

Case Officer: Rob Forrester
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Ctte Date: 14th October 2019

File No: CHE/19/00242/FUL
Plot No: 2/0600

ITEM 3

Use of land as open storage (Use Class B8), retention of fill material and associated landscaping works. (Flood risk statement recieved 26.06.2019, Ex and Proposed Sections received on 16.07.2019 and Landscape Master Plan received on 12.08.2019), on land at Land at Whittington Industrial Estate, Station Lane, New Whittington. Derbyshire. S43 2BP

Local Plan: Part Employment/part existing open countryside
Ward: Barrow Hill and New Whittington

1.0 **CONSULTATIONS**

Local Highways Authority	Comments received 10/06/2019 – no objection, advises an advisory note regarding the public right-of-way
CBC Strategic Planning Team	Comments received 03/06/2019. Concerns raised – part of the site intersects the open countryside (Policy EVR2). Complies with CS9, should integrate with surroundings CS18
Derbyshire Wildlife Trust	Comments received 05/08/2019 – The revised Ecological Management Plan will provide higher quality habitat and good connectivity - Recommends conditions
Yorkshire Water Authority	Comments received 24/06/2019 – no comments
Crime Prevention Design Advisor	Comments received 28/05/2019 – I note that the application is to regularise

	an existing use which has been in existence since 2016. There are no overriding community safety matters
Environment Agency	Comments received 31/05/2019 - We can remove our previous objection if the deposited material remains within the site boundary behind the fence, so access via the public footpath is maintained
DCC Lead Flood Authority	Comments received on 11/07/2019 – note that the site now falls within FRZ1 – no objections
CBC Drainage	Comments received 11/07/2019 – Concur with E.A comments – no objections
CBC Environmental Health	Comments received 15/05/2019 –
Ward Members	No comments received
Site Notice / Neighbours	3 representations received from one addressee

2.0

THE SITE

2.1

The site the subject of the application comprises an open area of land that was formerly an over-grown woodland area, although the trees and scrub were subsequently removed prior to the development being carried out.

2.2

The site is close to residential areas along Station Road, and is adjacent to the Whittington Industrial Estate which lies to the north. The site falls partly within the open countryside and part is an allocated extension to the industrial estate.

Photos showing existing site from the south and the public right-of-way.



- 2.3 The site falls between the River Rother to the east and Station Road to the west, and it can be viewed from the south, where a public right-of-way crosses the pen fields, and the photograph above shows the site between the fields, and with the existing industrial estate behind.
- 2.4 The land is marked on its southern boundary by an old metal fence, and the photograph below shows the fill that has been tipped on the land – which is the subject of enforcement action.



3.0 **RELEVANT SITE HISTORY**

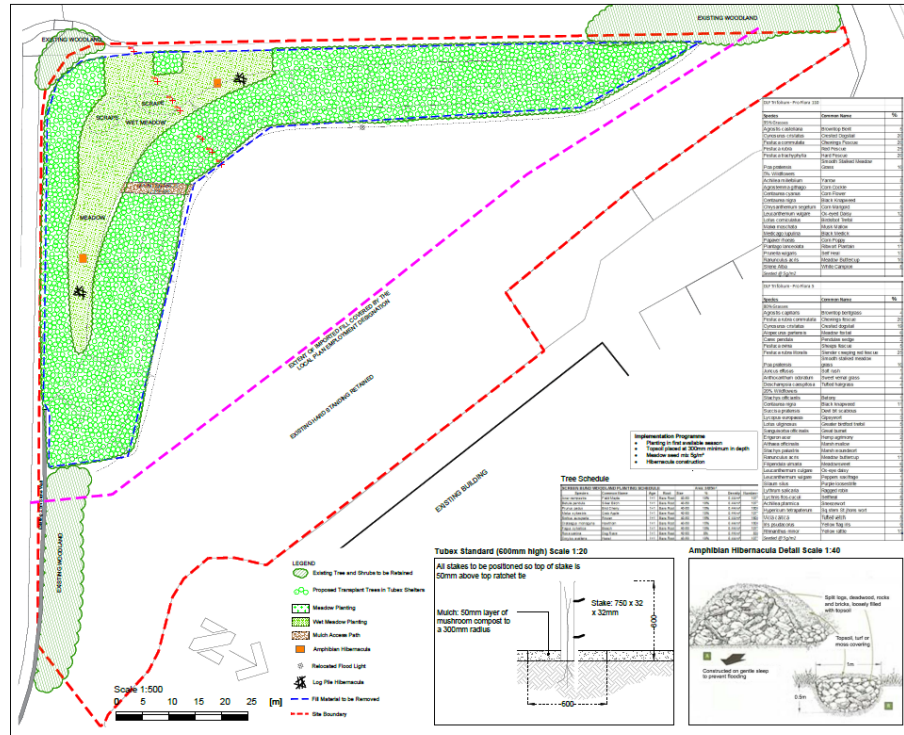
- 3.1 The only relevant Planning History is the previous enforcement action – (2 notices were authorised by the Planning Committee relating to the unauthorised fill material and unauthorised use of land for open storage). The notices were served on 3rd July 2018, came into effect on 8th August 2018 and required a 12 month compliance period. They required the removal of the fill material and use of land for storage to be removed/drawn back to the line of the Local Plan allocation for employment purposes, and the creation of a bund and the planting of grass and trees on the land where the fill was to be removed.
- 3.2 The enforcement notices requiring the removal of the fill from part of the site, granted planning permission for the retention of the fill material, and the open storage on the part of the site that is subject to the employment allocation, creating a straight line, with open storage to the north and a grassed/treed area to the south.
- 3.3 It was not considered expedient to take enforcement action over the whole of the site as it was an industrial

