

<b>APPLICATION NO</b>	<b>PA/2014/0881</b>
<b>APPLICANT</b>	Mr K Brook
<b>DEVELOPMENT</b>	Outline planning permission to erect five 2/3-bedroomed townhouses (with scale, appearance, layout and landscaping reserved for subsequent approval)
<b>LOCATION</b>	Land adjacent to The White Swan public house, Butts Road, Barton-upon-Humber
<b>PARISH</b>	<b>BARTON-UPON-HUMBER</b>
<b>WARD</b>	Barton-upon-Humber
<b>CASE OFFICER</b>	Joanna Heweth
<b>SUMMARY RECOMMENDATION</b>	<b>Subject to completion of a Section 106 agreement, grant permission subject to conditions</b>
<b>REASONS FOR REFERENCE TO COMMITTEE</b>	Objection by Barton-upon-Humber Town Council

## **POLICIES**

**National Planning Policy Framework:** Paragraph 19 states that significant weight should be placed on the need to support economic growth through the planning system.

Paragraph 34 states that plans and decisions should ensure developments that generate significant movements are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised.

Paragraph 48 states that local planning authorities may make an allowance for windfall sites in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens.

Paragraph 49 states that housing proposals should be considered in the context of the presumption in favour of sustainable development.

Paragraph 59 states that good design is a key aspect of sustainable development, is indivisible from good planning and should contribute positively to making places better for people.

Paragraph 100 states that inappropriate development in areas of high risk of flooding should be avoided by directing development away from such areas, but where development is necessary, making it safe without increasing flood risk elsewhere.

Paragraph 118 states that local planning authorities should aim to conserve and enhance biodiversity.

Paragraph 128 states that local planning authorities should require an applicant to describe the significance of any heritage assets including any contribution made by their setting.

Paragraph 131 states that local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; the positive contribution that conservation of heritage assets can make to sustainable communities, including their economic vitality; and the desirability of new development making a positive contribution to local character and distinctiveness. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

**North Lincolnshire Local Plan:** Policy H7 (Backland and Tandem Development)

Policy H8 (Housing Design and Housing Mix)

Policy DS1 (General Requirements)

Policy DS3 (Designing Out Crime)

Policy DS14 (Foul Sewage and Surface Water Drainage)

Policy DS16 (Flood Risk)

Policy T2 (Access to Development)

Policy T19 (Car Parking Provision and Standards)

Policy LC12 (Protection of Trees, Woodland and Hedgerows)

Policy HE2 (Development in Conservation Areas)

Policy HE5 (Development Affecting Listed Buildings)

Policy HE9 (Archaeological Evaluation)

**North Lincolnshire Core Strategy:** Policy CS1 (Spatial Strategy for North Lincolnshire)

Policy CS2 (Delivering More Sustainable Development)

Policy CS3 (Development Limits)

Policy CS5 (Delivering Quality Design in North Lincolnshire)

Policy CS6 (Historic Environment)

Policy CS7 (Overall Housing Provision)

Policy CS8 (Spatial Distribution of Housing Sites)

Policy CS9 (Affordable Housing)

Policy CS17 (Biodiversity)

Policy CS19 (Flood Risk)

## **CONSULTATIONS**

**Highways:** No objection subject to conditions including a requirement to provide details of construction of private drive, drainage, lighting and street naming arrangements.

**Environmental Protection:** Recommends that any permission granted be subject to conditions regarding contamination, noise, dust and hours of construction.

**HER Officer:** No objection subject to conditions securing the submission of an archaeological mitigation strategy with the reserved matters and subsequent implementation of the agreed programme of work.

**Conservation Officer:** No objections in principle.

**Environment Agency:** The development will only meet the requirements of the National Planning Policy Framework if a condition is imposed on any approval requiring the full implementation of the Flood Risk Assessment including flood mitigation measures requiring the minimum ground finished floor levels to be 4.3 metres AOD and habitable uses restricted to first floor and above with a minimum finished floor level of 7.0 metres AOD. The development must also pass the sequential test.

**Tree Officer:** No objections.

**Anglian Water Developer Services:** No response.

**Barton-upon-Humber Civic Society:** Would like to reiterate the objection made to this application the last time it was submitted. The issue raised then has not been addressed in the resubmission and there still remains the road safety concern of access via The White Swan/Butts Road. An alternative proposal of access via Overton Court offers a safer solution for all parties concerned.

## **TOWN COUNCIL**

Whilst the town council welcomes and supports new development, it does not support this development to be accessed from The White Swan public house/Butts Road. This is a very busy junction opposite the bus and rail terminus depot, already heavily trafficked. This highlights a road safety concern. However, if the access was from Overton Court, the town council would have no objection.

