

## **DEVELOPMENT PLAN**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise.

## **Unitary Development Plan - current status**

The Unitary Development Plan for Sunderland was adopted on 7th September 1998. In the report on each application specific reference will be made to those policies and proposals, which are particularly relevant to the application site and proposal. The UDP also includes a number of city wide and strategic policies and objectives, which when appropriate will be identified.

## **STANDARD CONDITIONS**

Sections 91 and 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 require that any planning application which is granted either full or outline planning permission shall include a condition, which limits its duration.

## **SITE PLANS**

The site plans included in each report are illustrative only.

## **PUBLICITY/CONSULTATIONS**

The reports identify if site notices, press notices and/or neighbour notification have been undertaken. In all cases the consultations and publicity have been carried out in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2010

## **LOCAL GOVERNMENT ACT 1972 – ACCESS TO INFORMATION**

The background papers material to the reports included on this agenda are:

- The application and supporting reports and information;
- Responses from consultees;
- Representations received;
- Correspondence between the applicant and/or their agent and the Local Planning Authority;
- Correspondence between objectors and the Local Planning Authority;
- Minutes of relevant meetings between interested parties and the Local Planning Authority;
- Reports and advice by specialist consultants employed by the Local Planning Authority;
- Other relevant reports.

Please note that not all of the reports will include background papers in every category and that the background papers will exclude any documents containing exempt or confidential information as defined by the Act.

These reports are held on the relevant application file and are available for inspection during normal office hours at the Office of the Chief Executive in the Civic Centre or via the internet at [www.sunderland.gov.uk/online-applications/](http://www.sunderland.gov.uk/online-applications/)

Janet Johnson  
Deputy Chief Executive

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**Reference No.:** 11/01066/SUB Resubmission

**Proposal:** **Provision of car park comprising 161no. spaces and 1no. coach parking space (as amended)**

**Location:** Land At Campground Springwell Road Springwell  
Gateshead NE9 7XW

**Ward:** Washington West

**Applicant:** Mr David Pegg

**Date Valid:** 19 September 2013

**Target Date:** 19 December 2013

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## **PROPOSAL:**

Members may recall that this application was initially referred to the Sub-Committee meeting of 18 December 2013 wherein it was resolved to defer due to the applicant, who wished to speak in support of the application, being delayed.

Planning permission is sought by Wrekenton Nou Camp Youth Football Club to provide a 161-space car park on an area of grassland which is used occasionally for informal parking in association with the adjacent football pitches as well as for daily visitors such as dog walkers and runners who use the fields. The site is owned by Gateshead Council but is wholly within the boundary of the City of Sunderland.

The proposed car park has an area of approximately 4250sq. m and would be surfaced with tarmac. The car park would be afforded vehicular access from the road to the Campground Refuse Disposal Works which runs along the south of the site, the existing vehicular access to the north would be terminated and a new pedestrian access would be provided to the northeast from Springwell Road which would be linked to the football pitches by a dedicated footway to be provided. Of the proposed 161no. parking spaces, 4no. would be dedicated disabled spaces, a single coach parking space would be incorporated and cycle racks which could accommodate up to 10no. bicycles would be provided within the curtilage of the site to the southwest. The submitted plans indicate that a total of 7no. trees would be removed and new trees would be provided within a buffer on the periphery of the site within the fence line to comprise a mix of Willow, Oak and Beech, in addition to Hawthorn hedging.

The site exists as an area of grassed open space and is situated within the Tyne and Wear Green Belt. The area on which the proposed car park to be provided is generally well maintained, although evidence of vehicular use is apparent. Relatively mature trees exist within the site in addition to numerous trees and shrubbery along its periphery. The site generally has a gradual upward east to west gradient which becomes steeper at its western side. The site is set higher than the B1288 Springwell Road, which runs along the northeast of the site and slopes downward from north to south, and the unadopted access the road to the Campground Refuse Disposal Works which runs along its southern boundary. Access to the site is currently afforded from the north via a hard paved track which also provides access to GL Ford and Co. Ltd. vehicle body repair centre off

which visitor parking for this business is afforded to the north, beyond which exists the Springwell Inn public house. The majority of the site is bound by green paladin fencing, although steel palisade fencing and panelling exists along a significant proportion of the northern boundary of the site. Residential properties exist to the north beyond this steel palisade fencing and to the southeast, namely Low Mount Farm, on the opposite side of Springwell Road.

This application is a resubmission of application ref. 10/02363/FUL, which was withdrawn in September 2010 due to a lack of information. The current application was then submitted in April 2011 but subsequently made invalid due to a lack of information and that the 'red line boundary' of the location plan, which identifies the extent of the application site, incorrectly included part of the curtilage of properties in Seaburn Gardens to the north and the requisite notice had not been served on the owners of these properties. The application was revalidated upon receipt of the outstanding information and an appropriately amended 'red line boundary' on 19 September 2013.

The following documentation has been submitted in support of the application.

- Design and Access Statement (which includes a Statement of Community Involvement)
- Flood Risk Assessment and Drainage Strategy
- Transport Statement

#### **TYPE OF PUBLICITY:**

Press Notice Advertised  
Site Notice Posted  
Neighbour Notifications

#### **CONSULTEES:**

Northumbrian Water  
Network Management  
County Archaeologist  
Environmental Health  
Sport England  
Gateshead Council  
Environment Agency  
Gateshead MBC  
Washington West - Ward Councillor Consultation

Final Date for Receipt of Representations: **15.10.2013**

#### **REPRESENTATIONS:**

The application has been subjected to two rounds of consultation by means of site and press notices and letters to neighbouring properties as well as with the relevant statutory and non-statutory consultees; one after it was initially validated in April 2011 and the second when it was revalidated in September 2013.

Representations have been received from a neighbouring occupant, submitted by a resident of Low Mount Farm, the concerns raised within this representation are summarised as follows.

- The proposal would exacerbate existing traffic congestion problems and would increase the risk of accidents on roads.
- Additional noise and consequent disturbance would be caused by the Football Club as a result of the proposal.
- The road leading to the Campground Refuse Disposal Works and adjacent field frequently flood and inadequate information has been submitted to address this matter.

The County Archaeologist confirmed that no comments are offered in this instance.

The Environment Agency offered no objection, noting its standing advice regarding general surface water drainage issues and advising that surface water from the proposed car park be directed through an oil interceptor before discharging to the ground.

Gateshead Council's planning section has provided a response as an adjacent authority and, whilst not objecting, raised concerns in respect of the appropriateness and impact of the proposal on the openness of the Green Belt, visual impact, the necessity of the number of spaces proposed, highway/pedestrian implications and drainage. These issues will be elaborated upon subsequently.

Northumbrian Water noted the applicant's intention to dispose of surface water generated from the development via an infiltration method which will not enter the public sewer and confirmed that it has no objection on this basis.

Sport England advised that, upon consultation with the Football Association, the proposed development is ancillary to the principal use of the site as a playing field of playing fields, and does not affect the quantity or quality of pitches or adversely affect their use, so offers no objection.

The Council's Environmental Health section originally recommended that a desk top study and site investigation be carried out to ascertain the existence of contaminants within the site and associated risks from the proposed development but subsequently revised its comments, advising that, given the nature of the development, it would be proportionate to provide the developer with an advisory that the land has had a previous industrial use, which should be taken into consideration during the development of the land, rather than require the aforementioned surveys to be carried out.

The Council's Network Management section noted that the application proposes 179no. car parking spaces, however the submitted plans indicate 176no. spaces [which has been rectified by altering the description of the proposal], the proposal appears to address the parking demand identified by the Transport Statement, although drivers may still park on street to ensure an easy get away, the proposed pedestrian access is acceptable and it may be appropriate to relocate the proposed cycle store closer to the access to avoid vehicle / cycle conflict within the car park. Concerns were also raised over the proposed access and the necessity of relocating the existing access is queried in respect of the potential for vehicles queuing at the junction with Springwell Road and the potential conflict with larger vehicles visiting the Campground Refuse Disposal Works. However this would be taken from an unadopted access road to the

Refuse Disposal Works which is operated by SITA in association with Gateshead Council.