type development and the northern part of the site is allocated for such purposes.

- 3.4 The planning permission granted by the enforcement notices is a material planning consideration in relation to the current application.

4.0 **THE PROPOSAL**

- 4.1 The application submitted seeks full planning permission for the retention of a larger area of fill than that permitted by the enforcement notices, and the enlarged area would then follow a curved-line projecting further south rather than the straight one of the enforcement notices, and its use for open storage, along with a re-located lighting column.
- 4.2 The curved area created would extend beyond the existing and proposed employment allocation, and would effectively be an encroachment in to the countryside.
- 4.3 The remaining area to the south (required by the enforcement notices is to be seeded with grass and trees planted) would be re-profiled to create a wildlife site, with a specialist ecological habitat created for the benefit of wildlife management.
- 4.4 The resulting 'bund' between the ecology site (at the lower level) and the raised area of fill (at the upper level) would also be landscaped, to create a soft "edge" to the development that would become a new transition between the employment site and the open countryside.
- 4.5 The Proposed Site Layout is shown below



- 4.6 The application submission is supported by an Ecological Management Plan and Landscape Master-plan that defines the proposed treatment of the ecology 'buffer' that would be created (which provides for specialised ecology areas, meadow and wet-land meadow areas, tree plantations, amphibian and log-pile hibernacula) along with a detailed 5-year management regime.
- 4.7 The applicant is proposing, via a Section 106 Unilateral obligation, to secure the provision of the ecological buffer, and a 5-yearly review of the Ecological Management Plan and implementation of any revised findings.
- 4.8 The suggested Heads of Terms of the Section 106 Obligation are as follows:-
- A timetable for providing the initial ecology plan;
 - That it be provided under the guidance of a trained ecology clerk-of-works;
 - That a new L & E.M Plan be submitted or review by the L.P.A every 5 years, and
 - That under the guidance as above, the new plan be implemented

4.9 The actual Section 106 document has yet to be drawn up at the time of this report.

5.0 **CONSIDERATIONS**

5.1 **Planning Policy Background**

5.1.1 The site is situated within the Barrow Hill And New Whittington Ward in an area which is part allocated within the current Adopted Local Plan for employment purposes (and that allocation is to be advanced through the Emerging Local Plan), and part (the ecological element, and the additional fill area) falls within the countryside beyond the current development limits.

5.1.2 Having regard to the nature of the application proposals policies CS1 (Spatial Strategy), CS2 (Location of Development), CS3 (Presumption in favour of Sustainable Development), CS6 (Sustainable Design), CS7 (Management of the Water Cycle), CS8 (Environmental Quality), CS9 (Green Infrastructure and Biodiversity), CS13 Economic Growth, CS18 (Design) and CS20 (Demand for Travel) of the Core Strategy and the wider National Planning Policy Framework (NPPF) apply.

5.2 **Principle of Development**

Local Plan Spatial Strategy

5.2.1 The main policy considerations relating to the principle of development are Core Strategy policies CS1, CS2, CS9 and CS13. These policies are viewed to be in date and relevant to the proposal.

5.2.2 **CS1** (Spatial Strategy) - sets out that the overall approach is to concentrate new development within walking and cycling distance of centres and focus on areas that need regenerating. In terms of walking distance, the site is around 650m to the south of New Whittington Local Centre via a well-used and lit route. The open storage element is also adjacent to a long-established employment (industrial estate). Given the distance and route, this is considered reasonable in terms of distance from a centre, as set out in CS1, and in addition, CS1 establishes

allocations for new employment sites for B1, B2 and B8 uses (including the part of the current site). The planning permission granted by the issue of the enforcement notices, grants planning permission for the open storage on the part of the site that falls within the employment allocation, with only a minor element of the new site projecting in to the countryside.

