right of appeal to a Breach of Condition Notice, other than to the High Court on a point of law. The Notice must be served on the person responsible for the breach. Where there is any doubt about who is responsible or where human rights issues may arise due to the inability to appeal it may be more appropriate to serve an Enforcement Notice.

### **Enforcement Notice (EN)**

Served under Section 187A of the Town and Country Planning Act 1990 where development is carried out without planning permission and gives a list of requirements and a schedule of reasons for issuing the notice. There is a right of appeal to the Secretary of State on 7 grounds:

- a) that planning permission should be granted for what is alleged in the Notice
- b) that the breach has not occurred as a matter of fact
- c) that there is not a breach of planning control
- d) that the development is immune from enforcement action
- e) that the copies of the Notices have not been correctly served
- f) that the requirements of the notice are excessive to remedy the breach
- g) that the compliance period is too short.

If an appeal is submitted action against the notice is suspended until the appeal has been heard

### **Stop Notice (SN)**

Served under Section 183 of the Town and Country Planning Act 1990 where there is a breach of planning control that is causing serious harm, or has the potential to cause serious or irrevocable harm to amenity. It may be served with an Enforcement Notice as set out above or before an Enforcement Notice has taken effect, but requires the relevant activity to cease immediately and it cannot continue whilst an appeal against an enforcement notice is in progress. In certain circumstances the District Council may be liable to pay compensation to the recipient of a Stop Notice. It is a criminal offence not to comply with the requirements of the Notice.

### **Temporary Stop Notice (TSN)**

Served under Section 171E of the Town and Country Planning Act 1990. This may be served where it appears that there is a breach of planning control occurring and it prevents that development or activity taking place, for a period of up to 28 days. It gives the Council and the contravener the opportunity to consider further how to deal with the matter. It is a criminal offence not to comply with the requirements of the Notice.

### **Listed Building Enforcement Notice (LBEN)**

Served under Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Notice may require the building to be brought back to its former state, or other works specified in the Notice to alleviate the effects of the unauthorised works, or the building to be brought back to a state it would have been in if the terms of any Listed building Consent had been observed, within a timescale specified in the Notice. There is a right of appeal against a LBEN. It is a criminal offence not to comply with the requirements of the Notice and a fine of up to £20,000 can be imposed on summary conviction

Unauthorised works to a listed building is an offence under Section 9 of the Planning (Listed Building and Conservation Areas) Act 1990.

### **Listed Building Urgent Works and Repairs Notices**

Served under Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 gives Local Authorities the power to carry out works to unoccupied or partly occupied Listed Buildings. At least 7 days notice must be given to the owner. Section 55 of the Act allows for reasonable costs to be recovered. Section 48 of the Act gives the power to serve a Repairs Notice specifying works which are considered necessary for the proper conservation of the Listed Building. Section 47 of the Act allows for a Local Authority to compulsorily purchase any Listed Building where a Repairs Notice is not complied with. These powers do not relate to ecclesiastical buildings or ancient monuments.

### **Conservation Area Enforcement Notice**

As above, but relates specifically to demolition in a Conservation Area. Served under Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

### **Notice under Section 215**

Served Under Section 215 of the Town and Country Planning Act 1990. Used to require the maintenance of untidy land. There is a right of appeal to the Magistrates Court.

### **Injunctions**

The District Council can apply to the High Court or County Court for an Injunction requiring works to cease where they consider it expedient to do so. Failure to comply with an Injunction can lead to proceedings in the County Court.

### **Discontinuance Notice**

Requires the discontinuance of the display of any advertisement, or the use of a site for the display of an advertisement, which has the benefit of deemed consent under the Control of Advertisements Regulations where the Council is satisfied it is necessary to do so to remedy a substantial injury to the amenity of the locality or a danger to members of the public. Served under Regulation 8 of the Town and Country Planning (Control of Advertisements) Regulation 1995. It is a criminal offence not to comply with the requirements of the Notice.