## **POLICIES:**

In the Unitary Development Plan the site is subject to the following policies;

B\_2\_Scale, massing layout and setting of new developments  
B\_3\_Protection of public/ private open space (urban green space)  
CN\_2\_Purpose of the Green Belt in Sunderland  
CN\_4\_Control of other operations in the Green Belt  
CN\_5\_Safeguarding the visual amenity of the Green Belt  
EN\_12\_Conflicts between new development and flood risk / water resources  
L\_7\_Protection of recreational and amenity land  
T\_8\_The needs of pedestrians will be given a high priority throughout the city.  
T\_9\_Specific provision will be made for cyclists on existing/new roads and off road  
T\_10\_Protect footpaths; identify new ones & adapt some as multi-user routes  
T\_14\_Accessibility of new developments, need to avoid congestion and safety problems arising  
T\_22\_Parking standards in new developments  
WA\_19\_Maintenance of a Green Belt

## **COMMENTS:**

The main issues to consider in the assessment of this application are set out as follows:

- Principle of Proposed Development;
- Impact on Openness and Visual Amenity of Green Belt;
- Highway Implications;
- Flood Risk and Drainage; and
- Residential Amenity

## **Principle of Proposed Development**

The site is situated within the Tyne and Wear Green Belt and, as such, policy WA19.1 of the Council's adopted Unitary Development Plan (UDP) is applicable, which dictates that this particular section of the Green Belt shall be retained. Paragraph 80 of the National Planning Policy Framework (NPPF) sets out five purposes of including land in Green Belts, which are reflective of policy CN2 of the UDP, namely to:

- check the unrestricted sprawl of large built-up areas;
- prevent neighbouring towns merging into one another;
- assist in safeguarding the countryside from encroachment;
- preserve the setting and special character of historic towns; and

- assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

Paragraph 81 of the NPPF goes on to advise that, 'once Green Belts have been defined, local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land'.

The essential characteristic of Green Belts is their permanence and their protection must be maintained as far as can be seen ahead. In order to safeguard the Green Belt, paragraph 87 of the NPPF considers 'inappropriate development' to be, by definition, harmful and should therefore not be approved except in very special circumstances. Paragraph 88 goes on to state that, 'when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations'.

Within this context, paragraph 89 of the NPPF indicates that the construction of new buildings inside the Green Belt is inappropriate unless for one of the following purposes:

agriculture and forestry;

appropriate facilities for outdoor sport, outdoor recreation, and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;

the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;

the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;

limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or

limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

Whilst the current proposal does not constitute the construction of a new building, the proposed car park would be directly associated with the football pitches which exist within the site, to be used by Wrekenton Nou Camp Youth Football Club, who are a Charter Standard club, and its patrons and supporters. Therefore, it is considered that the proposal constitutes an appropriate facility for outdoor sport.

As set out in the main report to the Sub-Committee, Sport England, upon consultation with the Football Association, advised that the Football Club has

grown dramatically in recent years and a car park would therefore be of benefit, particularly given that the club has raised issues about parking on the access road to the disposal works. Although the proposal would result in the loss of part of the playing field, the current area is not suitable for a pitch.

For such reasons, the provision of a car park to serve the Football Club is considered to constitute appropriate development within the Green Belt and is therefore considered to be broadly acceptable, in principle. However, the development can only be considered to be appropriate within the Green Belt on the proviso that it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it (as set out by paragraph 80 of the NPPF) and notwithstanding the other issues set out below.

### **Impact on Openness and Visual Amenity of Green Belt**

Policy B2 of the UDP reflects the above, stating that the scale, massing, layout and/or setting of new developments should respect and enhance the best qualities of nearby properties and the locality whilst large scale schemes, creating their own individual character, should relate harmoniously to adjoining areas' whilst policy B3 states that 'public and private open space will be protected from development which would have a serious adverse effect on its amenity, recreational or nature conservation value; proposals will be considered in the light of their contribution to urban regeneration and to the importance of such space to the established character of the area'.

As set out above, (paragraph 89 of the NPPF) development can only be considered to be appropriate within the Green Belt on the proviso that it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. Reflective of paragraph 89, UDP policy CN5 sets out that care will be taken to ensure that the visual amenities of the Green Belt will not be injured by proposal for development within, or conspicuous from, the Green Belt.

One of the core principles of the NPPF, as set out by paragraph 17, is that planning should 'always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings'. Paragraphs 56 and 57 expand upon this principle, highlighting the importance Central Government place on the design of the built environment, including individual buildings, public and private spaces and wider area development schemes. Paragraph 64 of the NPPF goes on to state 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'.

One of the purposes of including land within the Green Belt, as set out by paragraph 80 of the NPPF (see above) is to 'assist in safeguarding the countryside from encroachment'. To this regard, given the form of development proposed, particularly the extensive use of tarmac, it is considered that the proposal would represent the erosion of the Green Belt by encroaching into it in a highly unsympathetic manner.

Therefore, in order for the proposal to be considered any further, 'very special circumstances' must be demonstrated (the onus for which lies with the applicant) in order for the proposal to be considered any further. Where such very special

circumstances cannot be provided, the proposal represents an inappropriate form of development within the Green Belt and is therefore unacceptable in principle.

The proposal would benefit the football club by providing a formalised car park, which has been identified by the Football Association as a requirement for the club. Accordingly, as set out above, there is no objection to the principle of providing a football pitch on the area of land in question, provided that it is designed in an appropriate manner. Indeed, it is noted that site is currently used informally for parking, although only occasionally (mainly on weekends) and no formal consent has been given for such.

The site is situated in a prominent location and is highly visible from Springwell Road to the southeast and north and Leam Lane to the northeast. The site exists as an area of grassland which is generally well maintained and situated within the Tyne and Wear Green Belt which extends to the south and part of the north of the site and to the west beyond the Campground Refuse Disposal Works. The site abuts the northern extent of the Green Belt so, whilst there exists built development immediately to the north, this is not situated within the Green Belt.

The proposal comprises the provision of an approximately 4250 square metre expanse of tarmac which would be almost entirely unbroken. This is considered to be wholly inappropriate within a semi-rural setting, which is compounded by the Green Belt allocation of the site and its surroundings. In addition, the site levels rise substantially to the west and this embankment would also be covered by tarmac, increasing the prominence of the proposed car park and further eroding the green aspect of the site and its surroundings.

The amount of tarmac has been slightly reduced from as originally proposed and planting, including numerous trees, would be incorporated on the periphery, and within the curtilage of, the site. It is also noted that a grassed embankment abuts the south of the site. However, given the vast amount of tarmac surfacing still proposed, it is not considered that such soft landscaping and tree planting would adequately screen the proposed car park, particularly taking into account the levels of the western section of the site. In addition, mature trees would be required at the spacing proposed to provide any reasonable amount of screening, however this would pose a considerable cost and it is not considered that the applicant has demonstrated that such planting could realistically be achieved. In fact, as set out below, the proposed surface material has been chosen primarily to limit the cost of the development.

The above concerns have been discussed with the applicant and the LPA has suggested that additional soft landscaping be incorporated within the proposed car park and a more appropriate material be used, such as Grasscrete or a similar product, in respect of its visual impact as well as to afford natural drainage, to be discussed below. The applicant has advised that Grasscrete would be prohibitively expensive (i.e. twice the cost of tarmac for this site) and alleges that such a surface can become slippery when wet, so can be dangerous. However, the LPA is not satisfied that the applicant has demonstrated that tarmac is the only and most appropriate viable option for the surfacing of the proposed car park and no evidence has been provided to corroborate the claims that Grasscrete is unsafe.