- 5.2.3 Policy CS1, whilst directing new development to sustainable locations close to identified centres, does not preclude development in the countryside as the important features of the countryside - green gaps and green-belt - are covered by other policies.
- 5.2.4 Saved Local Plan Policy ERV2 (Countryside) – which sought to include criteria restricting development in the countryside - has been shown at recent appeals to be out-of-date, and little weight can be attributed to it.
- 5.2.5 Emerging Local Plan Policy LP20 (River Corridors) seeks to resist development that harms the existing character or restricts future potential for improvement and public access for recreation.
- 5.2.6 The site falls within the defined river corridor area, and whilst an element of the ‘fill’ material and the open storage would intrude in to the area, that element is concentrated against the northern edge (the industrial allocation) and it would be surrounded by the proposed landscaped bund and the ecology habitat to be created, and as a result, the development overall would not impact on the character of the river corridor.
- 5.2.7 The development does not impinge on public access to the banks of the River Rother or the nearby public footpath, and is considered overall, to be a significant enhancement as advocated by Policy LP20.
- 5.2.8 **CS2** (Principles for Location of Development) sets criteria for assessing proposals for development on unallocated sites, and part of the site falls outside of the allocated employment site, albeit a modest element of the overall scheme. In relation to the stated criteria of Policy CS2, the

development can be assessed against the criteria of Policy CS2 as follows:-

Criterion a (will deliver the Spatial Strategy contained in CS1)

The proposal would not impact on the delivery of CS1, and the site is a sustainable location close to the local centre, and would allow for walking/cycling

Criterion b (on previously developed land that is not of high environmental value)

Whilst the site is a greenfield one not previously developed, the site being cleared former woodland, is not of high environmental value, although the proposed ecological habitat and landscaping that would be created would be a significant environmental improvement

Criterion c (not on the best/most versatile agricultural land)

The site being cleared former woodland, is not of high agricultural quality

Criterion d (Delivers wider regeneration and sustainability benefits to the area)

The site will deliver regeneration benefits in a sustainable location, in the form of additional employment area, as well as a significant ecological habitat improvement/landscaping

Criterion e (utilises existing/improved social infrastructure)

The site utilises an existing access arrangement and transport modes and would not have significant demands on social infrastructure due to the nature of the development. It does not impact on the existing right-of-way

Criterion f (maximises walking/cycling and public transport opportunities)

The site of the fill material and open storage is effectively an extension of the applicant's existing crane storage operation and as a result, it provides for the same level of walking/cycling. The proximity of the site to the New Whittington Local Centre and public transport and the

surrounding housing, ensures that the employees would have the opportunities to utilise transport-modes other than the private car

Criterion g (sequential and other National/Local test)

The site is not within the flood-risk zone and it is not a retail or other town-centre development and as such, no 'tests' are applicable.

- 5.2.9 Policy CS2 also indicates that in assessing a sites suitability, the Council will take in to consideration, whether the proposed use would aid the re-generation of sites. As stated above, the enforcement notices granted planning permission to the part of the application site that falls within the existing and proposed industrial allocation, but would only result in the remaining land being grassed and trees planted.
- 5.2.10 By allowing the current proposal to extend the open storage beyond the allocation by a modest amount, the site will be re-generated with some additional employment-related area, as well as ensuring that the remainder of the site is re-generated for ecological/habitat creation to a significantly higher level than would be achieved by the enforcement action.
- 5.2.11 This is considered to be a substantial benefit and the proposal is therefore in general accordance with Policy CS2.
- 5.2.12 **CS9** (Green Infrastructure and Bio-diversity) recognises Chesterfields green infrastructure at all levels of the planning process and the aim of protecting and enhancing the network. New development is expected to result in a net increase in bio-diversity and if possible, link-habitats.
- 5.2.13 The planning permission granted by the enforcement notices represents the applicant's fall-back position, and the Local Planning Authority could insist that the notices be complied with and the basic grass and tree-planting as required by the notices be provided.

