

1.0 **Application No:** [2/2018/1808/OUT](#)

Site Address: Land North Of, Burton Street, Marnhull, Dorset,

Proposal: Develop land by the erection of up to 61 No. dwellings, form vehicular and pedestrian access, public open space and attenuation basins. (Outline application to determine access).

Applicant: P And D Crocker

Case Officer: Ms Penny Canning

Ward Members: Cllr Graham Carr Jones

Recommendation Summary: Grant subject to conditions and a S106 legal agreement, without NHS contributions.

2.0 **Reason application is going to committee:**

2.1 The planning committee of (the former) North Dorset District Council on 26th March 2019 issued the following decision on this application:

Delegate authority to the Planning Manager to grant planning permission subject to conditions and the securing of planning contributions through the signing of a S106 agreement.

2.2 The obligations to be secured included a financial contribution requested by the NHS Trust towards acute and planned health care, which Members were verbally updated on following a late representation received from the NHS Trust. Following further consideration officers have come to the view that the contributions requested do not meet the necessary policy and legal tests as set out in Regulation 122(2) of the Community and Infrastructure Regulations, and as set out in para 56 of the National Planning Policy Framework (NPPF). In this regard, officers do not consider that the information provided demonstrates the need for the contributions has been clearly justified or evidenced as being directly related to the development or fairly and reasonably related in scale and kind to the development, and it cannot in this case be concluded that it is necessary to make the development acceptable in planning terms. The NHS Trust has since withdrawn their request for contributions. As such, officers no longer recommend a contribution in this regard. As this formed a material planning consideration, the application is being reported back to committee.

3.0 **Update**

3.1 The previous recommendation as set out in the Officers report, appended below, was to approve the application without the NHS Trust contribution and the consideration and recommendations as set out in that report remain relevant.

3.2 The following updates are provided in relation to any policy or legislative changes since the time of writing that report:

3.3 **Policy changes**

3.3.1 Regulation 123(3) of the Community Infrastructure Levy Regulations (2010) (CIL), which restricts the number of S106 agreements which an authority can enter into in relation to funding particular infrastructure, has been removed under the Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019. This amendment is not considered to alter the Councils position in terms of Planning Obligations in this case.

3.3.2 The number of commitments and completions within Marnhull since 2011 was formerly reported as approximately 68 dwellings. This figure has since risen to approximately 82 dwellings. Notwithstanding this, the Council continues to be unable to demonstrate a 5 year housing land supply, with the most up to date figure being 4.0 years. There have been no other significant policy changes since the time of writing the appended report.

3.4 **Impact on trees**

3.4.1 The previous report was unclear regarding the consideration given in respect of the impact upon trees. For the purposes of completeness and clarity it is considered appropriate to update Members on this matter.

3.4.2 It is not proposed to remove existing trees and hedges and, whilst landscaping is a reserved matter, the illustrative plan does indicate some additional planting proposed. The proposed road realignment and resultant loss of the existing highway verge would nevertheless have the potential to indirectly impact upon an adjacent Walnut Tree within the garden of a neighbouring property to the South of Burton Street through disturbance to its roots. The Walnut Tree has recently had a Tree Preservation Order (TPO) served seeking to protect the tree in recognition of its contribution to the visual amenity of the area. In order to fully assess the impact the Tree Officer has been consulted. The Tree Officer does not consider the development to result in the loss of the tree directly but does accept that there is potential for the roots of the tree to be disturbed and its long term health thereby affected. Notwithstanding this, given the impact of the development would be limited to a single tree, on balance the Tree Officer does not consider the overall harm would outweigh the benefits of the scheme, and consequently raises no objection to the proposal.

3.5 **Climate change**

3.5.1 Since the previous report was written, the impacts of climate change has become an ever increasing priority for the Council and at the forefront of planning decisions. In terms of the principle of development, the scheme is considered to represent sustainable development, meeting the three tests (social, environmental, and economic factors) as set out in the NPPF.