Therefore, the reasons which has been provided by the applicant, namely providing a necessary facility for the football club and the cost implications of



using an alternative surface material to tarmac, are not considered to constitute 'very special circumstances' to justify the proposal and do not outweigh the harm described above. It is considered that the proposal would be highly injurious to the visual amenity of the area and the openness of the Green Belt and would constitute an unsympathetic encroachment into the countryside.

## **Flood Risk and Drainage**

Policy EN12 of the UDP dictates that the Council, in conjunction with the Environment Agency (EA) and other interested parties, will seek to ensure that proposals would not be likely to impede materially the flow of flood water, or increase the risk of flooding elsewhere, or increase the number of people or properties at risk from flooding (including coastal flooding) or adversely affect the quality or availability of ground or surface water, including rivers and other waters, or adversely affect fisheries or other water-based wildlife habitats.

In addition, paragraph 100 of the NPPF states that 'inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. For these purposes, paragraph 2 of the Technical Guidance to the NPPF sets out that:

"areas at risk of flooding" means land within Flood Zones 2 and 3; or land within Flood Zone 1 which has critical drainage problems and which has been notified to the local planning authority by the Environment Agency;

"flood risk" means risk from all sources of flooding - including from rivers and the sea, directly from rainfall on the ground surface and rising groundwater, overwhelmed sewers and drainage systems, and from reservoirs, canals and lakes and other artificial sources'.

As summarised in the main report to the Sub-Committee, the EA made no specific comments in respect of surface water drainage, noting its standing advice regarding general surface water drainage issues. Northumbrian Water raised no objection on the basis that the development is not proposed to affect its apparatus, given that it is proposed to dispose of surface water via an infiltration method and not the public sewer.

The site is situated within Flood Zone 1 and the surface of the proposed car park is to be of tarmac, so would be inherently non-porous. The submitted Flood Risk Assessment (FRA) states (paragraph 10.1.5) that 'groundwater flooding is not an issue at the development site. There have been no recorded instances of flooding caused by groundwater'. However, Gateshead Council has confirmed that it has received complaints in respect of flooding deriving from surface water discharge and photographing evidence has been provided by a local resident of a large gathering of water on the adjacent field to the south, who also states that this field is regularly prone to flooding.

The FRA notes that surface water run-off would increase from a greenfield rate for a 100 year event, 6 hour duration of 132m<sup>3</sup> to a rate of 231m<sup>3</sup> as a result of the proposal. Accordingly, the provision of a soakaway with an attenuation volume of at least 100m<sup>3</sup> is proposed adjacent to the boundary onto Springwell Road to offset such additional run off. The surface water would be drained by gullies and channels into soakaways to attenuate the run-off.

However, the Proposed Drainage Strategy of the FRA is considered to be based largely on assumption and it is not considered that it has been clearly demonstrated that an attenuation volume of at least 100m<sup>3</sup> can be realistically achieved or delivered. Given the extent of the proposed area of tarmac (approx. 4250 square metres) together with a lack of recognition of existing flooding problems within the area, the LPA is not satisfied that the applicant has adequately demonstrated that the proposal would not exacerbate existing flooding problems which are known to be prevalent in this area. In addition, pumping to the Northumbrian Water public sewer is technically challenging and prohibitively expensive and discharge to the nearest watercourse also appears to be prohibitively expensive.

There are particular concerns that the proposal would increase the risk of flooding of the road leading to the Campground Refuse Disposal Works and the field to the south of this road. As set out above, the LPA is not satisfied that the applicant has demonstrated that the use of non-porous tarmac is the only viable option. Notwithstanding this, scant porous/permeable areas would be incorporated within the proposed car park and, given the gradient of the site all surface water would run off directly onto Springwell Road and the road which runs along the south of the site. Accordingly, it is considered that the proposal would increase the risk of flooding locally.

### **Highway Implications**

Paragraph 32 of the NPPF states that consideration should be given to:

the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;

safe and suitable access to the site can be achieved for all people; and

improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

Paragraph 75 of the NPPF states that, 'planning policies should protect and enhance public rights of way and access. Local authorities should seek opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails'.

Policy T14 of the UDP aims to ensure that new developments are easily accessible to both vehicles and pedestrians, should not cause traffic problems, should make appropriate provision for safe access by vehicles and pedestrians and indicate how parking requirements will be met. Policy T21 relates to the provision of parking within the City and the need to take account of the need to maintain safe road conditions and ensure the economic viability of existing retail and commercial centres whilst UDP policy T22 seeks to ensure that the necessary levels of car parking provision will be provided.

The proposal appears to broadly address the parking demand identified by the Transport Statement wherein vehicle numbers were counted on a single day in

April 2013 and coach parking and turning areas have been incorporated. Whilst the proposal would effectively formalise the current occasional use of the land for car parking, it is not considered that it represents a sustainable approach given that it caters almost solely for car users. In particular, the Transport Assessment provides details of existing bus and cycle links and a dedicated pedestrian access through to the football pitches has been incorporated, however no details have been provided as to how such sustainable means of transport would be encouraged or, with the exception of the pedestrian access, better facilitated. Cycle stands are proposed, however they would be particularly remotely sited to the southwest of the site so would not be directly accessible from the proposed pedestrian or vehicular access without having to travel through a substantial proportion of the car park.

Vehicular access to the site is proposed to be relocated from the north, via a small area of privately owned hard surface, to the south via the road leading to the Campground Refuse Disposal Works. There have been no recorded accidents to date, so it is desirable that the existing access continue to be used. The applicant has cited concerns that they do not have formal consent to utilise the hard surface from which the existing access is taken as the reason for the desire to relocate the access. However, the applicant has not demonstrated that there is an immediate risk of a prohibition of the use of this access, nor has it been demonstrated that the applicant has established an entitlement to take access from the road leading to the Refuse Disposal Works, which is not an adopted highway and currently under the ownership of Gateshead Council. Therefore, the applicant's reasons for relocating the access are unclear.

In respect of the proposed access, a gradient of 1 in 10 would be provided, which is highly undesirable and in excess of the recommended 1 in 12.5. In addition, previous concerns have been raised over cars parking on the road leading to the Refuse Disposal Works and it is considered that such indiscriminate parking would be exacerbated by relocating the access to be taken directly off this road. Whilst a formal car park would be available, it is likely that cars would also park on this road for convenience, particularly given the significant amount of time it is likely to take for a car park of 161 spaces to be cleared. Such indiscriminate parking would conflict with vehicles using the Campground Refuse Disposal Works, including HGVs, which is particularly well-used during weekends when the proposed car park would be at its most busy. In addition, it is likely that cars would be parked over the kerb, resulting in damage to the adjacent grassed verges.

For such reasons, it is considered that the proposal would be prejudicial to highway safety and the free passage of traffic.

### **Residential Amenity**

Reflective of paragraph 17 of the NPPF, as set out above, policy EN6 of the UDP states that, where noise sensitive development is proposed which is likely to be exposed to unacceptable levels of noise or vibration from roads, railways, existing industrial areas or other potentially noisy uses, the Council will require the applicant to carry out an assessment of the nature and extent of likely problems and to incorporate suitable mitigation measures in the design of the development, if necessary. Where such measures are not practical, permission will normally be refused.

There are dwellings in Seaburn Gardens and Eighton Terrace immediately to the north/northwest of the site, the nearest of which is around 40 metres from the proposed car park. Whilst the proposed car park would be occasionally busy, by the nature of its use to accommodate vehicles on a short-term basis it is not considered that the proposal would give rise to any significant level of noise, vibration or consequent disturbance to neighbouring residents.

## **Conclusion**

As set out above, whilst the LPA do not object to the principle of providing an appropriately designed car park on the site, it is considered that the proposal, by means of its design and use of tarmac, would be highly injurious to the visual amenity of the area and the openness of the Green Belt, would constitute an unsympathetic encroachment into the countryside and would increase the risk of flooding locally whilst highway safety and the free passage of traffic along the road leading to the Campground Refuse Disposal Works would be compromised.