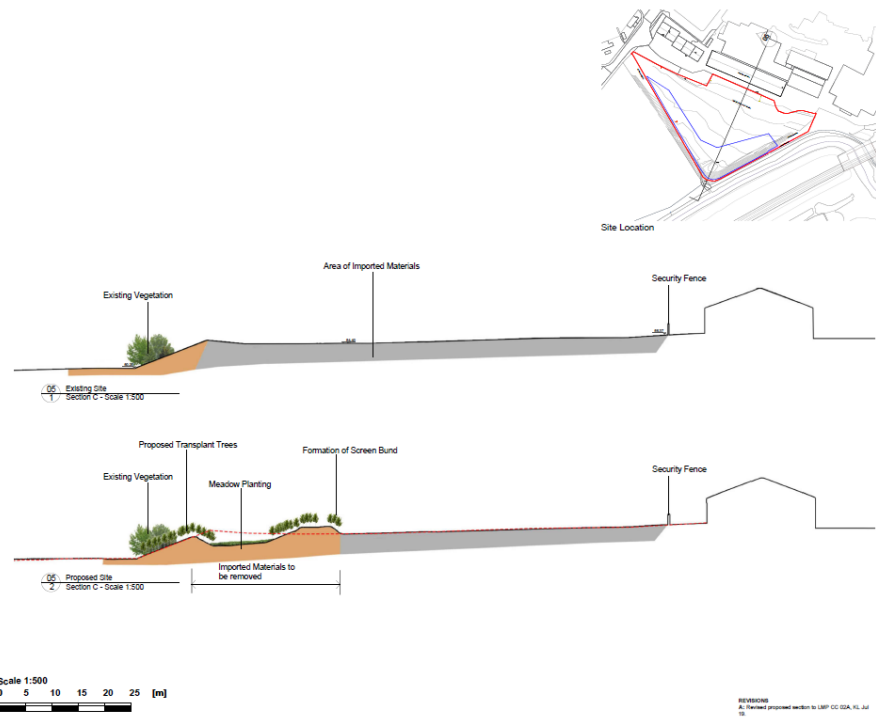
- 5.2.14 The N.P.P.F however, directs the decision-maker at paragraph 38, to “approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible”.
- 5.2.15 The current proposal represents an ideal opportunity to secure the significant bio-diversity improvement envisaged by Policy CS9 and in a manner advocated by the N.P.P.F.
- 5.2.16 The proposal represents ‘sustainable development’ and with the ecological improvements proposed, clearly performs particularly well against the environmental arm of sustainability, in addition to the economic benefits. The creation of a more attractive wildlife area close to public footpaths would also add to a healthy lifestyle with some attendant social benefits.
- 5.2.17 Whilst there would be a modest incursion in to the countryside (arising from the extra fill/open storage) outside of the allocated employment area, the benefits achieved are considered to outweigh this modest impact.
- 5.2.18 **CS13** (Economic Growth) seeks to allow economic development where it accords with the spatial strategy including B2 and B8 uses in the Rother Valley Corridor. B8 uses are permitted where they would not cause any traffic movement problems.
- 5.2.19 The proposed additional open-storage now envisaged, lies directly adjacent to the existing/proposed employment allocation and is located close to an established centre and as a result, does not represent a conflict with either the spatial strategy or Policy CS13.
- 5.2.20 Given that the Local Plan has relevant policies that are not out of date there is no requirement to apply the approach to the presumption in favour of sustainable development

set out in policy CS3 and paragraph 11 of the NPPF, however it has been concluded above that the proposal represents sustainable development in any event.

- 5.2.21 In this case when considering policies CS1, CS2, CS09 and CS13 together, the proposal is in general accord with the aims of those policies and given the above the proposal would not prejudice the spatial strategy and strategic objectives.
- 5.2.22 When considering purely the principle of development, in this particular instance, having regard to the small scale of the proposed development, its location and the degree to which it meets the requirements of CS1, CS2, CS9 and CS13 and the NPPF it is considered that on balance the principle of development is acceptable.

5.3 **Ecological Interests**

- 5.3.1 The proposal provides, as mitigation for the encroachment beyond the allocated employment site boundary, that the land between the River Rother to the east, Station Road to the west and the open land (at the lower level) to the south, where the boundary is marked by an old wrought-iron fence and some remaining trees.
- 5.3.2 The applicant has submitted a Landscape Master-Plan and a Landscape and Ecological Management Plan (L.E.M.P), to demonstrate how the site would be laid-out for the benefit of wildlife and substantial areas of enhanced habitat will be created, along with its maintenance for the first 5 years after its provision.
- 5.3.3 The wildlife/habitat element of the site (which is at a lower level than the fill/open storage) would be extensively planted with groups of trees, as well as meadow-land and individual hibernacula for wildlife, particularly amphibians – see existing/proposed sections below.



5.3.4 Derbyshire Wildlife Trust welcomes the proposal stating:-

“We are pleased to note that the applicant has taken some of our earlier comments on board and consider that the revised plans will result in the creation and maintenance of higher quality meadow habitats, providing better habitat connectivity with the wider landscape beyond the site boundary.

While we note that floodlight columns have been relocated to the new boundary between the storage and habitat areas, we would like to reiterate the impacts of lighting on nocturnal wildlife and would welcome further consideration of timers or motion sensors to restrict lighting to essential periods only.

If the Council is minded to grant consent, we recommend that conditions are attached to secure both the creation and long-term management of the new habitats, as set out within the LEMP. We also recommend that habitat creation works should be implemented under the direction of a suitably experienced Ecological Clerk of Works to ensure that features such as hibernacula are fit for purpose”.