3.5.2 This is an outline application with all matters, except access, reserved. As such, limited details have been provided at this stage. The agent has nevertheless confirmed that there would be capacity to deliver vehicle charging points to a number of individual plots on the site and it is recommended that a condition requiring a vehicle charging point scheme to be submitted to, and approved in writing by, the Council should be placed on any consent. The developer has also confirmed that each individual dwelling would be provided with a garden shed suitable for the storage of bicycles to encourage the use of sustainable modes of transport, and a condition requiring cycle storage (condition 15) requires details and implementation of cycle parking. An additional recommended condition requiring electric car charging points is outlines below:

- *Prior to the construction of any part of the development above damp proof course level details of the number and location of charging points for plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations, within the development, along with a timetable for their provision, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details and timetable.*

REASON: To ensure that adequate provision is made to enable occupiers of development to be able to charge their plug-in and ultra-low emission vehicles.

3.6 **S106 legal agreement**

3.6.1 Since the application was last heard at committee work has progressed on the S106 legal agreement to secure the contributions as set out within the appended report, without the NHS Trust Contributions. In error, the legal agreement has in fact been sealed, however, this does not change the ability for the committee to make a different decision. To be clear, the Committee may choose to go down any of the below routes:

- (a) The committee could decide to refuse the application, and under these circumstances the legal agreement would not come into force. The reasons for refusal would however have to be clear having regard to any material changes since the last committee decision;
- (b) The committee could decide to approve the application with the omission of the NHS Trust contributions;

(c) The committee could decide to approve the application with the NHS Trust contribution as per its original recommendation. Technically a supplementary legal agreement could be put in place to require the payment of these contributions. However, because officers do not consider the contributions to be compliant with Regulation 122 of the CIL Regs any decision may be unlawful and open to challenge, and the Council would be at risk of costs.

4.0 Summary of Recommendation:

Grant, subject to the completion of a legal agreement under section 106 of the town and country planning act 1990 (as amended), without NHS Trust contributions, and subject to conditions.

5.0 Reason for the recommendation:

In the absence of 5 year land supply, para 14 of the National Planning Policy Framework (NPPF) sets out that permission should be granted for sustainable development unless specific policies in the NPPF indicate otherwise. The location in this case is considered to be sustainable and the proposal is not considered to result in significant harm the visual or residential amenity of the area, historic or natural features, or highway safety. There are no material reasons to warrant the refusal of this application and the application is recommended for approval. The previous committee decision to grant consent forms a material planning consideration. With the exception of the NHS Trust contribution no longer being sought by the Council, due to this not meeting the tests as set out in the NPPF, there are no other material changes to the application which would warrant a change in recommendation.

6.0 Table of key planning issues

Issue	Conclusion
Principle of development	The proposed development is considered to meet the objectives as set out in the NPPF, such that the proposal would comprise sustainable development, for which there is a presumption in favour for. Equally, the impacts of the development are not considered to outweigh the benefits of the scheme, providing much needed housing, and those policies seeking to protect areas and assets of importance do not provide justified reasons for refusal that would prevent the tilted balance described in the appended

	<p>report from applying. The principle of development is therefore considered acceptable.</p>
<p>Impact on the historic environment</p>	<p>The Conservation Officer considers that there would be less than substantial harm resulting from the development and through careful design, the proposed development could be achieved without significant detriment to the historic environment. When weighing the potential harm caused against the benefits of the scheme, the benefits are considered to outweigh the harm caused in this case.</p>
<p>Impact on the landscape</p>	<p>The Landscape Officer raised no objection to the principle of the scheme, and it is considered that the proposed development of up to 61 dwellings, together with access could be accommodated on the site without significant detriment to the landscape qualities of the area.</p>
<p>Ecology</p>	<p>It is considered that the proposed development could be achieved without significant harm to protected species, and could contribute to enhancing biodiversity at the site.</p>
<p>Residential amenity</p>	<p>It is considered that a proposal for up to 61 dwellings could be delivered without significant adverse impacts on the residential amenity of the area.</p>
<p>Impact on trees</p>	<p>It is considered that the harm caused to trees and other natural features would be limited in this case, and would not outweigh the benefits of the scheme.</p>
<p>Impact on cemetery</p>	<p>The proposed development is not considered to significantly compromise the use and tranquillity of the cemetery to warrant refusal of the application.</p>