After the previous Sub-Committee meeting, the agent acting on behalf of the applicant agreed to extend the statutory deadline for the determination of the application to 10 January 2013. The LPA requested a later deadline in order to allow for the submission and consideration of revised plans and/or additional information in the hope of proactively reaching a more acceptable form of development. However, the agent declined to extend the deadline any further despite the LPA's advice that the previous recommendation to refuse is likely to remain unchanged.

Consequently, it is recommended that Members refuse planning permission in accordance with the reasons set out below.

## **RECOMMENDATION: Refuse**

### **Conditions:**

- 1 The proposal, by means of its design and use of materials, would be detrimental to the visual amenity of the area and the openness of the Green Belt and would constitute an unsympathetic encroachment into the countryside, contrary to policies B2, B3, L7, CN2, CN4, CN5 and WA19.1 of the adopted Unitary Development Plan and paragraphs 79, 80, 87, 88 and 89 of the National Planning Policy Framework.
- 2 The proposal, by means of its design and use of materials, would unacceptably increase the risk of flooding locally, contrary to policy EN12 of the adopted Unitary Development Plan and paragraph 100 of the National Planning Policy Framework.
- 3 The proposal, by means of the proposed means of access, number of car parking spaces and lack of promotion of alternative sustainable modes of transport is detrimental to highway safety and the free passage of traffic along the road leading to the Campground Refuse Disposal Works, contrary to policies T14 and T22 of the adopted Unitary Development Plan and paragraphs 32 and 75 of the National Planning Policy Framework.

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**Reference No.:** 11/03177/EXT1 Extension of Time

**Proposal:** Application for a new planning permission to replace an extant planning permission 05/03963/SUB (Use of existing lake and land for trout/pike lake. Associated development including lodge, on site wardens accommodation, snack and tackle shop and W.C. and education room. Formation of car park, new ponds, jetties, footpaths and fencing.) in order to extend the time limit for implementation.

**Location:** Willows Reservoir East Of 23 Eddison Road Swan Washington

**Ward:** Washington East  
**Applicant:** Robert And Linda Wales  
**Date Valid:** 4 November 2011  
**Target Date:** 3 February 2012

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## **PROPOSAL:**

This application seeks to extend/renew a previous planning approval: reference 05/03963/SUB.

Planning approval 05/03963/SUB approved the use of the existing lake and land for trout/pike lake with associated development including lodge, on site warden's accommodation, snack and tackle shop and W.C. and education room, formation of car park, jetties footpaths and fencing.

Planning approval 05/03963/SUB was presented to Members of the Development Control (Hetton, Houghton and Washington) Sub Committee at their meeting on 31 October 2006. The planning approval certificate was subsequently issued on 7 November 2006. To date the development has not been implemented and the majority of the conditions applied to the approval granted in 2006 remain outstanding.

Members should note that the time period for implementation of the development approved by 05/03963/SUB was five years from the date of approval on 7 November 2006 (as set out in condition 1 of that planning permission).

This five year time period for implementation of the scheme is two years longer than the standard time limit for commencement of development following the approval of planning permission. In this instance, the five year time limit on commencement was applied to planning permission 05/03963/SUB in acknowledgement that ecology and wildlife survey can only be carried out at certain times of year and in acknowledgement that a great deal of supporting information was required to discharge pre commencement conditions.

The time period for implementation of this consent has now lapsed however consent was sought to extend the time limit for implementation of this consent by an additional three years before the period ended. An approval of this planning permission would effectively result in the applicant having had a total of eight years to implement development, an excess of five years over and above the time limit that is usually allowed following the approval of planning permission.

A Members site visit to this site was conducted on Monday 12 December 2011.

### **Principle of the Extension of Time for Implementation**

Communities and Local Government (CLG) Guidance on Greater flexibility for planning permissions allows applicants to apply for a new planning permission to replace an existing permission which is in danger of lapsing, in order to obtain a longer period in which to begin the development. This measure was introduced, temporarily due to current economic conditions and has been in place since 1 October 2009.

The original planning consent (05/03963/SUB) was granted on 7 November 2006, i.e. the consent has now lapsed, but as the application to extend the time limit for implementation was made prior to this consent lapsing, the Local Authority retains jurisdiction to issue an extension of time if it sees fit.

The CLG guidance advises Local Planning Authorities to take a positive and constructive approach towards applications which improve the prospect of sustainable development being taken forward quickly, whilst taking into account whether development plan policies and other material considerations have changed significantly since the original granting of planning permission.

Paragraph 30 of the CLG guidance allows where necessary, Local Planning Authorities to impose such conditions as they see fit, including different conditions to those originally imposed, where necessary. Local Planning Authorities may also refuse to grant new planning permission to replace an existing permission if they consider that development plan policies have altered to such an extent that the proposed development no longer complies with the requirements of policy or where it is considered that other material considerations have altered to such a degree that the previously approved development is no longer acceptable. Where a refusal of planning permission is issued in connection with an application to replace an existing planning permission with a new permission, the applicant has a right to appeal the formal decision of the Council.

In light of the above, the relevant planning policies are set out below under the "Policies" heading. The policy considerations relevant to the determination of this application remain unchanged from the time of the original grant of planning permission in 2006.

However, most of the conditions applied to the approval of planning permission in 2006 to enable the development to fully comply with adopted policy remain outstanding. This is due to the lack of acceptable information which would have allowed the Local Planning Authority to formally discharge conditions. This issue is further expanded upon later in this report.

Furthermore, the circumstances on and around the development site are considered to have altered significantly since the approval of planning permission 05/03963/SUB. These changes in circumstance are discussed in detail later in this report.

## **Site Context**

The Reservoir (hereafter referred to as Willows Pond) is located between the Swan Industrial Estate and "The Willows" residential development in an area of Barmston, Washington. To the southeast of the proposed development is the "Sherringham House" residential apartment block. To the south of the development is "Lakeside Gardens". The eastern edge of the site is formed by an access track and the embankment of the former Leamside Railway line.

The majority of the proposed development site comprises a lake and lake edges with an area of proposed wetland habitat located in the northwest corner of the site. A track positioned to the eastern edge of the lake at the foot of the railway embankment also forms part of the application site.

Willows Pond is shown on historical maps dating back to 1858. Prior to its current use as a fishing lake, the pond was used by the Cape Insulation factory as a cooling lake during which time the level of the lake could be controlled via a well head that is located, close to the pond's eastern shore adjacent to where the wardens accommodation is proposed as a part of the current proposal.

Part of the proposed development site (the north eastern corner) is designated as a SNCI (Site of Nature Conservation Importance). It should be noted that Sites of Nature Conservation Importance do not have statutory protection but are recognised on account of certain features, which makes them significant in a county or regional context. This particular SNCI supports a bird and amphibian population.

A Tree Preservation Order (No. 128) was made on trees on the site in 1999, however those trees are on the southern edge of the pond and are not affected by the proposed development.

## **TYPE OF PUBLICITY:**

Press Notice Advertised  
Site Notice Posted  
Neighbour Notifications

## **CONSULTEES:**

Natural England  
Durham Wildlife Trust  
Network Management  
Environment Agency  
Network Rail  
Northumbrian Water

**REPRESENTATIONS:**

Natural England

No Objection

Durham Wildlife Trust

Durham Wildlife Trust objects to the proposal as the information submitted does not discharge the conditions relating to the earlier permission with respect to the protection of wildlife and the Local Wildlife Site.

The report presented is inadequate in terms of the schedules and ongoing management plans that are required by the conditions, and the surveys conducted in relation to protected species, namely bats, do not follow recognised guidelines.

In the Trust's view the bat survey carried out was not adequate to establish the use of the site by bats and the potential use of trees on site as roosts, in particular trees that are to be reduced, pollarded or felled. There is therefore the risk that a bat, protected under UK law is killed or disturbed whilst in a place of shelter or rest or that there is damage to or destruction of a bat's breeding site or resting place.