5.3.5 It is apparent from the above that the bio-enhancement scheme now proposed represents a significant improvement over the applicant’s fall-back position which

is to comply with the enforcement notices, reduce the fill/open storage to the Local Plan allocation boundary and to grass/plant trees on the remainder of the land.

- 5.3.6 It is considered that the improved bio-diversity/increased habitat, is entirely the result envisaged by Policy CS9, but it can only be delivered by the granting of permission for the modest increase in the fill area now proposed.
- 5.3.7 The compliance with the L.E.M.P could be a condition of approval, however whilst it is clear in relation to the initial 5years, how the site would be managed for ecology purposes, the position beyond that time is less-well defined, and it would need to be reviewed. It might be for example that one type of plant does not flourish very well and a review of the plan might suggest an alternative species.
- 5.3.8 Policy CS9 indicates that where new green infrastructure is proposed, there must be clear funding and delivery mechanisms in place for its long-term maintenance before development is commenced.
- 5.3.9 Issues of funding and long-term maintenance – beyond the initial 5 years – cannot readily be controlled by conditions, particularly as much of the development has already occurred, and this issue has been raised with the applicant, and as a result, the applicant has agreed to provide a legal obligation (under Section 106 of the Town and Country Planning Act 1990) that would deliver the required funding and maintenance.
- 5.3.10 The matter would be progressed as a s106 Undertaking to be signed by the applicant and whilst the final document has yet to be received, the Heads of Terms have been agreed, as listed in paragraph 4.8 above.
- 5.3.11 The commitment under Section 106, will ensure that the new wildlife habitat is delivered within an agreed timetable and maintained in the future in an appropriate manner, the L.E.M.P reviewed as necessary and its recommendations undertaken, and as a result, the proposal would represent an appreciable benefit to the green infrastructure of the

area (as well as screening the proposed and existing employment area), and the proposal which therefore complies with the provisions of policies CS2 and CS9 of the Core Strategy and the advice within the N.P.P.F.

5.4 **Design and Appearance**

- 5.4.1 In accordance with Core Strategy Policy CS18 all new development should identify, respond to and integrate with the character of the site and surroundings and respect the local distinctiveness of its context. In doing so developments are expected to respect the character, form and setting of the site and surrounding area; having regard to its function, appearance, scale and massing.
- 5.4.2 The proposed retention of a larger element of filled ground than is allowed by the enforcement notices will have some visual impact although this is lessened by the fact that from public vantage-points, the new development (open storage) would be viewed against a back-drop of the existing industrial estate, the southern end of which is dominated by the applicants existing crane storage/supply business
- 5.4.3 The impact of the development is therefore very much reduced, and would be mitigated further by the proposed re-profiling of the bund, the landscaping and habitat creation.
- 5.4.4 The development will therefore be visually acceptable in the landscape, and the “curved” development area created, will appear more natural in the landscape than the harsh line that would be created by the current allocation which has a straight line boundary.
- 5.4.5 The development, particularly the new planting that will soften the southern edge, and the habitat creation, will ensure that the development would be assimilated in to the countryside.
- 5.4.6 It is considered that the siting, design and scale of the development proposals are acceptable having regard to

the provisions of policies CS2, CS18 and CS19 of the Core Strategy.

5.5 **Highways Issues**

5.5.1 Whilst the representations received make reference to highway safety and increased traffic, the development is a simple extension of the existing industrial estate and the proposed allocation of its expansion.

5.5.2 As a result, the development, which is modest in terms of the increase in the size of the open storage, would utilise the existing industrial estate road junction on to the public highway network.

5.5.3 The existing access from the industrial land on to Station Road is considered to have adequate visibility splays and the development will utilise the parking/turning associated with the current use.

5.5.4 The Local Highways Authority (LHA) raise no objections to the proposal, noting that there are no restrictions on the current uses and activities on the wider industrial estate and therefore any highway-based objection could not be substantiated and the proposal is acceptable in Highway safety terms.

5.5.5 The N.P.P.F states that development should only be resisted on highway safety grounds if the resulting situation would be severe, and on this basis, and having regard to the other matters considered above, the development proposals are considered to be acceptable in terms of Highway Safety and accord with the provisions of policies CS2, CS18 and CS20 of the Core Strategy in respect of highway safety matters.

5.6 **Flood Risk & Drainage**

5.6.1 In relation to potential flood risk, the site does not fall within a flood-risk zone, although this is of some controversy in the opinion of the objector. The removal of the woodland on the site prior to the fill occurring did not require any sort of permission from this Authority as the

trees were not protected nor in a conservation area, and whilst the objector has made reference to the impact the trees may have in removing water from the environment, this is not relevant to the current application, and the proposed ecological Management Plan proposes new tree planting in any event.