Highway Safety	The proposed development is not considered to significantly impact highway safety to warrant refusal of the application, and the Highway Authority raise no objection.
Flood risk and drainage	It is considered that a suitable drainage system could be achieved at this site to safeguard properties and land downstream from any impacts of flooding as a consequence of the proposed development. On this basis, no objection has been received from the Lead Local Flood Authority or Wessex Water.
Affordable Housing	The applicant is proposing to deliver 40% of the proposed housing as affordable units, in accordance with policy 8 of the Local Plan. This would be secured through a legal agreement.
Planning Contributions	Contributions have been sought towards play facilities, allotments, formal outdoor sports, informal outdoor space, community, leisure and indoor sports, rights of way, primary and secondary education, and libraries. These are considered to be in accordance with the relevant tests as set out in the NPPF and CIL, and the applicant has agreed to the contributions, with a legal agreement now in place.

7.0 RECOMMENDATION

GRANT, SUBJECT TO A LEGAL AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) TO SECURE THE FOLLOWING:

40% affordable housing, and financial contributions towards the following: play facilities & maintenance, allotments, formal outdoor sports & maintenance, informal outdoor space & maintenance, community, leisure and indoor sports

facilities, rights of way enhancement, primary & secondary education, index-linked from the date of resolution.

And the following conditions (and their reasons):

1. The development to which this permission relates must be begun not later than whichever is the later of the following dates:-

- (i) the expiration of three years from the date of grant of outline planning permission, or
- (ii) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: This condition is required to be imposed by Section 91 and 92 of the Town and Country Planning Act 1990 (as amended).

2. Application for approval of any 'reserved matter' must be made not later than the expiration of two years beginning with the date of this permission.

REASON: This condition with shortened timeframe, normally imposed by Section 92 of the Town and Country Planning Act 1990 (as amended), seeks to encourage development, due to the pressing need for housing to be provided in a short timeframe, within an area where housing land supply is not currently being met.

3. The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan, drawing no. RL001 (BS), received 14 Dec 2018
Access Design and Visibility Splays, drawing no. 028.0050.004 Rev C, received 6 March 2019
Access Tracking, drawing no. 028.0050.005, received 14 Dec 2018

REASON: For the avoidance of doubt and in the interests of proper planning.

4. Approval of the details of the layout, scale and appearance of the buildings, and the landscaping of the site (hereinafter called the Reserved Matters) shall be obtained from the Local Planning Authority in writing before any development is commenced.

REASON: To ensure the satisfactory development of the site.

5. No development shall commence until details of the access, geometric highway layout, turning and parking areas have been submitted to and agreed in writing by the Local Planning Authority.

Reason: To ensure the proper and appropriate development of the site.

6. No development shall commence until a Construction Traffic Management Plan (CTMP) shall have been submitted to and agreed in writing by the Local Planning Authority. The CTMP must include:

- construction vehicle details (number, size, type and frequency of movement)
- a programme of construction works and anticipated deliveries
- timings of deliveries so as to avoid, where possible, peak traffic periods
- a framework for managing abnormal loads
- contractors' arrangements (compound, storage, parking, turning, surfacing and drainage)
- wheel cleaning facilities
- vehicle cleaning facilities
- Inspection of the highways serving the site (by the developer (or his contractor) and Dorset Highways) prior to work commencing and at regular, agreed intervals during the construction phase
- a scheme of appropriate signing of vehicle route to the site
- a route plan for all contractors and suppliers to be advised on
- temporary traffic management measures where necessary

Thereafter, the development must be carried out in strict accordance with the approved Construction Traffic Management Plan.

