

Amendments to conditions 14 and 15 of planning permission 22/00546/OUT which was for the erection of up to seven dwellings (outline- access and layout only) to change the offsite biodiversity mitigation details

Report Item No

Application Reference:
23/01160/VCU

Land West Of, Ashby Road, Packington, Leicestershire.

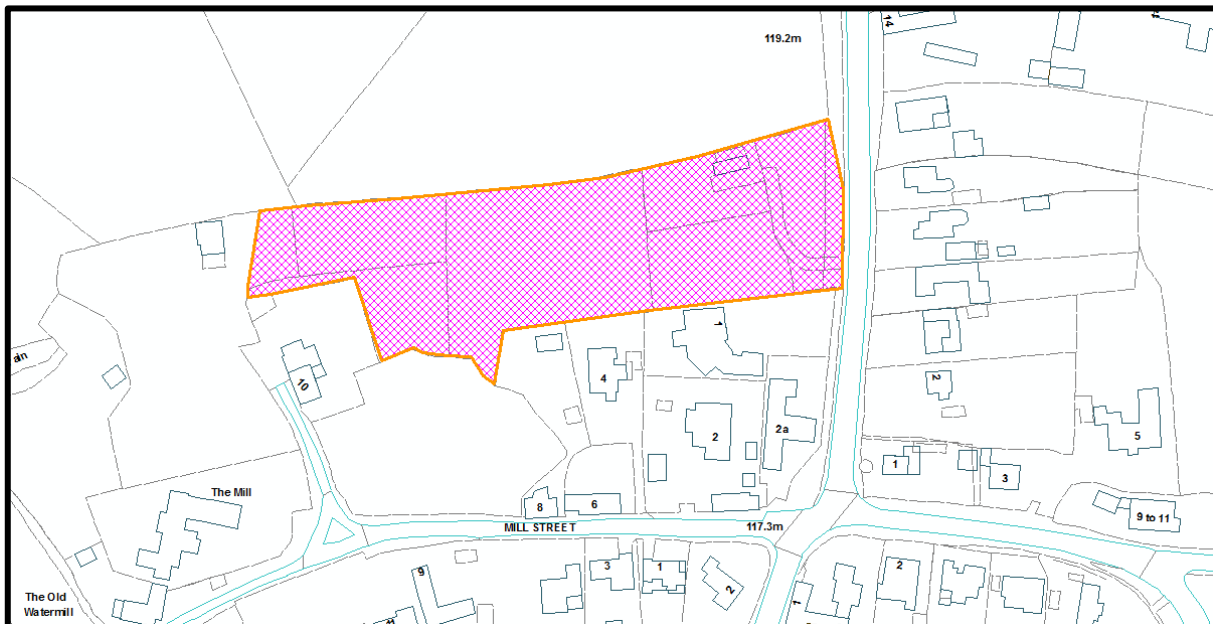
Date Registered:
7 September 2023
Consultation Expiry:
18 October 2023
Determination Date:
2 November 2023
Extension of Time:
None Agreed

Applicant:
Keller Construction Ltd

Case Officer:
Sarah Booth

Recommendation:
PERMIT

Site Location



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1. Proposals and Background

Reason the case is called to the Planning Committee:

The application is brought to the Planning Committee for determination under the requirement of the constitution as the agent for this scheme is related to an Elected Member of the Council.

RECOMMENDATION - PERMIT, subject to a deed of variation of the S106 agreement which relates to Planning permission 22/00546/OUT so that it also applies to this scheme and the following condition(s):

- 1 Standard time limit.
- 2 Submission of Reserved matters (landscaping, scale, and appearance)
- 3 Approved plans
- 4 Details of existing proposed ground levels to be submitted with reserved matters.
- 5 Details of all boundary treatments
- 6 Provision of Access in accordance with Highways standards
- 7 Provision of Parking / turning
- 8 Provision of visibility splays
- 9 Contaminated land as per details discharged under 23/00218/DIS
- 10 Verification Investigation for land contamination purposes
- 11 Surface water drainage as per submitted details
- 12 Management details of shared areas and wildlife corridor
- 13 Details of external lighting as per details discharged under 23/00218/DIS
- 14 Details of onsite ecological mitigation measures
- 15 Details of offsite ecological mitigation scheme
- 16 Removal of PD rights for boundary treatments
- 17 Treatment and enclosure of PROW 071 as per details discharged under 23/00218/DIS
- 18 Management of surface water drainage scheme as per details discharged under 23/00218/DIS
- 19 Surface water drainage connection to water course as per details discharged under 23/00218/DIS
- 20 Details of surface water management during construction
- 21 Provision of means to prevent vehicles cutting through the site as per details discharged under 23/00218/DIS

1. Proposals and Background

Planning permission (22/00546/OUT) was granted by planning committee in June 2022 on this application site, on land at Ashby Road Packington, for the erection of up to seven dwellings. That application was subject to a S106 legal agreement and permission for application 22/00546/OUT was subsequently issued in February 2023.