Visual inspection identified trees 1951, 1991 and 1994 as being a potential bat roosts, showing the potential the site has to support bats. Tree 1994 is scheduled to be felled. Emergence surveys were conducted on 2 dates in June 5 days apart, the first survey when weather conditions were unsuitable for bats. The second survey recorded bat activity across the site.

The Bat Conservation Trust survey guidelines recommend that 2 or 3 surveys are conducted, spread through the optimum June to August period. However, there was in effect 1 survey in June used to inform the ecological report presented with the planning application.

The Bat Conservation Trust survey guidelines recommend a methodology for dusk emergence and dawn re-entry surveys - those guidelines state -

Surveyors are positioned so that all possible bat exits can be observed at one time and the line-of-sight should not exceed 50 m.

From the information supplied in the ecological survey report it is difficult to see how this guidance was followed by the use of 2 surveyors, particularly given the wooded nature of the site and the difficulty presented by being unable to view trees from the water.

Given this difficulty in surveying presented by the woodland and open water habitats the Trust would have expected a precautionary approach to be taken when undertaking tree works as part of the development, but there is no indication in the report that a suitable method statement will be used to minimise



potential impacts on bats and to inform those conducting tree works on what to do if bats are unexpectedly discovered.

The schedule for tree works given in the table in appendix 5 of the ecological report states that tree work will be completed within 2 months on the start of the construction work, but does not give a date for the start of construction. Tree felling and reduction could therefore be carried out at a time when risk of roosting bats is greatest. It should also be noted that there will also potentially be a risk to nesting birds if tree work is carried out at certain times of the year.

#### City Services - Network Management

No objection to the proposed development, however the unscaled plan submitted in relation to car parking does not give an accurate indication of its capacity. An accurate scale plan (drawn to a recognised scale) is required to verify the size and capacity of the car park proposed.

Regarding the service vehicle access, if approved, the use of this access should be controlled by a condition, restricting its use to a service/emergency vehicle use, and excluding access by other vehicles. An accurate, scale plan should be submitted, showing a turning facility for a refuse vehicle. In addition, the gates should be set back at least 12 metres from the highway.

#### Environment Agency

Comments from the Environment Agency are awaited and will be reported verbally at the Committee meeting.

#### Network Rail

No objection to the proposed development subject to:

- o All surface and fowl water drainage to be directed away from the railway line.
- o Mutual boundary between the railway and the development to be maintained at all times.
- o Trespass proof fence must be provided by the applicant adjacent to Network Rail's boundary (minimum 1.8 metres high) due to the increased risk of trespass on to the railway as a result of the development.
- o The developer should note that the railway line may become operational on a 24 hour a day basis in the future, appropriate soundproofing to the warden's lodge should be considered.
- o All earthworks and excavations must be designed and executed such that there is no interference with the integrity of Network Rail's property and structures.
- o All roads, paths or ways providing access to any part of the railways undertaker's land must be kept open during and after the development.

Final Date for Receipt of Representations: 20.12.2011

## REPRESENTATIONS:

8 representations received in objection to the proposed development.

The representations received raise issues as follows:

### Objector 1

- North east shoreline as indicated on the proposed site layout (adjacent to The Willows) is now under water due to a rise in the level of the lake.
- If boardwalks are built the water between them and the shore would be come stagnant and smelly.
- The track to the east of the lake where the Warden's Lodge is proposed is now privately owned by a group of "The Willows" residents (including the objector) who will not allow the applicant to develop any part of the track or any other land within their ownership (the applicant is allowed access along the track to service the well head for which he is responsible).
- Vehicular access onto Station Road from the track to the east of the lake would be dangerous, particularly for construction traffic.
- Fencing erected on the site has affected landing areas for Swans.
- The northern most area of the proposed development site encompasses an area of Village Green.
- Massive earthworks required in connection with the development, particularly the infilling required to create the car parking area, would lead to conditions prejudicial to the residential amenity of those living near to the site, particularly those residents of Sherringham House, Lakeside Gardens and Barmston Close.
- Increase in traffic volume, congestion and on street parking particularly during the construction phase of the development when large volumes of fill material will be required to be transported to the site, but also following consutruction during use of the fishing lake.

### Objection 2

- Proposed development will result in loss of privacy.
- Proposed development will generate unacceptable levels of noise.
- The access proposed to the development is poor.
- Such a construction/development of this area would breach Articles 5 & 8 and Protocol 1, Article 1 of the Human Rights Act 1998, for the neighbours and residents close by, which includes the objector.

### Objection 3

- Invasion of privacy due to overlooking from proposed car park.
- Proposal will allow public access to the bottom of rear garden where currently there is none.
- Increased litter.
- Loss of view.
- Detrimental impact upon wildlife and trees, particularly bats.
- Poor maintenance of the site to date.

### Objection 4

- Loss of view.
- Noise and disturbance due to close proximity of car park and Warden's Lodge.
- Negative impact upon wildlife.
- Increased traffic leading to dangerous road conditions.
- Warden's lodge is a way of gaining residential use on the site. Alternative accommodation in the nearby Swann industrial Estate and on Station Road should be considered instead.
- Invasion of privacy through overlooking in to rear of dwelling and rear garden from proposed car park.
- Security risk - the proposed car park will allow easy access to the rear of properties on Lakeside Gardens. These properties currently have lake water to the rear.
- Current lack of maintenance of the site and concerns that if litter and weeds are not cleared at the present time, the site will not be properly maintained in the future.
- Increase in letter.
- Intensification of traffic.

### Objection 5

- Objection 5 is accompanied by detailed plans indicating what the objector considers to be significant differences in the site since planning permission 05/03963/SUB was approved in November 2006.
- Objection 5 further states reasons for objection as being:

- Enclosure of land now designated as Village Green.
- Failure to discharge planning conditions of planning approval 05/03963/SUB.
- Landing area for Swans on the lake inhibited by fencing erected by the applicant.
- Litter and poor maintenance of the site to date.
- Number 6 - 11 The Willows now hold title plans for the area of the site to the rear of these properties. The owners of this area of land will not allow any development to take place on their property. In addition much of this area, which was dry land in 2005/2006 is now underwater due to the water level of the lake rising since 2006.
- The track to the east of the lake where the Warden's Lodge is proposed is now privately owned by a group of "The Willows" residents (including the objector) who will not allow the applicant to develop any part of the track or any other land within their ownership (the applicant is allowed access along the track to service the well head for which he is responsible).
- Negative impact upon biodiversity of the site as a result of the proposed development.
- 7220 cubic metres of fill will be required to fill the areas of the lake required for construction of the car park alone. This infilling is likely to take approximately two years to complete. The noise and disturbance to residents of all these homes will be intolerable while the work is carried out.
- The materials required for infilling and development of the site will destroy the ecosystem of the lake.
- Part of the proposal involves school groups - how will children be safely transported to the site, Station Road is not a suitable place for school children to exit buses.

#### Objection 6

- The boundary between the bottom of the gardens of 6-11 The Willows and the lake have changed since 2006.
- The track to the east of the site is now owned by a group of "The Willows" residents and no construction work i.e. Warden's Lodge, will be permitted on this track.
- Part of the site now has Village Green Status.
- A fence has been erected by the applicant on Council land.
- The applicant has a right of access through Sheringham House Car Park but the residents of Sheringham House have car parking and access

requirements that could be inhibited by the infilling and construction access proposed through the car park.

- 678 x 20 cubic metres of infill will be required and machinery for compacting: there is no detail of the fill material to be used and no detail of the construction barrier that will be used in the lake. This construction will occur 5-6 metres away from some of the flats located in Sheringham House and up to the rear gardens of Lakeside Gardens.
- The site is a Site of Nature Conservation importance that should be protected.
- Only one of the previously applied conditions have been discharged
- Lack of maintenance on site currently.

## **Objection 8**

Objection 8 listed the following grounds for objection:

- Inappropriate use.
- Increased litter.
- Loss of light.
- Loss of privacy.
- Noise from use.
- Poor access.
- Traffic Generation.
- Visual Amenity.