5.6.2 The site is currently shown on the Environment Agencies flood-risk maps as falling within flood-risk zone 3 and is also identified as a flood storage area, however prior to the submission of this application (and prior to the service of the enforcement notices) the applicant's agent demonstrated to the Environment Agency, that their flood-risk map was incorrect. Due to the gradient and level of the land (prior to the unauthorised fill being deposited), it was such that it could not fall within flood-risk zone 3 (or therefore be a flood storage area), and the Environment Agency have accepted that this is the case.

5.6.3 *Their amended response states:-
"Following a site visit in 2017 and consideration of our new draft flood model outlines, we can remove our previous objection. Our draft flood model outlines for the area show the site is located in flood zone 1. The boundary of flood zone 3b as shown on our current published flood map is out of date and will be updated with the new information in due course.*

Whilst the deposited material on site is within the zone for permitting, i.e. 8 metres from the top of the bank of the River Rother, we would not be concerned if the deposited material remains within the site boundary i.e. behind the fence, so access via the public footpath is maintained".

5.6.4 In the light of the above comments, (and the incorrect annotation on the E.A Flood-Map) the Environment Agency, Lead Flood Authority and the CBC Drainage Section raise no objections on flood-risk grounds and a flood-risk assessment is not required.

5.6.5 For the above reasons, the issue of potential flooding did not constitute a reason for serving the enforcement notices.

5.6.6 The objector does not consider this to be an appropriate way forward, although it must be noted that on the photographs of the flood-waters shown on the objectors submitted photographs, it is apparent that due to the height of the land concerned (the site) was such, that it did not flood.

5.6.7 The proposed 'filled' ground the subject of this application (being a mix of inert material mostly hard-core and crushed brick) is such that it will be freely draining and as a result, it will not result in any drainage issues, nor will the development add to flooding of other land, and the development complies with the provisions of policies CS2 and CS7 of the Core Strategy.

5.7 **Land Condition/Noise(Inc. Neighbouring Impact / Amenity)**

5.7.1 The site the subject of the application was former open land and woodland (and therefore unlikely to be contaminated), and it now comprises a substantial volume and depth of fill, and as a result, the new open-storage use proposed is not considered to be 'at risk' from contamination, having regard to policy CS8 of the Core Strategy.

5.7.2 In respect of land condition the site lies outside of the Coal Authority's defined high-risk area and is subject to Coal Authority standing advice.

5.7.3 As the development comprises open-storage and not buildings, the risk from mining legacy is minimal the site is not one where development should be restricted and it is considered that the development complies with the provisions of policies CS2 and CS8 of the Core Strategy.

5.7.4 The Council's Environmental Health Officer (EHO) sought additional information as to the type of activity/operations that would occur, although the application is for a non-specific B8 open storage use, and as the majority of the site falls within the industrial allocations (where B1, B2 and B8 uses are promoted, it was not considered appropriate

to seek to restrict the type of storage. The land was previously used to store railway track and other infrastructure associated with Network rail.

- 5.7.5 The Environmental health officer also raises concerns stating that operations involved in moving of material can cause dust/noise if adequate controls are not in place, although as the enforcement notices require the removal of the fill to a specified line, and the current proposal seeks to retain more of the fill on-site, there would be less movement than would occur if the applicant was compelled to comply with the notices.
- 5.7.6 The nearest dwellings are an appreciable distance from the site on the opposite side of Station Road, and it is not considered that the development would cause any undue noise or disturbance from either the fill-movement works (which would be less than complying with the enforcement notice situation in any event), or the final open storage use.
- 5.7.7 In order to avoid undue noise at unsociable hours, it would be appropriate to restrict the operating time of the fill removal.
- 5.7.8 The position of the dwellings is such that no unacceptable impact on the amenities of the neighbours arising from a loss of light or privacy and no undue noise/disturbance would arise from the use of the access.
- 5.7.9 Subject to the above controls identified above, the proposal would not harm the amenities of nearby residents, and the development complies with the provisions of policies CS2 of the Core Strategy.

5.8 **Other Considerations**

- 5.8.1 Mature Trees - The only other issue is the reference by the objector to the loss of mature woodland.
- 5.8.2 Prior to the unauthorised development commencing, the applicant had cleared the site of all the vegetation/trees and other scrub (apart from some boundary trees)

however as the felled trees were not protected or in a Conservation Area, no consent was need from the Council for their removal.

5.8.3 As tree removal was not 'development' and was a separate activity from the subsequent unauthorised fill/open storage, it could not be the subject of any enforcement action.

5.8.4 Whilst there was potentially some impact on wildlife habitat – and the objector suggests that transpiration from the trees would be changed – this would be off-set by the new tree planting and habitat creation proposed.

5.9 Community Infrastructure Levy (C.I.L)

5.9.1 Having regard to the nature of the application proposals the development comprises the creation of hard-standing for open storage and the development is not therefore CIL Liable.