The application site lies on the edge of the village of Packington and is within the limits of development. The site consists of grassland and a stable block. Boundaries are predominantly hedgerow, with arable fields bordering the north and existing housing bordering the south, west and east. The site is located outside of but within the setting of the Packington Conservation Area to the south and there are grade II listed buildings at Packington Mill 65m to the south west, 9 and 11 Mill Street 65m to the south and no 14 Ashby Road 35m to the north east. A public right of way is located to the western boundary and connects with Mill Street to the south.

This is a variation of condition application to seek permission to amend conditions 14 and 15 of application 22/00546/OUT relating to biodiversity net gain mitigation. These conditions were worded as follows:

14. Prior to occupation of the development, a scheme of onsite ecological mitigation as broadly described in the approved Ecological Appraisal by Wildlife Consultants dated March 2022 and received by the Authority on 11 April 2022 shall be completed, the exact details and specification of which shall first be submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in accordance with the approved details and thereafter retained in the approved form.

Reason: In the interests of mitigating the impact of the development on protected species and their habitats

15. Prior to occupation of the development, a scheme of offsite ecological mitigation and enhancement within the land edged in blue on the approved Site Location Plan and a timetable for its completion shall first be submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in accordance with the approved details.

Reason: In the interests of mitigating the impact of the development on protected species and their habitats

This application seeks permission to amend these two conditions above so that it would be possible to relocate one of the offsite locations for the biodiversity mitigation from its currently approved location on land at Ashby Road to land on Coleorton Lane in Packington.

The new biodiversity mitigation land would be located to the north east of the approved development. Figure 1 below shows the location of the approved application site on Ashby Road as well as the proposed amended location for the biodiversity mitigation land on Coleorton Lane (shown in purple).

Figure 1 - Amended proposed biodiversity mitigation Site

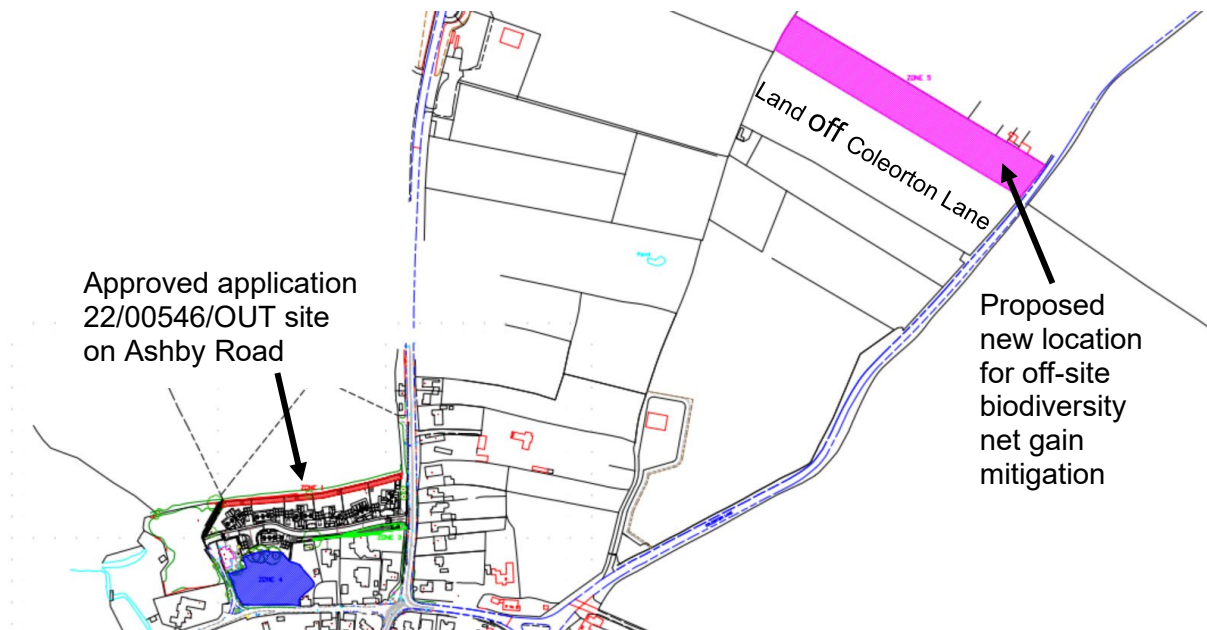


Figure 2 – Existing approved locations for biodiversity mitigation



Key for Figure 2

Red - B3 Onsite Hedgerow Enhancement

Blue - D3 Offsite Habitat Enhancement

Purple – D1 Offsite Habitat Enhancement (Orchard)