### **Unauthorised Display of Advertisements**

It is a criminal offence to display an advertisement, which requires Advertisement Consent, without consent being obtained.

### **Contravention of a Tree Preservation Order**

Under section 210(1) or (4) it is a criminal offence cut down, lop, top or wilfully destroy any tree which is the subject of a Preservation Order.

### **Completion Notice**

Served under Section 94 of the Town and Country Planning Act where development has commenced and where the Local Planning Authority is of the opinion that that a development will not be completed in a reasonable period. It must be served on any owner and occupier, stating that a planning permission will cease to have effect at the end of a further period, of at least 12 months. It only takes effect after confirmation by the Secretary of State and there is an opportunity for those served with the Notice to be heard at a Public Local Inquiry. It does not require any development already carried out under the planning permission to be removed, nor does it guarantee that a development will be completed, but merely takes away planning permission for any further development once the period stated on the Notice has expired.

## **High Hedge Remedial Notices**

Served under Section 69 of the Anti-Social Behaviour Act 2003 to require the reduction of an evergreen hedge. There is a right of appeal against a Notice and also by the complaint if no Notice is served. It is a criminal offence not to comply with any requirement of High Hedge Remedial Notice.

## **Powers of Entry**

Enabled by Sections 196A 196B and 196C of the Town and Country Planning Act 1990, to enter land specifically to investigate alleged breaches of planning control.

Section 74 of the Anti-Social Behaviour Act 2003 to enter land specifically to in relation formal High Hedges complaints

Section 88 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to enter land specifically to in relation to alleged breaches of Listed Building Consent.

Officer have rights of entry under the Council's Scheme of Delegation, as set out in the Constitution.

## **Power to decline to determine retrospective planning applications**

Insertion of Section 70C to the Town and Country Planning Act 1990, the power to decline to determine a retrospective planning application in relation to land where an enforcement notice has been served prior to the receipt of the application and would involve granting planning permission for the matters specified as the alleged breach of planning control.

## **Time limits for enforcing concealed breaches of planning control**

Insertion of Section 171BA to the Town and Country Planning Act 1990, the power to apply to the magistrates court for a planning enforcement order, to extend the period for immunity in relation to an apparent breach where the court is satisfied, on the balance of probabilities, that the apparent breach has deliberately been concealed.

## **Power to remove structures for the unauthorised display of advertisements**

Insertion of Section 225A of Town and Country Planning Act 1990, the power to serve a removal notice and dispose of any display structure used for the unauthorised display of advertisements. There is a right of appeal to the Magistrate's Court against the issue of a removal notice.

Insertion of section 225C of the Town and Country Planning Act 1990, the power to serve an action notice in relation to the persistent display of unauthorised advertisements on any surface. There is a right of appeal to the Magistrate's Court against the issue of an action notice.

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## PRE-APPLICATION CHARGING REGIME – REVIEW AND UPDATE

Councillor Lax, Cabinet Member for Regulatory, Housing & Health

Date:	4 <sup>th</sup> April 2022
Agenda Item:	7
Contact Officer:	Jon Allinson /Claire Billings
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Key Decision?	<b>NO</b>
Local Ward Members	<b>ALL</b>



## PLANNING COMMITTEE

### 1. Executive Summary

- 1.1 The purpose of this report is to seek approval of the Planning Committee for amendments to the current pre-application charging regime to increase the charges payable.
- 1.2 A report on the effectiveness of the pre-application charging regime was last reported to the Planning Committee on the 13 November 2017. It was indicated at this time that the charging regime would be future reviewed.
- 1.3 It is considered the current pre-application fee levels are inadequate to appropriately fund the service provided, having not been reviewed for some years.
- 1.4 Following a review of other existing pre-application charging levies within other neighbouring Councils, and an assessment of the level of resources required to provide the service, this demonstrates that Lichfield do not currently charge comparatively nor are recovering full costs and accordingly, this report seeks approval to increase fees to a level that allows full cost recovery to provide this service.