## **PUBLICITY**

Neighbouring properties have been notified by letter, and site and press notices posted. Letters of objection have been received on the following grounds:

- concerns regarding proposed vehicular access
- current access not fit for purpose and cause of grave concern with regard to public safety, especially as Butts Road is a regular walking route for school children; this

applies to pedestrians and cars emerging from the proposed access through the White Swan car park and cyclists on Butts Road

- invasion of privacy
- damage to trees and tree roots, impact on local wildlife and ecological sustainability
- impact on archaeological remains which will be lost forever
- impact on the conservation area.

## **ASSESSMENT**

The application is an outline and is for the erection of five two/three-bedroomed townhouses with access to be determined at the outline stage and everything else reserved for subsequent approval. The application site lies to the rear of The White Swan public house, a listed building, and residential properties fronting Butts Road. To the south is a two-storey nursing home for residents with dementia. To the west are residential properties fronting Fleetgate, which are also listed. To the east are modern three-storey blocks of flats fronting Overton Court. The site lies within the Barton conservation area.

Access into the site would be from Butts Road via an existing access which runs between the public house and 2 Butts Road. The indicative plans show a proposed block of three-storey development with non-habitable rooms at ground floor, including garages, living accommodation at first floor, and a second floor accommodated within the roof space served by dormer windows in the front and rear elevations. The indicative layout plans show the block of houses on a north-south axis situated at the eastern end of the site close to the Overton Court development.

The site was originally used as a bowling green in connection with the public house but has been vacant for a number of years and is grassed and overgrown. There are a number of mature trees within the site around the perimeter and also trees which overhang the site from neighbouring properties. A number of trees along the southern boundary are protected by a Tree Preservation Order. There are a number of boundary treatments along the boundary with Butts Road. Along the boundary with Overton Court is a 2 metre high palisade fence. Along the southern boundary with the nursing home is a brick wall to a height of around 2.5 metres. Along the boundary with the public house there is a brick outbuilding and a parking area for the public house.

**The material planning considerations in the determination of this application are planning history and policy, archaeology and impact on trees.**

### **Planning history and policy**

This application follows a previous one for the same development which was refused in March 2014 (PA/2014/0032). That application was refused on only one ground relating to the lack of an archaeological assessment. The indicative layout submitted with the current proposal is the same as the previous application. Prior to the 2014 application a proposal for the same development, but with a different indicative layout, was refused on five grounds and was dismissed at appeal (PA/2012/1175). A copy of the Inspector's decision is attached for information.

The Inspector upheld two of the reasons for refusal relating to a lack of both affordable housing and an archaeological assessment. He considered that the development would not result in an unacceptable loss of amenity to neighbouring properties, would comply with the National Planning Policy Framework with regard to flood risk and the sequential and exceptions tests, and that it would not be harmful to the conservation area or adjacent listed buildings. The Inspector also considered that the proposed access would be acceptable in terms of impact on the amenity of 2 Butts Road, and whilst the access was not to be determined as part of the appeal application, the Highway Officer raised no objections at that time or in relation to the current application. The town council and civic society have both objected to the current proposal on access grounds and suggest an alternative access from Overton Court. It is considered, however, that the proposal should be determined as submitted and there is no evidence to show that the alternative access would be achievable. Given the Inspector's decision and the support of the Highway Officer, it is considered that the proposed access is acceptable.

The applicant agreed on the previous application to provide affordable housing and has repeated this agreement in relation to the current application in the form of a two-bedroom house to be provided on site. This would comply with policy CS9 (Affordable Housing) which requires 20% provision for a development of five or more housing units in market towns. The affordable housing could be secured through a Section 106 agreement.

## **Archaeology**

The only outstanding item from the previous decisions is the lack of an archaeological assessment. This has now been received and the HER Officer has advised that the investigation comprised the excavation of a number of trial trenches. The investigation found that the site contains apparently dispersed medieval features seemingly related to drainage of the site dating from the eleventh century. The finds relate to a depth of at least 0.9 metres beneath current ground surface. In addition, there is good potential for palaeoenvironmental deposits to survive that may inform the archaeological record. The HER officer is satisfied that a condition could be attached to any approval to secure appropriate mitigation measures. This may take the form of archaeological recording in advance of, or during, any groundwork commencing, followed by post-excavation assessment, reporting, analysis and publication of results as required. This strategy would be in accordance with the National Planning Policy Framework, policy CS6 (Historic Environment) of the Core Strategy and policy HE9 (Archaeological Evaluation) of the local plan.

## **Impact on trees**

There are a number of trees on and around the site boundaries. Whilst reference to the impact on these trees has not formed part of the consideration of previous applications the applicant has been requested to submit a tree survey plan and to show that the amount of development could be achieved without detrimentally affecting the trees or the amenity of future residents. There are no objections from the tree officer but the impact on the tree roots would need to be determined at the reserved matters stage together with the impact on the amenities of future residents in terms of proximity to tree branches and overshadowing and fear of tree branches affecting garden areas. It is considered that the site would be large enough to accommodate this level of development without significantly affecting the existing trees, although the indicative layout may well need to be amended to allow sufficient space for the trees and residents' amenity space. A condition is

recommended to secure the retention of the trees on site in the interests of amenity and in accordance with policy LC12 of the local plan.