6.0 REPRESENTATIONS

6.1 The application has been publicised by means of a press advertisement (expired 06/06/2019); a site notice (expired 31/05/2019) and neighbour letters (publicity period expired 30/05/2019).

6.2 As a result of the applications publicity, 3 letters of objection (from the same addressee) have been received from the occupant of No 2 Meadow Close, New Whittington, which makes the following points:-

- In June 2007 the River Rother flooded Station Lane, Meadow Close and Brearley Avenue – photos attached
- In 2017 Chesterfield Crane Co removed mature trees and tipped fill on the land within the flood-plain
- On 3 April 2018, Chesterfield Borough Council Planning Committee authorised the issue of enforcement notices seeking to remove the fill back to the line of the Local Plan allocation
- This retrospective application has been submitted in April 2019

- There are anomalies in the submitted documents, particularly in relation to flooding, which states the development would not add to flood-risk elsewhere
- The removal of trees – and the natural transpiration they have – will add to flooding elsewhere as will the raising of the ground with non-absorbent materials, which will prevent flood-water from being absorbed
- The applicant seeks to re-zone the site from flood-risk zone 3 to FRZ1, however as the state of the land has been unequivocally changed, this criteria should not be used and a full site specific flood-risk assessment would be required
- The lack of an assessment is contrary to Policy CS7 as the development has removed trees and increased the risk of flooding
- The applicant does not provides supporting evidence to warrant such a change – which is shown on the Environment Agency Flood-Risk Map as flood-risk zone 3 and Flood Storage Area
- The changes to the land are such that the level of protection against flooding has been radically changed and the threat of flooding for surrounding residents has increased
- The fill area represents an impenetrable wall to flood-waters
- There are surrounding residents on Hardwick Avenue and Bluebank View opposite the Station Road entrance that would be affected – the removal of the trees has led to many complaints from residents about increased noise, traffic and disturbance
- The loss of 3 acres of Flood Storage Area and woodland is contrary to Policy CS9 – it is wrong to lose tis flood capacity at a time when flooding is increasing and extra homes are put at risk and where Nationally, flood-risk defences are being reviewed as increased rainfall is expected over the next decade
- The applicant alleges that the industrial units on the estate are tenanted and no scope to use them as storage, but they are units to let and the storage land was being vacated by Network Rail 9 months ago
- The acknowledgement letter from the Council included a clerical error, referring to me as Mr Young

- In relation to my questioning of the Environment Agency, I received a letter indicating that the site is incorrectly shown on their flood-risk map, which would be corrected at the next re-issue, but they did not include details of the information as to how this change came about
- The case officer for the planning application did not know the precise date of receipt of this information, but he was aware that the E.A periodically reviewed the flood-risk zones when new information/date was available
- I do not agree that the site is not in the flood-risk zone and whilst I do not have any photographs, I am prepared to testify that the site did flood prior to the works being carried out
- Whilst the tipped fill makes assessment of the contour difficult, but it is obvious that Station Road is flat up to the junction with Brearley Avenue, and rises gently to the metal railing fence marking the woodland boundary within the industrial estate 27m from the junction_of the site
- Whilst I agree with the reason given for taking enforcement action, I am disappointed that the question of flooding was not included as I believe the woodland was correctly classified as within the FSA

Officer Commentary

The issues raised in the above representations are referred to within the main body of the report (above).

7.0

HUMAN RIGHTS ACT 1998

7.1

Under the Human Rights Act 1998, which came into force on 2nd October 2000, an authority must be in a position to show:

- Its action is in accordance with clearly established law
- The objective is sufficiently important to justify the action taken
- The decisions taken are objective and not irrational or arbitrary

- The methods used are no more than are necessary to accomplish the legitimate objective
- The interference impairs as little as possible the right or freedom

7.2 It is considered that the recommendation is objective and in accordance with clearly established law noted above.

7.3 The recommended conditions are considered to be no more than necessary to control details of the development in the interests of amenity and public safety and which interfere as little as possible with the rights of the applicant.

8.0 **STATEMENT OF POSITIVE AND PROACTIVE WORKING WITH APPLICANT**

8.1 The following is a statement on how the Local Planning Authority (LPA) has adhered to the requirements of the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 in respect of decision making in line with paragraph 38 of the National Planning Policy Framework (NPPF).

8.2 Following changes to the Landscape Master-plan and L.E.M.P, and given that the proposed development does not conflict with the NPPF or with 'up-to-date' Development Plan policies, it is considered to be 'sustainable development' and there is a presumption on the LPA to seek to approve the application. The LPA has used conditions to deal with outstanding issues with the development and has been sufficiently proactive and positive in proportion to the nature and scale of the development applied for.

8.3 The applicant /agent and any objectors/supporter will be notified of the Committee date and invited to speak, and this report informing them of the application considerations and recommendation /conclusion is available on the web-site.