### 2. Recommendations

- 2.1 That Planning Committee notes the content of this report and;
  - a) Approves the increased pre-application fee charges, as set out in the attached schedule of fees in Appendix 1;
  - b) That the amended pre-application fee schedule be introduced with immediate effect (from 5 April 2022) for all relevant pre-application queries received from such date.

### 3. Background

- 3.1 Charging for pre-application planning advice was introduced in April 2014 following approval by Planning Committee on the 31 March 2014. The effectiveness of the service and charges was subsequently reviewed in 2016 and an updated charging regime adopted following subsequent Planning Committee approval in April 2016.
- 3.2 A further amendment to the pre-application fee schedule was agreed by the Planning Committee on the 13 November 2017, which included the addition of a bespoke charging level relating to Planning Performance Agreements (PPAs) for more complex or strategic planning proposals that involve a substantial level of officer time / resource.

- 3.3 Pre-application charging was originally introduced in order to generate further income as part of the 2014 'Fit for the Future' Development Services review. Whilst pre-application advice is a discretionary/non-statutory service, it is an important part of the development management process, as it adds value to the quality of planning application submissions, as well as encouraging the delivery of high quality and appropriate development. It is therefore considered to be an important process to maintain as part of the Development Management planning service provided by the Council.
- 3.4 On the introduction of the pre-application service, the Council did not receive any complaints about the fact that a charging regime was introduced. Furthermore, since Lichfield adopted such a service other neighbouring Councils followed with the introduction of such a payable service. There remains a general acceptance that a fee is payable for the professional service and advice provided, which can lead to the quicker and smoother processing of resultant planning applications.
- 3.5 The current adopted schedule of fees were calculated having regard to relevant legislation (including that such charges must be on a not-for-profit basis); the unit/hourly costs normally involved in dealing with pre-application enquiries; the existing charges levied by other Local Planning Authorities; and, the actual planning application fee for the type of development sought.
- 3.6 The pre-application charging schedule is split into 8 development type bands of decreasing complexity consisting of 4 major development bands (including bespoke Planning Performance Agreements), 4 minor development bands and a householder / advertisement band; as set out on the schedule in Appendix 1.
- 3.7 The below table sets out details of the number of pre-application enquiries received in the last 3 financial years and until the end of February 2022 in the current financial year, and level of income generated since April 2018. This notes that with the exception of 2020/21, the Council receives approximately 170 pre-app requests of varying complexity per year. The level of fee income generated ranges from approximately £35K to £40K per year; which has been below what was initially projected to be achieved (£50K per annum).

	2018/19	2019/20	2020/21	2021/22 (up to 18 Mar 2022)
Total no. of pre-apps	170	164	241	166
1.No of PPAs	0	1	1	3
2.No of Strategic Major	2	4	4	4
3.No of Major Developments (a)	5	6	5	3
4. No of Major Developments (b)	7	7	10	8
5.No. of Minor Developments (a)	12	4	10	14
6.No. of Minor Developments (b)	82	64	66	66
7.No of Change of use	4	7	6	0
8.No. of Householder / Advertisements	55	72	132	74
HS2	3	0	8	4
Income received	£37,485	£37,844	£41,831.50	£36,745

- 3.8 Despite the initially envisaged level of income not being achieved, the introduction of pre-application fees has regulated the overall number and quality of pre-application enquiries received. It has also meant that some of the costs of providing the service are being recouped, thereby offsetting the resources involved thereto.
- 3.9 However, the recent increase in the quantity and complexity of requests for pre-application advice has resulted in a number of requests not being responded to within the relevant time frame; as set out



within the pre-app protocol (15 working days in most cases). For example, in the current period 2021/22, only 35% of requests for pre-application advice were responded to within the set time period, due to increased number vs the resources available within the team.