In conclusion, it is considered that the application is acceptable subject to conditions and subject to a Section 106 agreement to secure the provision of one unit of affordable housing on site.

## **RECOMMENDATION**

**Subject to the completion of a formal agreement under Section 106 of the Town and Country Planning Act 1990 to secure the provision on site of one dwelling, the committee resolves:**

- (i) it is mindful to grant permission for the development;**
- (ii) the decision be delegated to the Head of Development Management upon completion of the obligation;**
- (iii) if the obligation is not completed by 11 September 2015 the Head of Development Management be authorised to refuse the application on grounds of lack of affordable housing contrary to policy CS9 of the North Lincolnshire Core Strategy; and**
- (iv) the permission so granted be subject to the following conditions:**

1.

Approval of the details of the layout, scale, and appearance of the building(s), and the landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the local planning authority in writing before any development is commenced.

### **Reason**

The application has been made under Article 3(1) of the Town & Country Planning (General Development Procedure) Order 1995.

2.

Plans and particulars of the reserved matters referred to in condition 1 above, relating to the layout, scale, and appearance of any buildings to be erected, and the landscaping of the site, shall be submitted in writing to the local planning authority and shall be carried out as approved.

### **Reason**

The application has been made under Article 3(1) of the Town & Country Planning (General Development Procedure) Order 1995.

3.

Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

### **Reason**

To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.

4.

The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason

To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.

5.

No dwelling on the site shall be occupied until the vehicular access to it and the vehicle parking facilities serving it have been completed in accordance with details to be submitted to and approved in writing beforehand with the local planning authority and, once provided, the vehicle parking facilities shall be retained.

Reason

In the interests of highway safety and to comply with policies T2 and T19 of the North Lincolnshire Local Plan.

6.

No development shall take place until details showing an effective method of preventing surface water run-off from hard paved areas within the site onto the highway have been submitted to and approved in writing by the local planning authority. These facilities shall be implemented prior to the access and parking facilities being brought into use and shall thereafter be so retained.

Reason

In the interests of highway safety and to comply with policy T19 of the North Lincolnshire Local Plan.

7.

No loose material shall be placed on any driveway or parking area within 10 metres of the adopted highway unless measures are taken in accordance with details to be submitted to and approved in writing by the local planning authority to prevent the material from spilling onto the highway. Once agreed and implemented these measures shall be retained.

Reason

In the interests of highway safety and to comply with policy T19 of the North Lincolnshire Local Plan.

8.

No development shall begin until details of the private driveway, including construction, drainage, lighting and where appropriate signage/street naming arrangements, have been agreed in writing with the local planning authority and no dwelling on the site shall be occupied until the private driveway has been constructed in accordance with the approved details. Once constructed the private driveway shall be retained.

Reason

In the interests of highway safety and to comply with policies T2 and T19 of the North Lincolnshire Local Plan.

9.

Unless otherwise agreed by the local planning authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until parts 1 to 4 below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the local planning authority in writing until part 4 has been complied with in relation to that contamination.

### **Part 1: Site Characteristics**

A Phase 1 desk study shall be carried out to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters relevant to the site. The desk study shall establish a 'conceptual model' of the site and identify all plausible linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/Quantitative Risk Assessment (or state if none required). Two full copies of the desk study and a non-technical summary shall be submitted to the local planning authority for approval prior to proceeding to further site investigation. An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
  - human health
  - property (existing or proposed), including buildings, crops, livestock, pets, woodland and service lines and pipes
  - adjoining land
  - groundwaters and surface waters
  - ecological systems
  - archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and a proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

### **Part 2: Submission of Remediation Scheme**

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken,

proposed remediation objectives and remediation criteria, a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

### **Part 3: Implementation of Approved Remediation Scheme**

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority.

### **Part 4: Reporting of Unexpected Contamination**

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Part 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Part 2, which is subject to the approval in writing of the local planning authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with Part 3.

#### **Reason**

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors in accordance with policy DS7 of the North Lincolnshire Local Plan.

#### **10.**

No authorised development shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. This shall include details of mitigation measures for the control of pollution, including noise, dust and light. All construction shall be carried out in accordance with the approved CEMP unless otherwise agreed in writing by the local planning authority.

#### **Reason**

To protect residents from unacceptable pollution in the interests of amenity in accordance with policy DS1 of the North Lincolnshire Local Plan.

#### **11.**

Construction operations shall be limited to the following hours:

7am to 7pm Monday to Friday

7am to 1pm on Saturdays.