Reason: to minimise the likely impact of construction traffic on the surrounding highway network and prevent the possible deposit of loose material on the adjoining highway.

7. No development shall take place until a survey of the downstream surface water/land drainage system has been undertaken, which confirms existing drainage arrangements from the site, including the outfall route from the existing pond and ditch system.

Reason: To ensure compliance with National Planning Policies concerning sustainable drainage and to better manage local flood risk and residual risk from public drainage infrastructure.

8. No development shall take place until a Surface Water Construction Management Plan, which shall include measures to prevent turbid run-off from the construction site reaching the road and/or discharging into the public sewer system, has been submitted and approved, in writing, by the Local Planning Authority. The agreed measures shall be implemented and maintained throughout the construction phase of the development.

Reason: To prevent increased risk of flooding during construction, prevent pollution and protect water quality.

9. No development shall take place until a detailed and finalised surface water management scheme for the site, based upon the hydrological and hydrogeological context of the development, has been submitted to, and approved in writing by the local planning authority. The surface water scheme shall be implemented in accordance with the submitted details before the development is completed.

Reason: To prevent increased risk of flooding and to improve and protect water quality.

10. No development shall take place until details of maintenance and management of the surface water sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. These should include a plan for the lifetime of the development, the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the surface water drainage scheme throughout its lifetime.

Reason: To ensure future maintenance of the surface water drainage system and to prevent increased risk of flooding.

11. No development shall commence until written agreement has been received from Wessex Water, and in turn submitted in writing to the Local Planning Authority, confirming that capacity can be made available for new connections to the foul drainage network.

Reason: To ensure appropriate capacity is first secured to manage foul drainage from the development.

12. No development shall commence until a detailed Arboricultural Method Statement shall have been produced, submitted to and approved in writing by the Local Planning Authority. The statement shall include details of how the existing trees are to be protected and managed before, during and after development and shall include information on traffic flows, phased works and construction practices near trees. The development shall thereafter be carried out in accordance with the approved Arboricultural Method Statement.

Reason: To ensure thorough consideration of the impacts of development on the existing trees.

13. The development shall comprise of no more than 61 dwellings.

Reason: To protect the character and appearance of the area.

14. Prior to the occupation of the first dwelling, the first 15.00 metres of the vehicle access, measured from the rear edge of the highway (excluding the vehicle crossing - see the Informative Note below), must be laid out and constructed to a specification first submitted to, and agreed in writing by, the Local Planning Authority.

Reason: To ensure that a suitably surfaced and constructed access to the site is provided that prevents loose material being dragged and/or deposited onto the adjacent carriageway causing a safety hazard.

15. Prior to the occupation of the first dwelling, a scheme showing precise details of the proposed cycle parking facilities shall have first been submitted to, and agreed in writing by, the Local Planning Authority. The cycle parking facilities shall be constructed in accordance with the agreed details, and made available for use prior to the occupation of the 30th dwelling. Thereafter, they shall be maintained, kept free from obstruction, and made available for the purposes specified.

Reason: To ensure the proper construction of the parking facilities and to encourage the use of sustainable transport modes.

16. Prior to the occupation of the first dwelling, the following works must have been constructed to the specification of the Local Planning Authority:

The realignment of Burton Street and associated highway works, as shown on Dwg No 028.0050.004 Rev C (or similar scheme to be agreed in writing with the Local Planning Authority).

Reason: These specified works are seen as a pre-requisite for allowing the development to proceed, providing the necessary highway infrastructure improvements to mitigate the likely impact of the proposal.

17. Prior to the occupation of the 1st dwelling, a Travel Strategy must first have been submitted to and agreed in writing by the Planning Authority. The strategy should include measures to reduce the need to travel to and from the site by private transport and the timing of such measures. Thereafter, the strategy must be implemented in accordance with the details as approved.