- 3.10 A review of the fee charges were originally scheduled to take place in 2018/19, although due to resources within the team and the impact of the pandemic this was delayed. However, with the growing DM team resource available and the need to ensure costs associated with delivering the service are met, it is appropriate to now consider a full review of the fees charged that have been static for over 4 years.
- 3.11 In undertaking the recent review of the fees charged, regard has again been given to legislation (charges must be on a not-for-profit basis); the unit/hourly costs involved in dealing with pre-application enquiries; review of the charges levied by other nearby, including Staffordshire-wide LPAs; and, the planning application fee for the type of development.
- 3.12 A full comparison of the charges against neighbouring/nearby local authorities is set out in Appendix 3. This shows that, although all nearby authorities have different fee structures, they do all charge more for all bands of pre-application advice when compared to Lichfield's charging schedule. For comparison, in relation to householder pre-application, Lichfield currently charge a £42 fee, while Tamworth charge £50; East Staffordshire charge £69; South Staffordshire £103; Walsall £113 and Birmingham charge £120 for the same type of pre-application service. For the minor development category of up to 5 new dwellings, Lichfield charge a fee of £180, in comparison to East Staffs charging £188; Birmingham charge £240; Stoke-on-Trent charge £250; South Staffordshire Charge £450; and Walsall charge £630. Finally, for a major development category of between 50 and 199 dwellings, Lichfield currently charge a fee of £1,440 in comparison to East Staffs charge £1,250; Cannock charge £2,400; South Staffordshire charge £2,400; Walsall charge £3,783; and Birmingham charge £3,672. Therefore, this clearly shows that in comparison to nearby LPA's, Lichfield significantly charge less for the pre-application service.
- 3.13 Notwithstanding the comparison of fees charged by our nearby authorities, in undertaking this review, consideration has also been given to the unit/hourly costs involved to provide the service, so as to identify an appropriate fee levy that recoups the relevant costs involved. For a householder pre application request to extend an existing dwelling, on average it takes on average approximately 2 hours to process, this includes registering, assessing and providing a written response to such a request. Given the unit costs of officers to carry out such work, this leads to a process cost of approximately £63 inclusive of VAT. By comparison, the current rate for a pre app charged for a householder application is £42 including VAT. Having regard to this, it is therefore proposed to increase the charge levied by 50% to £63, thereby ensuring the costs of providing the service are fully met, whilst also maintaining affordability of this service to a householder. This proposed charge would furthermore remain below the statutory application fee for a householder planning application (£206).
- 3.14 For a minor development of up to 4 new dwellings, which could involve specialist internal advice, the average officer hours needed to process and respond is approximately 5 hours. Given the unit costs of more senior officers involved, this leads to an approximate average cost of £270 to process. By comparison, the current rate charged for such a pre-app is £180 inc vat. Therefore, it is also proposed to increase the fee by 50%. This would also remain below the current single dwelling statutory planning application fee of £462. Therefore, it has been calculated that the overall service has not been covering its costs and is running at a loss of 50%.
- 3.15 In terms of the 5 remaining pre-application charging bands (excluding the bespoke Planning Performance Agreement (PPA) band), it is also proposed to increase the fee of all by 50%, as this would ensure the officer resource costs involved in processing are covered, allowing the right resource to be

put in place within the team and that there are also, more comparable rates charged having regard to other local authorities nearby.