No construction operations shall take place on Sundays or public/bank holidays.

HGV movements shall not be permitted outside these hours during the construction phase without prior written approval from the local planning authority.

Installation of equipment on site shall not be permitted outside these hours without the prior written approval from the local planning authority.

#### Reason

To avoid the unacceptable loss of amenity to nearby properties through noise and general disturbance in accordance with policy DS1 of the North Lincolnshire Local Plan.

#### 12.

The details submitted in pursuance of the outline permission shall be accompanied or preceded by the submission to the local planning authority of an archaeological mitigation strategy. No development shall take place until the archaeological mitigation strategy has been approved in writing by the local planning authority. The strategy shall include the following details:

- (i) the proposed development design and precise construction methodology with an assessment of the impact on the archaeological remains as described in the Network Archaeological report 'Land to the rear of the White Swan, Barton-upon-Humber' dated July 2014
- (ii) measures to ensure the preservation by the record of archaeological features of identified importance
- (iii) methodologies for the recording and recovery of archaeological remains, including artefacts and ecofacts
- (iv) post-fieldwork methodologies for assessment and analysis
- (v) report content and arrangements for dissemination, and publication proposals
- (vi) archive preparation and deposition with recognised repositories
- (vii) a timetable of works in relation to the proposed development, including sufficient notification and allowance of time to ensure that the site work is undertaken and completed in accordance with the strategy
- (viii) monitoring arrangements and notification in writing to the North Lincolnshire Historic Environment Record of the commencement of archaeological works and the opportunity to monitor such works
- (ix) a list of all staff involved in the implementation of the strategy, including sub-contractors and specialists, their responsibilities and qualifications.

**Reason**

To comply with policy HE9 of the North Lincolnshire Local Plan because the site lies in an area of archaeological interest.

13.

The archaeological mitigation strategy shall be carried out in accordance with the approved details and timings, subject to any variations agreed in writing with the local planning authority.

**Reason**

To comply with policy HE9 of the North Lincolnshire Local Plan because the site lies in an area of archaeological interest.

14.

A copy of the analysis, reporting, publication or archiving required as part of the mitigation strategy shall be deposited at the North Lincolnshire Historic Environment Record within six months of the date of completion of the development hereby approved by this permission or such other period as may be agreed in writing with the local planning authority.

**Reason**

To comply with policy HE9 of the North Lincolnshire Local Plan because the site lies in an area of archaeological interest.

15.

The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) dated 2 October 2014, Issue 3 by Lincs Design Consultancy, including the following mitigation measures:

- non-habitable rooms, limited to garage, utility and WC, shall be provided at ground floor with a minimum finished floor level of 4.3 metres AOD
- habitable uses shall be restricted to the first floor and above with a minimum finished floor level of 7 metres AOD
- the ground floor shall be constructed in accordance with the flood resilience measures outlined in section 9.4 of the FRA.

The mitigation measures shall be fully implemented prior to occupation and subsequently remain in place throughout the life of the development.

**Reason**

To reduce the risk of flooding to the proposed development and future occupants.

16.

Before development is commenced, details of the method of protecting the existing trees on the site throughout the construction period shall be submitted to and approved in writing by the local planning authority, and such works as may be so approved shall be carried out before development is commenced, and maintained until completion of the development. None of the trees so protected shall be wilfully damaged or destroyed, uprooted, felled, lopped or topped, nor any other works carried out which would cause damage to the root systems or otherwise threaten the lives of the trees during the period of construction without

the previous written consent of the local planning authority. Any trees removed without such consent or dying or being severely damaged or becoming seriously diseased during that period shall be replaced with trees of such size and species as may be agreed with the local planning authority.

**Reason**

In order to protect the existing trees on the site.

17.

No trees shall be wilfully damaged or destroyed or uprooted, felled, lopped or topped nor any other works carried out which would cause damage to the root systems or otherwise threaten the lives of the trees without the previous written consent of the local planning authority. Any trees removed without such consent, or dying or being severely damaged, or becoming seriously diseased, shall be replaced with trees of such size and species as may be agreed with the local planning authority.

**Reason**

In order to protect the existing trees on the site.

18.

The development hereby approved shall be carried out strictly in accordance with the following plans and documents unless otherwise agreed in writing with the local planning authority: Site location plan received on 21 January 2015 ref KB/1/10 rev A; Topographical Survey received on 19 December 2014 ref: AS1694/1; A Tree Survey - Locations and Canopies Ref: KB/1/10/20; Flood Risk Assessment received on 8 August 2014; Heritage Assessment Report dated July 2014; Heritage, Planning, Design and Access Statement received on 8 August 2014.

**Reason**

In the interests of proper planning and for the avoidance of doubt.

19.