Reason: In order to reduce or mitigate the impacts of the development upon the local highway network and surrounding neighbourhood by reducing reliance on the private car for journeys to and from the site.

18. Details submitted pursuant to any reserved matters application shall include exceedance measures, and a timetable for their implementation.

Reason: To ensure that the development is resilient to climate change and to ensure residual flood risk from infrastructure failure is managed appropriately.

19. Prior to the occupation of the 1st dwelling, all measures set out in the Biodiversity Mitigation & Enhancement Plan submitted by Lindsay Carrington Ecological Services dated 18th February 2019, as certified by Dorset County Council Natural Environment Team, shall be implemented in full.

Reason: To ensure that the development conserves and enhance biodiversity in accordance with the objectives of the National Planning Policy Framework.

20. Prior to the construction of the foundation of any dwelling, a Landscape and Ecology Management Plan (LEMP) shall first be submitted to and approved in writing by the Local Planning Authority. The LEMP shall include ecological enhancements, habitat creation and retained habitat features, together with details of maintenance of habitat/ecological features for a period of not less than 5 years. Such scheme shall be implemented immediately following commencement of the works, or as may be agreed otherwise in writing by the Local Planning Authority.

Reason: To ensure that the development conserves and enhance biodiversity in accordance with the objectives of the National Planning Policy Framework.

21. Prior to occupation of the 1st dwelling, a landscaping and tree planting scheme shall have first been submitted to and agreed in writing by the Local Planning Authority. The landscaping scheme shall include details of all tree, shrub and hedge planting, including details of species, sizes, and densities of plants. In addition, it shall include a long term management plan for all trees and landscaping which are to be retained and/or proposed at the site, together with provision for the maintenance and replacement as necessary of the trees and shrubs for a period of not less than 5 years. Such scheme shall be implemented during the planting season November - March inclusive, immediately following commencement of the works, or as may be agreed otherwise in writing by the Local Planning Authority.

REASON: To ensure the provision, establishment and maintenance of a reasonable standard of landscape, in the interest of safeguarding the visual amenity and landscape qualities of the area.

22. Prior to occupation of the 1st dwelling, full details of hard landscape proposals, including surfacing and boundary treatments, shall have first been submitted to and agreed in writing by the Local Planning Authority. Thereafter, development shall proceed in strict accordance with such details as have been agreed.

REASON: To ensure the provision, establishment and maintenance of a reasonable standard of hard landscaping, in the interest of safeguarding the visual amenity and landscape qualities of the area.

23. No external street lighting shall be erected on site, until a scheme showing the precise details of external lighting (including appearance, light intensity and orientation) shall have first been submitted to, and agreed in writing by, the Local Planning Authority. Thereafter, any street lighting shall be implemented in accordance with the agreed details, and shall be retained as such thereafter.

REASON: In the interests of safeguarding the rural amenity of the area.

24. Prior to the construction of the foundation of any dwelling, details of the finished floor levels of the buildings shall have first been submitted to and approved in writing by the Local Planning Authority. Such levels shall be relative to an ordnance datum or such other fixed feature as may be agreed in writing by the Local Planning Authority. Thereafter, the development shall be carried out in strict accordance with the approved details.

REASON: In the interests of visual amenity

25. Prior to the construction of any attenuation pond, details of depths, gradients, and any associated structures shall have first have been submitted to, and agreed in writing by, the Local Planning Authority. Thereafter, development shall proceed in strict accordance with such details as have been agreed.

REASON: in the interests of visual amenity

26. Prior to the construction of any part of the development above damp proof course level details of the number and location of charging points for plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations, within the development, along with a timetable for their provision, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details and timetable.

REASON: To ensure that adequate provision is made to enable occupiers of development to be able to charge their plug-in and ultra-low emission vehicles.