- 3.16 It is furthermore noted that whilst increasing all pre application advice fees charged by 50%, the fees would continue to remain below that of the statutory fee for planning applications, so as not to dissuade applicants from seeking pre app advice in favour of proceeding with a full application without engaging in such process; for example, the lowest planning application fee for any non-domestic development is £462. Such an increase would allow for this service to operate on a full cost recovery basis.
- 3.17 Part of the current pre-application service provided is the ability for the enquirer to request, for a further fee, additional meetings or on-site meetings with officers, in addition to the initial meetings provided as part of the standard agreed fee. Given the increases proposed to the standard fee schedule and the reasons outline above for these, it is also proposed to increase the fee for additional meetings by 20% for the 4 lowest bands of pre app (the non-major development bands), and the major bands (excluding PPA) by 33.3%. For example, an additional householder meeting would rise from £35 to £42 inc vat, and an additional strategic major development meeting would increase from £300 to £400.
- 3.18 Also, the existing fee schedule allows for a 25% fee reduction for repeat / revised requests for pre-application advice. The time taken by officers in dealing with such proposals can however be greater than in dealing with the original submission. Therefore, it is proposed to cease providing this reduced fee option, and therefore, all pre-apps will require a fee, unless meeting one of the exemptions outlined in the fee schedule (see Appendix 2) which are not proposed to be amended.
- 3.19 Lastly, consideration has been given to response times, to ensure performance can be improved against those set out in the Development Management pre-application protocol, whilst also ensuring officers have sufficient time to make appropriately considered assessments of proposals, and allowing time to include in-house specialists (e.g. heritage or biodiversity). In regard to this, it is proposed that the response period for minor development, householder/ advertisements and change of use be extended from 15 working days to 20 working days and to extend the response period for major developments from 15 working days to 30 working days; unless an extension of time has been agreed with the applicant and there is the need/agreement to additional meetings.
- 3.20 It is considered that the proposed revised fee charges and response periods would allow the pre-application service to be adequately resourced and that appropriate responses are provided in a timely manner, in line with an amended Pre-app Protocol.
- 3.21 In conclusion, Members are asked to support the officer recommendation and approve the proposed increases to the pre-application charging schedule, as set out in Appendix 2 and that such amended pre-application fees be introduced with immediate effect (from the 5 April 2022).

Alternative Options	<ul style="list-style-type: none"> <li>• Not approve an increase in pre- application planning fees- this is not recommended because this would prevent the pre-application charging service being adequately resourced nor full cost recover for the service provided, to the detriment of service provision.</li> <li>• Stop pre-application service- this is not recommended as it is considered this service is important to the planning process ensuring high quality planning submissions and development. It is furthermore encouraged by national planning guidance and policy.</li> </ul>
Consultation	None

<b>Financial Implications</b>	The revised fees have been calculated to achieve the pricing objective of Full Cost Recovery, where the Council wishes to make the service available, but does not wish to subsidise the service. Therefore, prices are based on the direct cost and overheads related to the activity. The new fees should achieve full cost recovery, based on the projected volume of pre-applications. This is in line with the Corporate Fees and Charges Policy, approved by Council in February 2022.
Approved by Section 151 Officer	Yes

<b>Legal Implications</b>	None
Approved by Monitoring Officer	N/A

<b>Contribution to the Delivery of the Strategic Plan</b>	Ensures the provision of pre-application advice to developers in bringing forward high -quality development within the District, in line with the Local Plan Strategy, which is relevant to the Council’s ambitions identified in the Strategic Plan where they have a spatial element.
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<b>Equality, Diversity and Human Rights Implications</b>	There are no equality, diversity and human rights implications; service delivery to residents is unaffected.
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<b>Crime &amp; Safety Issues</b>	None
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<b>Environmental Impact</b>	None
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<b>GDPR / Privacy Impact Assessment</b>	None
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	<b>Risk Description &amp; Risk Owner</b>	<b>Original Score (RYG)</b>	<b>How We Manage It</b>	<b>Current Score (RYG)</b>
A	Charges may impact on the number of developers that seek pre-application advice, potentially meaning a lower quality of application submission and consequently more applications may need to be refused. Owner: Planning Development Manager	Impact: Yellow Likelihood: Yellow Severity: Yellow	Publicise the charging schedule online and highlight the key benefits of engaging in the pre-application service.	Impact: Yellow Likelihood: Yellow Severity: Yellow
B	Continue to charge existing levies with full cost recovery not achieved, would mean the service cannot be adequately resourced. Owner: Planning Development Manager	Impact: Yellow Likelihood: Yellow Severity: Yellow/red	Limit the amount of time and resource spent on pre-application enquiries- providing less comprehensive responses/service.	Impact: Yellow Likelihood: Yellow Severity: Yellow