No development shall take place until a scheme for the disposal of foul and surface water has been agreed in writing by the local planning authority and none of the dwellings shall be occupied until it is connected to the approved drainage system.

**Reason**

To ensure satisfactory drainage is provided in accordance with policy DS14 of the North Lincolnshire Local Plan.

**Informative 1**

A refuse bin collection point shall be provided adjacent to the adopted footpath adjoining Butts Road.

**Informative 2**

The future occupants should be encouraged to sign up to the Environment Agency's Floodline Warnings Direct.

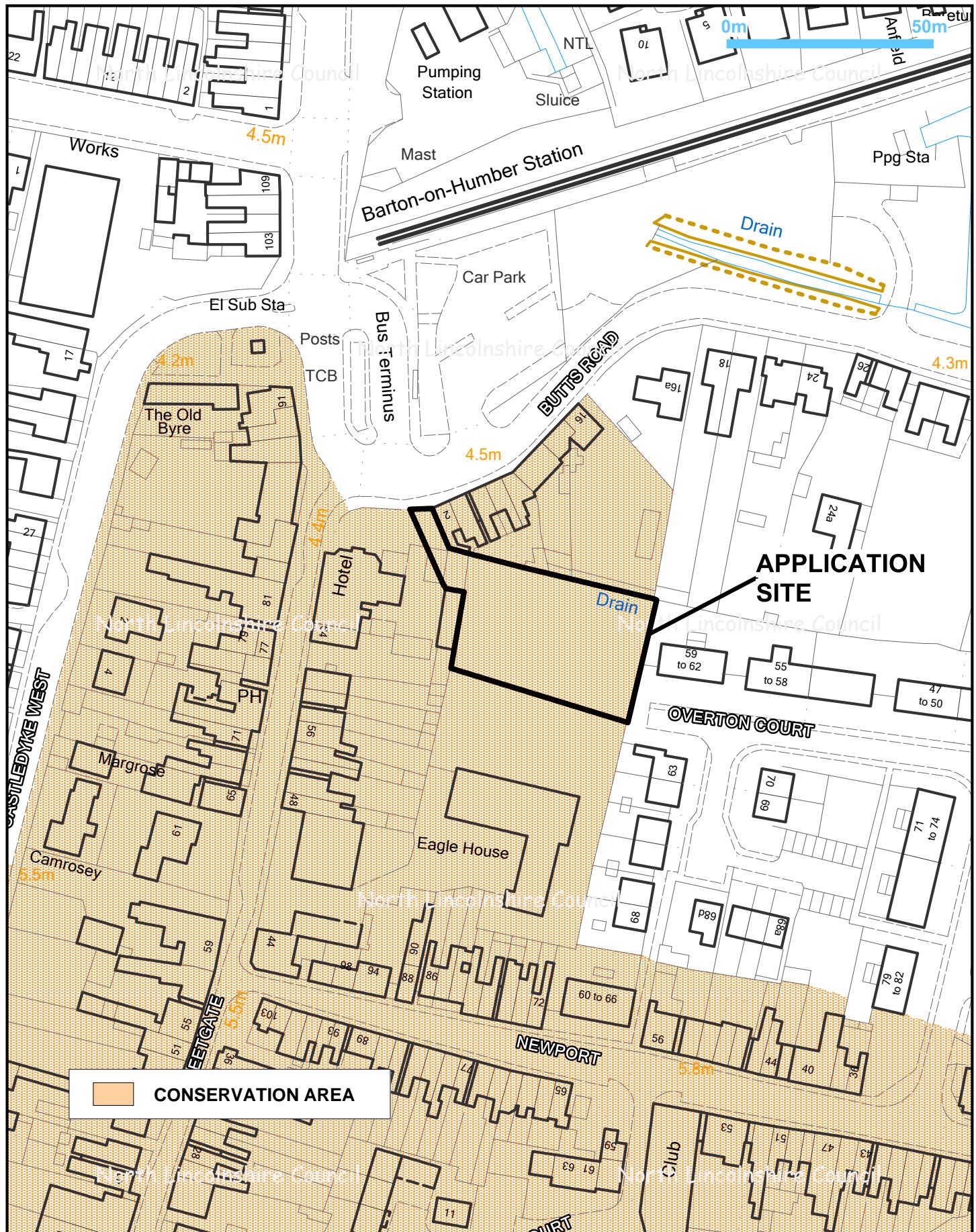
**Informative 3**

The development hereby granted planning permission requires works to be carried out within the limits of the adopted (public) highway. Therefore:

- before ANY construction works take place within the limits of the highway you MUST contact the highway authority on telephone number 01724 297000 to arrange for the relevant permissions/licenses to be issued;
- before ANY service (utility) connections take place within the limits of the highway you MUST contact the highway authority on telephone number 01724 297319 to arrange for the relevant permissions/licenses to be issued.