9.0 **CONCLUSION**

- 9.1 The proposed development is considered to be an appropriate alternative to the current situation wherein the enforcement notices grant planning permission for the part of the site which falls within the industrial allocation, and requires the remaining part of the site to be cleared of fill, and grass/trees planted.
- 9.2 The applicant seeks to retain an increased area of fill, but offers in mitigation - via a Unilateral undertaking under Section 106 of the Planning Act – the removal of the fill and laying out of the remainder of the site for use as an enhanced area of wildlife habitat and its long-term maintenance.
- 9.3 Whilst there would be a modest encroachment in to the countryside beyond the confines of the allocated employment site, this is a minor area, and the significant gain in bio-diversity and habitat creation (compared to the grass/tree planting required by the enforcement notices), represents a very real and substantial environmental improvement that is considered by be a sustainable benefit that outweighs any ‘harm’ caused by the encroachment.
- 9.4 The objectors concerns regarding traffic and the loss of flood storage/increased flood-risk have been shown to be unfounded, and the proposal has appreciable economic and environmental benefits.
- 9.5 The development has been sited, detailed and designed and landscaped such that the development proposals comply with the provisions of policies CS1, CS2, CS9, CS13, CS18, and CS20 of the Chesterfield Local Plan: Core Strategy 2011 – 2031.
- 9.6 Planning conditions have been recommended to address any outstanding matters and ensure compliance with policies CS2, CS8 and C9, of the Chesterfield Local Plan: Core Strategy 2011 – 2031 and therefore the application proposals are considered to be sustainable and acceptable.

10.0 **ADDITIONAL RECOMMENDATION**

- 10.1 That a Section 106 Obligation be negotiated covering:
- A programme for delivery of the new wildlife habitat area together with the required funding and maintenance.

11.0 **RECOMMENDATION**

- 11.1 Approve subject to the imposition of the following conditions:

01. The development hereby approved shall only be carried out in full accordance with the approved plans (listed below) with the exception of any approved non-material amendment.
- Drawing Number - 881-CC02 Rev A - Landscape Master-Plan - received on 12.08.2019;
 - Drawing Number - 881-CC03 Rev A - Existing and Proposed
 - Section A - received on 16.07.2019;
 - Drawing Number - 881-CC04 Rev A - Existing and Proposed
 - Section B - received on 16.07.2019;
 - Drawing Number - 881-CC05 Rev A - Existing and Proposed
 - Section C - received on 16.07.2019;
 - Drawing Number - D5161 - D01 - Location Plan;
 - Drawing Number - Un-numbered - Landscape and Ecological Management Plan – By Weddle Landscape Design dated July 2019, and
 - Drawing Number - MP.05161 - Flood Risk statement - Received 26.06.2019.
02. Works involved in the removal or movement of fill material and any ground-works or construction work to implement the permission hereby granted shall only be carried out on site between 8:00am and 6:00pm in any one day on Monday to Friday, 9:00am to 3:30pm on a Saturday and at no time on a Sunday or Public Holiday. The term "work"

will also apply to the operation of plant, machinery and equipment.

03. The hard-standing area hereby approved shall only be used for open storage falling within use-class B8 to the Schedule to the Town and Country Planning (Use Classes) Order 1987) or in any provision equivalent to that Class in any Statutory Instrument revoking and re-enacting that order, and for no other purpose.
04. There shall be no storage of items in excess of 15m in height above ground level on the part of the site that falls between the proposed habitat planting and the edge of the Local Plan Employment Designation, the extent of which is shown as a dotted pink line on the submitted Landscape Master-Plan.
05. Prior to the installation of the lighting column shown on the Landscape Master-Plan, full details of the column including height, strength of illumination, and manner in which its impact on the habitat area would be controlled (by cowl and/or imitation on time of illumination), shall be submitted to and approved in writing by the Local Planning Authority. The lighting column shall be installed in accordance with the agreed specification, and thereafter retained in the agreed form. No other lighting shall be installed that would illuminate the storage area or adjacent habitat/ecology area.

Reasons for Conditions

01. In order to clarify the extent of the planning permission in the light of guidance set out in "Greater Flexibility for planning permissions" by CLG November 2009.
02. In the interests of residential amenities.
03. In order to ensure that no noise or disturbance occurs in the interest of the amenity of the surrounding residents, as other uses have not been assessed.

04. In the interest of the visual amenity of the locality, as the site forms the transition between the urban area and the countryside.
05. In the interests of ecology and to ensure that there is no disturbance to bats, wildbirds and other protected species.

Notes

01. The proposed development lies within a coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to The Coal Authority. Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com
02. Attention is drawn to the fact that, this permission is granted in conjunction with the completion of a separate planning obligation under Section 106 of the Town and Country Planning Act 1990 to which any developer should also refer.