Background documents	Appendix 1 -Existing pre-app charging schedule Appendix 2 - Recommended pre-app charging schedule Appendix 3 - Neighbouring / Staffordshire LPA's pre-application charging schedule comparison
Relevant web links	LDC Pre app protocol : - <a href="https://www.lichfielddc.gov.uk/pre-application-guidance-1/pre-application-protocol/1">https://www.lichfielddc.gov.uk/pre-application-guidance-1/pre-application-protocol/1</a>

## Appendix 1 – Current Schedule of Fees for Pre-application Advice at Lichfield District Council

Proposed Development Type	Basic Fee Charged	Total Fee Inclusive of VAT (20%*)	Additional costs (per meeting) Plus VAT
Planning Performance Agreement (PPAs) or bespoke arrangements in relation to large scale, complex or strategic proposals where a bespoke charge is more suitable. This may include schemes where a PPA is involved.	TBA via negotiation	<b>TBC based on negotiated fee.</b>	N/A
Strategic Major Developments 200+ dwellings or over 4 ha site area or more than 10,000 sqm gross floor area.	£1800	<b>£2160</b>	£300
Major Developments (a) 50 to 199 dwellings or 2ha to 3.9ha site area or 5,000 to 9,999 sqm gross floor area.	£1200	<b>£1440</b>	£200
Major Developments (b) 10 to 49 dwellings; sites of up to 1.9ha or 1,000 to 4,999sqm gross floor area.	£600	<b>£720</b>	£150
Minor Developments 5 to 9 dwellings; sites of 0.5 to 0.99ha; 500 to 999sqm floor area.	£300	<b>£360</b>	£100
Minor Developments 1 to 4 dwellings; sites up to 0.49ha; up to 499sqm	£150	<b>£180</b>	£50
Householder & Advertisements	£35	<b>£42</b>	£35
Change of use of land or buildings to a non-residential (dwelling) use.	£150	<b>£180</b>	£50

### Exemptions:

- Planning discussions following enforcement investigations
- Where the enquiry is made by a Local Authority or County Council
- Where the enquiry is made by a Parish or Town Council
- Where the development is for the direct benefit of a disabled person/s (and as such there would be no fee incurred to make a planning application)
- Works in respect of Tree Preservation Orders
- Works to a Listed Building or in a Conservation Area, where no planning application fee would be required.
- Advice about how to submit a planning application or a fee enquiry.

### Notes:

Strategic Major Developments and Major Developments (a) - includes up to 3 meetings and notes of meetings and 1 written response.

Major (b), Minor Developments & Change of Use (non-residential) - includes up to 2 meetings, notes of meetings and 1 written response.

Householder & Advertisements- includes 1 meeting in the Council office and 1 written response. It does not however include a site meeting/site visit. If a site meeting/visit is required the normal fee rate will be doubled.

One short follow-up clarification/query on the advice provided will be given otherwise a further pre-application query will be necessary, which would generate a further fee. If a revised/amended scheme is subsequently proposed by the same applicant/developer in relation to the site within 6 months of the initial advice, then a reduction of 25% will be made against the further request.

**All above basic charges are exclusive of VAT\* and all fees are non-refundable.** \*VAT payable at current rate (20% at time of print/Nov 2017).

If specialist external advice is required to provide a response, the rates will be charged based on the fees incurred by the Council i.e. in relation to independent viability assessments or specialist agricultural advice required. Such fees are to be agreed between the two parties before specialist advice is sought.