#### **Informative 4**

In determining this application, the council, as local planning authority, has taken account of the guidance in paragraphs 186 and 187 of the National Planning Policy Framework in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the area.



Title: PA/2014/0881

Drawn by: Sue Barden

Date: 26/02/2015

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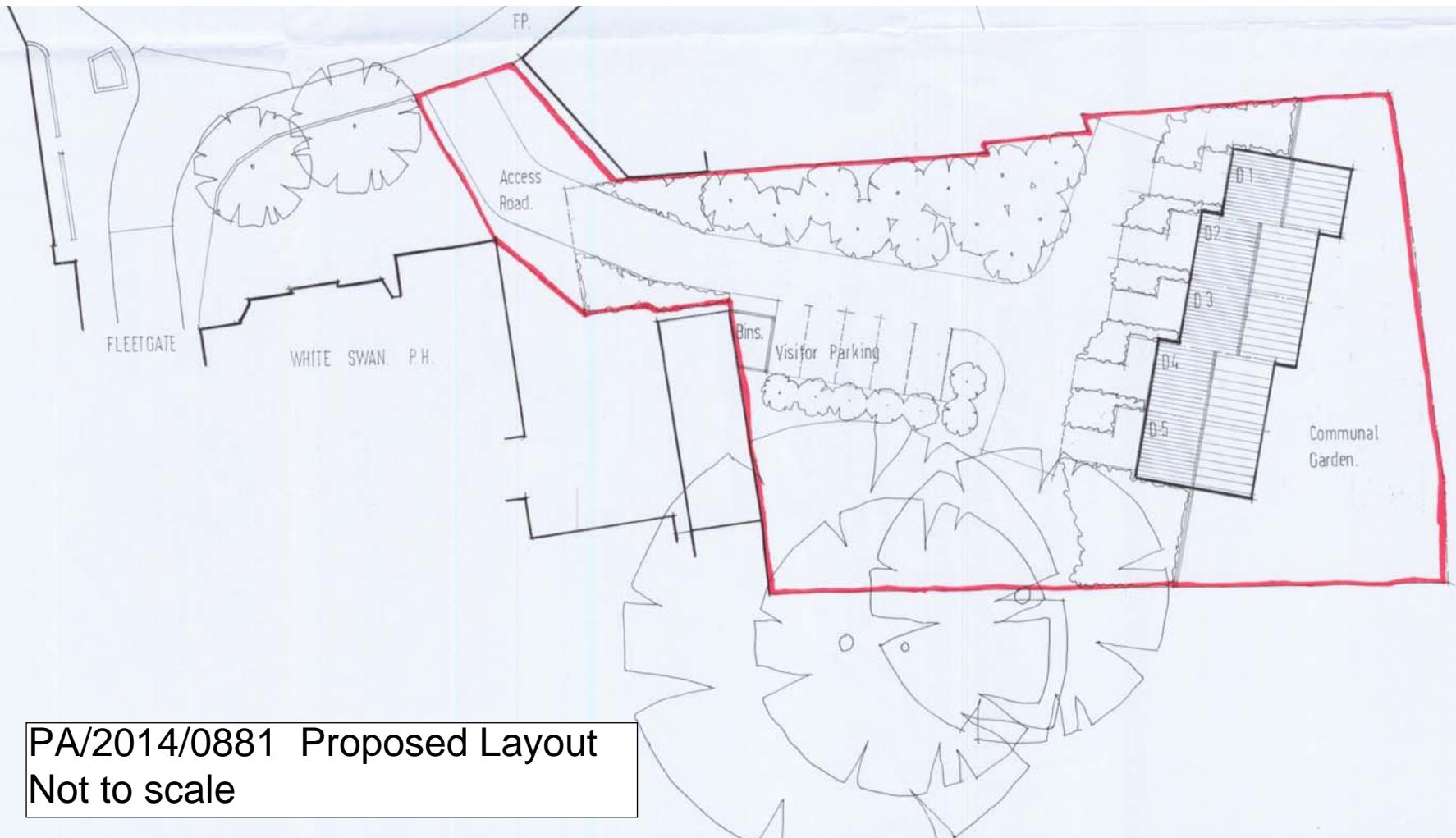


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Director of Places  
Peter Williams

BSc,DMS,CEng,MEI,MCM,AMIMechE



PA/2014/0881 Proposed Front Elevation Not to scale





## Appeal decision

Site visit made on 8 October 2013

**by Mike Croft MA DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 16 October 2013**

**Appeal ref: APP/Y2003/A/13/2195165**

**Land adjacent to White Swan Public House, Butts Road, Barton-on-Humber, DN18 5JH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by K Brook against the decision of North Lincolnshire Council.
- The application (ref PA/2012/1175), dated 3 October 2012, was refused by notice dated 13 December 2012.
- The development proposed is the erection of five town houses.