## **POLICIES:**

In the Unitary Development Plan the site is subject to the following policies;

B\_2\_Scale, massing layout and setting of new developments

T\_22\_Parking standards in new developments

T\_14\_Accessibility of new developments, need to avoid congestion and safety problems arising

B\_1\_Priority areas for environmental improvements

EC\_15\_Development or extension of bad neighbour uses

WA\_1\_Retention and improvement of established industrial / business area

B\_3\_Protection of public/ private open space (urban green space)

L\_7\_Protection of recreational and amenity land

L\_5\_Ensuring the availability of Public Parks and amenity open space

L\_4\_Standards for outdoor sport and recreation

L\_3\_Encouragement to regional recreational developments in appropriate locations

WA\_14\_Improvements in the level of provision / quality of amenity open space

CN\_18\_Promotion of nature conservation (general)

CN\_21\_Developments affecting designated / proposed LNR's, SNCI's or RIGS

CN\_15\_Creation of the Great North Forest

## **COMMENTS:**

The Unitary Development Plan (the UDP) was adopted in 1998. On commencement of the Planning and Compulsory Purchase Act (September 2004), the policies of the UDP were automatically 'saved' for three years, remaining in force until September 2007. The Council subsequently notified the Government Office of the policies it wished to retain and confirmation from the Secretary of State of the agreed saved policies was received on 4 September 2007.

As of 27 March 2012, the National Planning Policy Framework (NPPF) became a material consideration in the determination of planning applications and superseded a large number of previous planning policy guidance notes and statements. Paragraph 11 of the NPPF states that planning law requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 12 expands upon this and advises that the NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved.

Whether or not the development plan is up to date is a material consideration in determining how much weight should be attached to the relevant policies in the development plan in light of other material considerations. In particular, Paragraph 214 of the NPPF states that where the relevant provisions of the development plan were not adopted in accordance with the provisions of the Planning and Compulsory Purchase Act 2004 (which is the case with the Council's Development Plan which was adopted in 1998), due weight should be given to the relevant policies of the plan according to their degree of consistency with the NPPF.

Paragraph 14 of the NPPF provides that in respect of decision making:-

- development proposals that accord with the development plan should be approved without delay;
- where the development plan is absent, silent or the relevant policies are out of date, planning permission should be granted unless:-
  - (i) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole; or
  - (ii) specific policies in the NPPF indicate that development should be restricted.

## **Application History**

As the application under consideration seeks an extension to a previous planning approval issued in November 2006 it is important to consider the background to the granting of that planning permission and also consider if circumstances on the site have altered on the site since the granting of the original planning permission reference 05/03963/SUB.

## **Red Line Boundary**

It is noted that the southernmost extent of the red line associated with planning approval 05/03963/FUL takes in an area occupied by Sheringham House. It is also noted that an area within the red line of the development (south west extent of the red line) takes in a triangular area of land now occupied by number 34, 35 and 36 Lakeside Gardens and an area of adopted highway.

The applicant has signed certificate B to indicate that he does not own all of the land to which the development relates, however the applicant has not served notice upon the occupiers of Sheringham House or upon the owners of number 34, 35 and 36 Lakeside Gardens.

It appears that the inclusion of both Sheringham House apartment block and those properties located in Lakeside Gardens is an error on the part of the applicant, particularly given that there is no development proposed in these locations (not including the proposed access to be taken through the car park of Sheringham House).

Advice regarding the inclusion of these areas, which are in private ownership and are occupied by private individuals, has been sought from the City Council's Legal Services Team and will be reported verbally at the Committee meeting.

## **Previous Planning Approval**

The application associated with planning approval 05/03963/SUB was submitted for the consideration of the Local Planning Authority on 25 October 2005 and was made valid on the same date. The application process was lengthy, with the application being presented to Members for determination some twelve months later in October 2006. Members resolved to approve application 05/03963/SUB and planning permission was subsequently issued on 7 November 2006. However it was considered necessary to attach a total of 24 planning conditions to the approval.

Of the 24 conditions attached to the approval 05/03963/FUL 13 were pre-commencement conditions requiring the submission of additional detailed information for the approval by the Local Planning Authority prior to any development work commencing on the site. (Failure to discharge pre commencement planning conditions in advance of commencing development can render planning permission invalid and the development unlawful).

The inclusion of these conditions was considered necessary because the information submitted to support the planning application was considered to be either absent from the submission or else was not considered to be detailed enough to allow development to immediately proceed.

The conditions attached to planning approval 05/03963/SUB were considered to satisfy the six tests set out in Circular 11/95 regarding the validity of planning conditions. That is, the conditions included on the approval were considered to be:

- i. necessary;
- ii. relevant to planning;
- iii. relevant to the development to be permitted;

- iv. enforceable;
- v. precise; and
- vi. reasonable in all other respects .

The 13 pre-commencement conditions included on planning permission 05/03963/FUL required information relating to the following:

- Plan showing precise car park layout.
- Construction methodology for car park and turning area.
- Precise details of all boundary enclosures (gates and fences).
- Schedule and samples of materials to be used in construction.
- Detailed planting schedule for marginal vegetation.
- Management plan for the site and timetable for its implementation.
- Construction methodology for warden's lodge.
- Precise details of the fishing stock for the lake.
- Comprehensive tree survey to identify all trees to be removed and/or pruned and a methodology for the tree works to be undertaken.
- Plan identifying the type and location of bat boxes.
- Submission of water quality tests to ensure against degradation of the water quality of the reservoir during and following development.
- Timetable for ecological works to be implement.
- Construction methodology for the construction of the walkways and jetties.

The applicant has been successful in gaining formal discharge of condition thirteen only of planning permission 05/03963/SUB (construction methodology for walkways and jetties).

Despite several attempts by the applicant to discharge the other pre commencement conditions associated with this development, the Local Planning Authority has been unable to formally discharge the outstanding twelve conditions because the information submitted by the applicant discharge conditions has been inadequate and unacceptable to enable formal discharge.

There has been no attempt made to formally discharge condition 20 relating to the submission of the results of water quality tests.

## **Issues**

The main issues to consider in the determination of this application to extend the life of an existing planning permission are:

- Principle of Development
- Impact Upon Residential Amenity
- Impact Upon Village Green
- Impact Upon Wildlife and Ecology

Each issue is examined in turn below:

### **Principle of Development**

The approval of planning permission 05/03963/SUB in 2006 established the proposed development as acceptable in principle, subject to conditions.



## **Impact Upon Residential Amenity**

The proposed development for use of the lake for the purposes of fishing does not in itself raise concerns in connection with impact upon residential amenity. It is recognised that fishing, as a sport, is in general an activity undertaken on an individual basis and is a quiet pursuit.

However, the development proposed incorporates an area of car parking that will require a significant amount of earthworks in its construction including a large area of infill approximately (45x35) 1575 metres in area (depth unknown) immediately adjacent (to the rear) of numbers 31 - 36 Lakeside Gardens.

Two issues are considered to be relevant in respect of the car parking area:

1. The impact upon the residential amenity of the occupiers of number 31 - 36 Lakeside Gardens and the occupiers of Sherringham House as a result of the use of the car park by those attending the lake to visit/fish.
2. The impact upon the residential amenity of the occupiers of numbers 31- 36 Lakeside Gardens and Sherringham House during the infilling and construction phases of the proposed development, particularly the proposed car parking area.

With reference to the impact upon the residential amenity of nearby occupiers as a result of the use of the car park, it is considered that the location of the car park to the rear of 31 to 36 Lakeside Gardens is unacceptable and will result in unacceptable levels of noise and disturbance for the occupiers of those properties as a result of vehicles coming and going from the site, car doors slamming and visitors to the site gathering in the car parking area.

It is acknowledged that a different view was taken in respect of the location of the car park at the time of the original approval of planning permission in 2006. However, at the time that 05/03963/SUB was submitted and the site visited by the case officer, number 31- 36 Lakeside Gardens had not been constructed and the site that they occupy appeared as a vacant area of lakeside.