## Appendix 2 – Proposed Schedule of Fees for Pre-application Advice at Lichfield District Council

Proposed Development Type	Basic Fee Charged	Total Fee Inclusive of VAT (20%*)	Additional costs (per meeting) Plus VAT
Planning Performance Agreement (PPAs) or bespoke arrangements in relation to large scale, complex or strategic proposals where a bespoke charge is more suitable. This may include schemes where a PPA is involved.	TBA via negotiation	<b>TBC based on negotiated fee.</b>	N/A
Strategic Major Developments 200+ dwellings or over 4 ha site area or more than 10,000 sqm gross floor area.	£2700	<b>£3240</b>	£400
Major Developments (a) 50 to 199 dwellings or 2ha to 3.9ha site area or 5,000 to 9,999 sqm gross floor area.	£1800	<b>£2160</b>	£266
Major Developments (b) 10 to 49 dwellings; sites of up to 1.9ha or 1,000 to 4,999sqm gross floor area.	£900	<b>£1080</b>	£200
Minor Developments (a) 5 to 9 dwellings; sites of 0.5 to 0.99ha; 500 to 999sqm floor area.	£450	<b>£540</b>	£120
Minor Developments (b) 1 to 4 dwellings; sites up to 0.49ha; up to 499sqm	£225	<b>£270</b>	£60
Change of use of land or buildings to a non-residential (dwelling) use.	£225	<b>£270</b>	£60
Householder & Advertisements	£52.50	<b>£63</b>	£42

### Exemptions:

- Planning discussions following enforcement investigations
- Where the enquiry is made by a Local Authority or County Council
- Where the enquiry is made by a Parish or Town Council
- Where the development is for the direct benefit of a disabled person/s (and as such there would be no fee incurred to make a planning application)
- Works in respect of Tree Preservation Orders
- Works to a Listed Building or in a Conservation Area, where no planning application fee would be required.
- Advice about how to submit a planning application or a fee enquiry.

### Notes:

Strategic Major Developments and Major Developments (a) - includes up to 2 meetings and notes of meetings and 1 written response.

Major (b), Minor Developments & Change of Use (non-residential) - includes up to 2 meetings, notes of meetings and 1 written response.

Householder & Advertisements- includes 1 meeting and 1 written response. It does not however include a site visit. If a site meeting/visit is required at any stage, the normal fee rate will be doubled. For any subsequent meetings /site visits an additional £42 is required per request.

One short follow-up clarification/query on the advice provided will be given otherwise a further pre-application query will be necessary, which would generate a further fee.

**All above basic charges are exclusive of VAT\* and all fees are non-refundable.** \*VAT payable at current rate(20% at time of print/April 2022).

If specialist external advice is required to provide a response, the rates will be charged based on the fees incurred by the Council i.e. in relation to independent viability assessments or specialist agricultural advice required. Such fees are to be agreed between the two parties before specialist advice is sought.

**Staffordshire / W Midlands Pre Application Charging Schedules for Comparison**

	Lichfield (April 2014 / Nov 2017)	inc VAT	Additional mtg?	S Staffs (March 2020)	inc VAT	Add mtg	East Staffs (Oct 2014)	inc VAT	Add Mtg	Moorlands (April 2016)	inc VAT	Add mtg	Tamworth (April 2016)	inc VAT	Add mtg
Householder and advertisements	£42	y	£35	£103 (Householder) / £115(Adverts)	y	n/a	£69	?	£46	£0	y	n/a	£50 (householder only)	Y	n/a
Change of use of land or buildings to a non-residential (dwelling) use.	£180	y	£50	£115	y	n/a	£69	?	£46	n/a	y	n/a	n/a	Y	n/a
Minor developments (b)- 1 to 4 dwellings; sites up to 0.49ha; up to 499sqm.	£180	y	£50	£450	y	n/a	£188	?	£92	£570 if meeting /£285 if no meeting	y	n/a	£125	Y	n/a
Minor developments (a)- 5 to 9 dwellings; sites of 0.5 to 0.99ha; 500 to 999sqm floor area.	£360	y	£100	£450	y	n/a	£375	?	£138	£570 if meeting /£285 if no meeting	y	n/a	n/a	Y	n/a
Major developments (b) - 10 to 49 dwellings; sites of up to 1.9ha or 1,000 to 4,999sqm gross floor area.	£720	y	£150	£1200 (10-30 dwellings)	y	n/a	£938	?	£138	£845 (10-50 dwellings) meeting /£425 (letter)	y	n/a	£250	Y	n/a
Major developments (a) - 50 to 199 dwellings or 2ha to 3.9ha site area or 5,000 to 9,999 sqm gross floor area.	£1,440	y	£200	£2400 (30 -200 dwellings)	y	n/a	£1,250	?	£275	£1130 (50+ dwellings) meeting /£565 (letter)	y	n/a	£750	Y	n/a
Strategic major developments - 200+ dwellings or over four ha site area or more than 10,000 sqm gross floor area.	£2,160	y	£300	£3,840	y	n/a	10% of app fee	?	£375	n/a	y	n/a	£1,000	Y	n/a