### **Decision**

1. I dismiss the appeal.

### **Preliminary matter**

2. I note that all matters of detail in this outline proposal are reserved for consideration at a future stage. Those details shown on the submitted plans are indicative.

### **Inspector's reasons**

3. The appeal site is within the Barton Conservation Area. The adjacent public house is a grade II listed building. The main issues are whether the appeal project would (i) seriously harm nearby residents' living conditions, (ii) fail to preserve the setting of the listed building and/or fail to preserve, at least, the character and appearance of the Conservation Area, (iii) be contrary to current policy on flood risk, (iv) potentially adversely affect archaeological remains within the site, and/or (v) make inadequate provision for affordable housing.

#### *i. Residents' living conditions*

4. The Council's concern on this issue is with the living conditions of the occupants of 2 Butts Road, an end-terrace house immediately adjacent to the appeal site. The bulk of the site lies well back from Butts Road, and the proposed access would go past the side wall of no 2, between it and the nearby public house. The Council's position is that no 2's occupants would be adversely affected by the use of the vehicular access here through both increased noise and a loss of privacy to no 2's two ground floor windows facing the access.
5. I saw when I visited Barton that the side windows at no 2 face a tarmac area which extends by the side of the pub and includes the proposed access. The tarmac area appears to be available for pub customers for parking. It also appears to provide access for service vehicles and owners' vehicles going to the rear of the public house. Clearly there is already some potential for both noise

and loss of privacy to affect the occupants of no 2. The appellant sees the traffic accessing the appeal site as an alternative to parking by pub customers, and although parking by pub customers could still take place west of the proposed access some reduction in pub parking space would be inevitable if the appeal project were to go ahead.

6. The appellant also says that the proposed access (towards 4 m from no 2's windows) would in effect replace outdoor tables for pub customers only 0.7 m from no 2's windows and so bring with it a reduction in amenity problems. The reintroduction of that former facility may no longer be intended at that particular location by the present pub owners, but in any case I agree with the appellant to the extent that it is difficult to conceive of such a facility being squeezed in between the side wall of no 2 and the appeal site access. It is reasonable to count that as a potential benefit of the appeal project.
7. The occupants of no 2 will no doubt be well used to activity on the pub car park, as well on the adjoining roads. Particularly in that context, I am not satisfied that the Council has demonstrated that the living conditions of no 2's occupants would be harmed.
8. I note that there are local residents' objections to potential losses of privacy to those at 12 and 16a Butts Road. These fears no doubt relate to possible overlooking from windows in the proposed houses, but my assessment is that such overlooking would be at too great a distance for such fears to be justified.
9. I therefore regard the appeal project as satisfactory in relation to issue (i). Conflict would not arise with the most relevant policies, policies DS1 and H7 of the North Lincolnshire Local Plan, which seek to prevent amenity losses.

*ii. Setting of the listed building and character and appearance of the Conservation Area*

10. The Conservation Area is an extensive area covering much of the older parts of Barton. The eastern boundary of the appeal site coincides with a Conservation Area boundary. To the south of the site is a modern care home. To the west are the White Swan's outbuildings and to the north is a terrace of houses (ending in no 2) fronting Butts Road and appearing to date from the 19<sup>th</sup> century.
11. The Council complains that the heritage, design and access statement accompanying the appeal application is inadequate in not enabling an assessment of the impact of the proposed development on the adjacent listed building or the Conservation Area. It also says that the submitted design would detract from the character of the Conservation Area, with the buildings having a modern style and no real relationship in form and appearance with the Conservation Area's traditional buildings. I note here that the White Swan is an 18<sup>th</sup> century building with later additions, including a Victorian façade on the ground floor.
12. The appellant's response is basically that the design shown on the indicative plan can be varied. Overall, I consider that to be a fair response. Although this is a backland site, the proposed houses would be clearly seen through the access gap, between the public house and the Butts Road houses, if they were built in the position shown on the indicative plan. Indeed, any reasonable location for five town houses would inevitably result in them being seen from there. But they would not be prominent in the street scene. Contrary to a third party representation, I do not take exception to the principle of town

houses here as much of the Conservation Area is occupied by terrace housing. I note that the text to Local Plan policy HE2 refers to the limitations of outline applications for development in conservation areas, but in this case it seems to me that a satisfactory design – in relation to both the Conservation Area and the listed building – could be achieved at the reserved matters stage. On that basis the appeal project succeeds on issue (ii).