Members should note however, that planning permission 04/01883/LEG was approved on 4 May 2005 for the erection of 19 terraced two and a half and three storey houses and 23 flats with car parking. Lakeside Gardens, including numbers 31 - 36 Lakeside Gardens, therefore had planning permission prior to the approval of planning permission 05/03963/SUB in November 2006 and was recognised by the Local Planning Authority as a committed site in their determination of the aforementioned permission. However, numbers 31 - 36 Lakeside Gardens had not been completed when planning permission 05/03963/SUB was approved. Records show that the first of these houses to be sold was number 32 Lakeside Gardens and that sale was completed on 4 April 2007.

Based upon the above it is considered that the circumstances on and adjacent to the site have significantly altered since the approval of planning permission 05/03963/SUB in 2006. The presence of number 31-36 Lakeside Gardens has effectively rendered the location of the proposed car park in the south west corner of the site, adjacent to Sherringham House's carpark as unacceptable and likely to result in unacceptable noise, disturbance for the occupiers of those

properties. Furthermore, the location of the car parking area to the rear of numbers 31 -36 Lakeside Gardens is will result in unacceptable overlooking of the rear of those properties, particularly the rear gardens and rear elevations of these properties which currently enjoy a completely private aspect to the rear overlooking the lake.

In addition to the above Members will note the comments of the Executive Director of City Services: Network Management who states that the unscaled plan submitted in relation to car parking does not give an accurate indication of its capacity. It is therefore difficult for the Local Planning Authority to accurately assess the final capacity of the car park, and therefore the exact effect of the car park, at this stage, which again is considered to be unacceptable.

With reference to the significant infilling and earthworks that are associated with the proposed development, planning permission 05/03963/SUB included a condition requiring a construction methodology for the car park to be submitted and approved prior to commencement of any development on the site. This condition sought details of the fill material to be used in the construction of the car park and the methods that would be used in construction as well as details of the likely impacts upon the wildlife of the lake. The results of water quality test before, during and after construction were also required by condition.

The conditions referred to above were attached to planning permission 05/03963/SUB for two main reasons:

1. To ensure that the ecology and wildlife of the site was protected during construction.
2. To ensure that infilling and construction of the car park were undertaken using a method that would ensure that the residential amenity of near neighbouring residents did not experience unacceptable levels of noise, disturbance, dirt and detrimental impact upon visual amenity during the construction phase of the development.

Despite the submission of information by the applicant to discharge conditions relating the infilling and construction of the car park the Local Planning Authority has been unable to discharge these conditions because the information submitted to date is considered to be inadequate and not satisfactory to ensure that development will be undertaken to minimise the impact upon wildlife and to minimise the impact upon near neighbouring residents.

Objections to the proposed development have been received in respect of the infilling of the lake in particular, although the applicant has not submitted precise details of the volume of material required of the infilling of the lake, one objector suggests that approximately 7220 cubic metres of fill will be required to fill the areas of the lake required for construction of the car park alone and that this infilling is likely to take approximately two years to complete.

It is accepted by the Local Planning Authority that it is inevitable that with all development which includes construction works there will be some degree of noise and disturbance experienced by those near to the development site during the construction phase of the development, and that it would be unreasonable to refuse planning permission based solely upon the likelihood of disturbance during construction.

However, the infilling and construction works required in connection with the proposed car park are significant and it is considered that the lack of detailed specification supplied in connection with the proposed infilling provides no degree of certainty for the Local Planning Authority concerning the method, impact and timescales involved in the construction works required.

This, together with the material change in circumstances on the site by virtue of the completion of number 31 - 36 Lakeside Gardens, and the planned route for construction traffic terminating in the car park of Sheringham House, suggests that the Local Planning Authority should take a precautionary approach with regard to the approval of further planning permission on this site.

It is considered that the lack of detailed information is unacceptable and as no evidence has been presented to contrary it must be considered that the infilling activity that will be required to facilitate this development could be a lengthy undertaking, to the detriment of the residential amenity of near neighbouring residential occupiers by virtue of noise and disturbance and impact upon visual amenity, contrary to the requirements of Policy B2 and EN5 of the adopted Unitary Development Plan.

For the avoidance of doubt Policy B2 of the adopted Unitary Development Plan states that:

The scale, massing layout or setting of new developments and extensions to existing buildings should respect and enhance the best qualities of nearby properties and locality and retain acceptable levels of privacy; large scale schemes, creating their own individual character, should relate harmoniously to adjoining areas.

Policy EN5, relates to noise, and states that:

Where development is likely to generate noise sufficient to increase significantly the existing ambient sound or vibration levels in residential or other noise sensitive areas, the Council will require the applicant to carry out an assessment of the nature and extent of likely problems and to incorporate suitable mitigation measures in the design of the development. Where such measures are not practical, permission will normally be refused.

Members should note that no noise assessment accompanied planning application 05/03963/FUL or this application to renew that permission.

It should also be noted that one of the objections received stated that the objector considered that the proposed development would breach articles 5 and 8 and Protocol 1, Article 1 of the Human Rights Act 1998.

### **Land Ownership Issues**

Some of the objections received to this proposed development referred to the ownership of certain areas of the development site. It is understood from these objections that since the granting of planning permission in 2006 the track adjacent to the railway line to the east of the site has been bought and is now owned by a group of residents who live in the nearby housing estate known as "The Willows". The objectors have indicated that they will not allow any

construction works i.e. the proposed warden's lodge, to be constructed on land in their ownership. (Access to service the wellhead only is permitted to the applicant). Similarly it is claimed that the ownership of areas of land on the boundary between the rear gardens of The Willows and the reservoir has altered since 2006.

Although it is difficult to envisage how the proposed development could be fully implemented given that the track to the east of the lake is no longer available to the applicant, matters of property ownership cannot be considered as a material planning consideration because land can be acquired to enable development and it is not a requirement of planning legislation that those applying for planning permission own the land to which their application relates.

### **Impact Upon Village Green**

Objections have been received to the proposed development on grounds that it will encroach on to areas which enjoy Village Green Status.

Areas of land to the north and north west of the development site are registered as a Village Green (following Regulatory Committee on 22 April 2008). These areas were not designated as Village Green at the time the planning permission 05/03963/SUB was approved.

These areas of land are now registered under section 22 of the Commons Registration Act 1965 and section 15 of The Commons Act 2006 as Village Green.

The red line boundary supplied with the planning application does not encroach in the areas of Village Green, rather the red line boundary abuts the areas of Village Green in the north western portion of the site.

However, the proposed site layout plan showing the proposed development does indicate that it is intended to erect fencing across the area of Village Green located adjacent to 12 The Willows.

The red line boundary of the planning application and the proposed layout plan supplied therefore appear to contradict one another and no certainty can be had regarding what is actually proposed by the development being considered. In the event that the red line boundary is correct, any works proposed outside of that red line would not have the benefit of planning permission, even if this application were approved. Conversely, if the proposed site plan is to be accepted as accurate an enclosure of land designated as Village Green is proposed.

It is not acceptable to erect fencing across an area of land registered as Village Green effectively enclosing the area of Village Green nearest to the northern shore of the lake.

### **Impact Upon Wildlife and Ecology**

Willows Pond is designated as a Site of Nature Conservation Importance (SNCI) in the Unitary Development Plan. Its designation as such was undertaken due to the invertebrate and bird populations that the lake supports.

Several conditions were attached to the original planning approval issued in connection with this development requiring the submission of information to

demonstrate how the biodiversity, wildlife and ecology of the site would be managed and protected during construction and thereafter. None of the information submitted in connection with wildlife, ecology and biodiversity is considered to be adequate to either discharge conditions attached to 05/03963/SUB or to give the Local Planning Authority sufficient certainty over how wildlife and biodiversity will be managed and protected as a part of this development. This is considered to be unacceptable, particularly in the setting of an SNCI and contrary to the requirements of Policies CN19 and CN21 of the adopted Unitary Development Plan.