<p>Planning performance agreement (PPAs) or bespoke arrangements in relation to large scale, complex or strategic proposals where a bespoke charge is more suitable. This may include schemes where a PPA is involved.</p>	<p>To be agreed via negotiation</p>	<p>y</p>		<p>n/a</p>	<p>n/a</p>	<p>n/a</p>		<p>?</p>		<p>n/a</p>	<p>n/a</p>	<p>n/a</p>	<p>n/a</p>	<p>Y</p>	<p>n/a</p>
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Newcastle (?)	inc VAT	Add mtg	Cannock	inc VAT	Add mtg	Stoke (?)	inc VAT	Add mtg	Stafford	inc VAT	Walsall (April 22)	inc VAT	Add mtg	Birmingham (2021)	inc VAT	Add mtg
£24 upto 30 mins £36 over 30 mins (householder only)	Y	n/a	£0	n/a	n/a	£0	Y	n/a	n/a	n/a	£113.50(letter) / £189.50 Letter &mtg)	Y	£20 / £30	£120	Y	£240
£58	Y	n/a	£0	n/a	n/a	£250	Y	£125	n/a	n/a	£315.20 (letter) / £567.36 (letter + mtg)	Y	£30 / £40	£240	Y	£360
£105 (1 dwelling)	Y	n/a	£0	n/a	n/a	£250 (1-9 dwellings)	Y	£125	n/a	n/a	£630.40 (letter) / £1008.64 (letter +mtg) /£1513.20 (Development Team)	Y	£30 / £70 / £100	£240	Y	£360
162 (2-9 dwellings)	Y	n/a	£0	n/a	n/a	£250 (1-9 dwellings)	Y	£125	n/a	n/a	£630.40 (letter) / £1008.64 (letter +mtg) /£1513.20 (Development Team)	Y	£30 / £70 / £100	£600	Y	£360
£360 (10-200 units)	Y	n/a	£1,200	Y	n/a	£750 (dwellings) / £1500 (retail)	Y	£375 (dwellings) / £750 (retail)	n/a	n/a	£1891.50(Non Dev Team) /£2534.61(Dev Team)	Y	£100 / £125	£1224 (10-24 dwellings) / £2448 (25-49 dwellings)	Y	£360
n/a	Y	n/a	£2,400	Y	n/a	£1200 (50+ dwellings)	Y	£600	n/a	n/a	£3,783	Y	£160	£3672 (50-99 dwellings) / £7200 100-249 dwellings)	Y	£600
£715	Y	n/a	£4,800	Y	n/a	n/a	n/a	n/a	n/a	n/a	£3,784	Y	£161	£18,3600 (250+ dwellings)	Y	£600

n/a	n/a	n/a	n/a	n/a	n/a	To be agreed via negotiation	?		n/a	n/a	n/a	n/a	n/a	Upto £24,000	Y	£600
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