*iii. Flood risk*

13. The appeal site lies within flood zone 3a on the Environment Agency's flood map, ie it has a high probability of flooding. Policy CS19 of the North Lincolnshire Core Strategy, adopted in 2011, says the Council will support development proposals that avoid areas of current or future flood risk and which do not increase the risk of flooding elsewhere; this involves a sequential approach using the principle of locating development where possible on land with a lower flood risk. Such a sequential approach is endorsed by the National Planning Policy Framework (the Framework) and its Technical Guidance.
14. The appeal application is accompanied by a flood risk assessment, which the Environment Agency says is appropriate for the scale and nature of the development proposed. The Agency has no objection to the appeal project, subject to the Council applying the sequential test. The appellant's flood risk assessment deals with the sequential test, but the Council says that that is deficient because it lacks detailed information on alternative sites.
15. The flood risk assessment includes sites identified for housing in the Local Plan and the Council's Strategic Housing Land Availability Assessment 2009. It concludes that there are no sequentially preferable sites. Importantly, the Council's criticism about the level of detail in the assessment does not specify exactly what kind of essential information is absent, and I note that the assessment deals with an appropriately wide range of factors affecting the sites assessed, including flood risk, potential policy restrictions and capacity. I consider it right to accept the assessment's conclusion with regard to the sequential test. Paragraph 101 of the Framework summarises the sequential test thus: "Development should not be ... permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding." From the evidence before me, the appeal project would not offend against that requirement.
16. The flood risk assessment also deals, as it should, with the exception test. To pass the exception test it must, in the words of the Framework, be demonstrated that the development in question provides wider sustainability benefits to the community that outweigh flood risk, and that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
17. So far as sustainability is concerned, I agree with the appellant's assessment that the appeal project would consist of the development of a neglected site in a central location within Barton. That central location, close to the bus and train stations, is an important attribute that favours development here. As to safety, the proposed dwellings would have no habitable accommodation on the ground floor, and the assessment deals with the steps that would be taken to avoid increasing flood risk elsewhere. These could be matters for appropriate conditions on a permission. The Council relies for its flood risk objection on its criticism of the sequential test, which I deal with above. It does not criticise

the appellant's flood risk assessment in relation to the exception test. On the basis of my remarks above, I am satisfied with that part of the assessment.

18. It follows that the appeal project succeeds on issue (iii).

*iv. Archaeological remains*

19. The Council's objection here is that no archaeological assessment has been submitted for a site that may have potential to contain archaeological remains. That, it says, is contrary to Local Plan policy HE9. Policy HE9 says that planning permission will not be granted without an adequate assessment of the nature, extent and significance of the remains present and the degree to which the proposed development is likely to affect them. Paragraph 128 of the Framework says that in determining applications local planning authorities should require an applicant to describe the significance of any heritage assets affected. The Framework gives some guidance on the level of detail required, but makes clear that the minimum requirement is to consult the relevant historic environment record and to assess the assets using appropriate expertise.

20. The appellant does not dispute the potential here for archaeological remains. Indeed, he says it "clearly has" such remains. However, with other issues related to the site's development still outstanding, he resists incurring the financial burden of any archaeological investigation at this stage. He says the matter can be controlled by condition.

21. I do not consider the appellant's approach to be acceptable. It may be that the archaeological remains that the appellant accepts are present here are important ones. Such remains could have a major effect on the scale or form of the development proposed; they could affect the site layout; in the absence of any information at all about them, the possibility that they ought to prevent the appeal project taking place cannot be excluded. The doubts are too great to be left to the imposition of a condition. It is clear to me that the appeal project, as it stands, is in conflict with national and local policy on this point. So the project fails on issue (iv).

*v. Affordable housing*

22. The appeal project as it stands includes no affordable housing. However, Core Strategy policy CS9 seeks an element of affordable housing in developments of five or more dwellings in market towns like Barton. The appellant says he has verbally agreed with the Council's officer that one of the five houses would be an affordable dwelling. In the appellant's view the matter can be addressed by formalising that agreement or (so that policy CS9 would not apply) by reducing the scope of the project from five dwellings to four.

23. But neither of these solutions is an acceptable basis for granting permission for the project before me. As for a formal agreement, the proper way forward is for such an agreement to precede a grant of permission, not the other way round. If the appellant wishes to proceed by means of a project for four dwellings, that would differ from the proposal before me, and would need to be pursued through a planning application to the Council.

24. The project before me is therefore unsatisfactory so far as issue (v) is concerned.

*Other matters and overall conclusion*

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25. The owner of the White Swan public house raises concerns about possible difficulties for the operation of the public house arising from the access to the development proposed here being over land in the same ownership as the public house but over which the appellant has a right of way. Any dispute that there might be over the right of way (either as to its geographical extent, the precise nature of the right provided, or responsibility for the maintenance of the area of land affected) would be a matter for the relevant parties and not for me. My concern is only to assess the project before me from a planning point of view and in the public interest.
26. The overall assessment in the public interest is that the particular project before me is unsatisfactory on two of the five main issues. No other matter raised outweighs that, so I have no doubt that the appeal should be dismissed.

[REDACTED]

INSPECTOR