Objections to the proposed development have been received from Durham Wildlife Trust for the following reasons:

Durham Wildlife Trust objects to the proposal as the information submitted does not discharge the conditions relating to the earlier permission or provide sufficient information to support the current application with respect to the protection of wildlife and the Local Wildlife Site.

The ecological report presented is inadequate in terms of the schedules and ongoing management plans that are required by the conditions, and the surveys conducted in relation to protected species, namely bats, do not follow recognised guidelines.

It is considered that the bat survey carried out was not adequate to establish the use of the site by bats and the potential use of trees on site as roosts, in particular trees that are to be reduced, pollarded or felled. There is therefore the risk that a bat, protected under UK law is killed or disturbed whilst in a place of shelter or rest or that there is damage to or destruction of a bat's breeding site or resting place.

Visual inspection identified trees 1951, 1991 and 1994 as being a potential bat roosts, showing the potential the site has to support bats. Tree 1994 is scheduled to be felled. Bat emergence surveys were conducted on 2 dates in June 5 days apart, the first survey when weather conditions were unsuitable for bats. The second survey recorded bat activity across the site.

The Bat Conservation Trust survey guidelines recommend that 2 or 3 surveys are conducted, spread through the optimum June to August period. However, there was in effect 1 survey in June used to inform the ecological report presented with the planning application.

The Bat Conservation Trust survey guidelines recommend a methodology for dusk emergence and dawn re-entry surveys, those guidelines state:

Surveyors are positioned so that all possible bat exits can be observed at one time and the line-of-sight should not exceed 50 m.

From the information supplied in the ecological survey report it is difficult to see how this guidance was followed by the use of 2 surveyors, particularly given the wooded nature of the site and the difficulty presented by being unable to view trees from the water.

Given this difficulty in surveying presented by the woodland and open water habitats the Local Planning Authority expected a precautionary approach to be

taken when undertaking tree works as part of the development, but there is no indication in the report that a suitable method statement will be used to minimise potential impacts on bats and to inform those conducting tree works on what to do if bats are unexpectedly discovered.

The schedule for tree works given in the table in appendix 5 of the ecological report states that tree work will be completed within 2 months on the start of the construction work, but does not give a date for the start of construction. Tree felling and reduction could therefore be carried out at a time when risk of roosting bats is greatest.

It is considered that the information relating protected species on the development site, i.e. bats is unacceptable and does not adequately support the application to renew planning permission. This is contrary to the requirements of Policy CN22 of the adopted Unitary Development Plan which states that:

Development which would adversely affect any animal or plant species afforded special protection by law, or its habitat either directly or indirectly, will not be permitted unless mitigating action is achievable through the use of planning conditions and, where appropriate, planning obligations, and the overall effect will not be detrimental to the species and the overall biodiversity of the city.

It should also be noted that there will also potentially be a risk to nesting birds if tree work is carried out at certain times of the year.

Several of the objections received to the proposed development are on grounds that the proposed development will have a detrimental impact upon the biodiversity of the site. One objection received particularly relates to the impact of the proposed development upon bats.

It is considered, in the absence of evidence to the contrary, the proposed infilling of the lake will be to the detriment of the ecology of the lake. This does not comply with the requirements of Policies CN18 and CN21 of the adopted unitary Development Plan.

Furthermore, information regarding the protection and management of the ecology of the site is considered to be inadequate, this is considered to be unacceptable in an area designated as a site of nature conservation importance (SNCI) and also contrary to the requirements of Policies CN18 and CN21 of the adopted unitary Development Plan.

Policy CN18 of the adopted unitary Development Plan requires that:

CN18 The Promotion of the Interests of Nature Conservation Will be sought throughout the city'.measures will include:

- a. The appropriate management of Council owned land;
- b. Encouraging land owners and occupiers to adopt management regimes sympathetic to nature conservation, especially in wildlife corridors;
- c. Making provision in development proposals for preservation of habitats or creation of compensatory habitats;
- d. Seeking opportunities in development proposals or other schemes for new habitat creation on both public and private land.

- e. Improving access and providing interpretation to appropriate sites of wildlife interest; and
- f. Refusing inappropriate development.

Policy CN21 of the adopted Unitary Development Plan states that

CN21 Development which would adversely affect a designated or proposed local nature reserve, site of nature conservation importance or regionally important geological/geomorphological site either directly or indirectly will not be permitted unless:

- (i) No alternative site is reasonably available and the benefits of the proposed development would outweigh the regional or local value of the site; or
- (ii) Any loss of nature conservation or earth science interest can be fully compensated elsewhere within the site or in its immediate environs through the use of planning conditions and, where appropriate, planning obligations

#### Summary

The granting of a new planning permission to replace previous planning permission 05/03963/SUB is considered to be unacceptable.

The application for development is considered to lack information to the degree that the Local Planning Authority cannot be certain of the specific details of the development proposed.

Furthermore, it is considered that circumstances on the application site have significantly altered since the approval of the original planning permission in 2006, particularly through the completion of numbers 31-36 Lakeside Gardens to the west of the site, and that that significant change in circumstances means that the development proposed will have a significant detrimental impact upon the residential amenity of the occupiers of those properties through noise, disturbance and overlooking from the car park proposed, both during construction and following completion of the development, contrary to the requirements of Policies B2, EN9 of the adopted Unitary Development Plan and paragraph 56 of the National Planning Policy Framework.

In addition to the above, the information regarding the protection and management of the ecology of the site is considered to be inadequate, this is considered to be unacceptable in an area designated as a site of nature conservation importance (SNCI) and contrary to the requirements of Policies CN18, CN21 of the adopted unitary Development Plan and paragraph 118 of the National Planning Policy Framework.

The bat survey that accompanies the application is considered to be inadequate and unacceptable to the potential detriment of protect species present on the site (i.e. bats) if the development were to proceed. This is contrary to the requirements of policy CN 22 of the adopted Unitary Development Plan and paragraph 118 of the National Planning Policy Framework.

**RECOMMENDATION: Refuse** for the following reasons:

## Reasons:

- 1 The Bat Survey submitted in support of this application has not been undertaken in accordance with the guidelines of the Bat Conservation Trust. Furthermore the Bat Survey fails to properly establish the use of the site by Bats and also fails to properly establish the potential for trees on the site to be used as Bat roosts. Neither is there an indication in the submitted report that a suitable method statement will be used to minimise potential impacts on Bats and there is no indication to inform those conducting tree works on what to do if Bats are unexpectedly discovered. As such it is considered that the proposed development is likely to have a detrimental impact upon bats as a protected species contrary to the requirements of Policy CN22 of the adopted Unitary Development Plan and paragraph 118 of the National Planning Policy Framework.
- 2 The information submitted with the application relating to the management and protection of the ecology, biodiversity and wildlife present on the site, both during construction and operation of the development proposed, is inadequate to allow a proper assessment of the proposed management and protection of the ecology, biodiversity and wildlife on the site and the Site of Nature Conservation Interest as a whole. As such it is considered that the proposed development is likely to have a detrimental impact upon the ecology, biodiversity and wildlife of the site, particularly through the infilling of an area of the reservoir. This is contrary to the requirements of policies CN18, CN21 of the adopted Unitary Development Plan and paragraph 118 of the National Planning Policy Framework.
- 3 The proposed development will result in an unacceptable loss of residential amenity for the occupiers of number 31 - 36 Lakeside Gardens in particular, and other near neighbouring properties, through unacceptable levels of noise and disturbance during what is likely to be a lengthy construction phase and thereafter by reason of noise and disturbance from those visiting the car parking area of the fishing lake and by reason of unacceptable overlooking and invasion of privacy through views from the proposed car parking area. This is contrary to the requirements of Policies B2, EN5 of the adopted Unitary Development Plan and paragraph 56 of the National Planning Policy Framework.