Figure 2 above shows the currently approved areas to be used for biodiversity enhancements. The areas in red are for onsite mitigation and would consist of Hedgerow enhancements. The Areas highlighted in blue, and purple are both offsite habitat enhancement areas but, as previously approved, these are directly adjacent to the approved site. The Area outlined in purple is the only

area that would be amended by this variation of condition application, all of the other approved mitigation would remain unchanged from the Figure 2 above.

Given that this is a variation of condition application which only relates to biodiversity mitigation this can be the only matter for consideration in the report below.

Relevant Planning History:

23/01235/DIS The approval of details reserved by conditions 10 (Land Contamination) and 12, 14 and 15 (Ecology / BNG) relating to planning permission ref: 22/00546/OUT (Still pending a decision to be made on this case)

23/00228/REM Reserved matters approval (appearance, landscaping, and scale) (outline planning permission 22/00546/OUT) for the erection of up to seven dwellings – Permitted on 28.03.2023

23/00218/DIS The approval of details reserved by conditions 5 (Boundary Treatments), 9 (Contaminated Land), 13 (Lighting), 17 (Public Right of Way Works), 18 (Drainage Maintenance), 19 (Soakaway Connection) and 21 (Means to Prevent Access Through Site) relating to planning permission reference 22/00546/OUT – Permitted on 3.04.2023

22/00546/OUT Erection of up to seven dwellings (outline- access and layout only) PER 17.02.2023

21/02092/OUTM Erection of up to 11 dwellings and garaging, to include associated access alterations and parking provision (outline- access and layout only) – Withdrawn on 26.01.2022

2. Publicity

30 Neighbours have been notified.

Site Notice displayed 22 September 2023.

Press Notice published Leicester Mercury 27 September 2023.

3. Summary of Consultations and Representations Received

Packington Parish Council – No comments received

No objections from:

County Highway Authority

LCC Ecology

HS2 Ltd

Third Party Representations

4 letters of representation have been received which make the following points: -

- Loss of orchard originally proposed for Mill Street.
- Mitigation is moving further away from the site / outside of the village / too far the development.
- Detrimental to the character of the village and loss of community / village benefits.
- Loss of green space.
- Concerns over future use / redevelopment of the land.
- Impacts on the Conservation Area.
- Impacts on flooding in the area / on local residents.
- Negative impacts on the rural / visual amenity.
- There are already environmental improvements proposed in the new mitigation location for other development in that area.

4. Relevant Planning Policy

National Policies

National Planning Policy Framework (Dec 2023)

The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. The policies of the North West Leicestershire

Local Plan as listed in the relevant section below are consistent with the policies in the NPPF. The following paragraphs of the NPPF are considered relevant to the determination of this application:

Paragraphs 8, 10 (Achieving sustainable development);
Paragraphs 11 and 12 (Presumption in favour of sustainable development);
Paragraph 34 (Development contributions);
Paragraphs 38, 39, 40, 41, 42, 44 and 47 (Decision-making);
Paragraphs 55, 56 and 57 (Planning conditions and obligations);
Paragraphs 60 and 70 (Delivering a sufficient supply of homes);
Paragraphs 109, 111, 112, 113, 114, 115, 116 and 117 (Promoting sustainable transport);
Paragraphs 123, 124 and 128 (Making effective use of land);
Paragraphs 131, 133, 135, 137 and 139 (Achieving well-designed places);
Paragraphs 157, 159, 162, 165, 167, 168, 169, 170, 171, 173 and 175 (Meeting the challenge of climate change, flooding and coastal change); and
Paragraphs 180, 186, 189, 190, 191, 192 and 194 (Conserving and enhancing the natural environment).
Paragraphs 195, 196, 198, 199, 205, 208 (Conserving and enhancing the historic environment)

Adopted North West Leicestershire Local Plan (2021)

The following policies of the adopted Local Plan are consistent with the policies in the NPPF and should be afforded weight in the determination of this application:

D1 - Design of New Development
D2 - Amenity
H6 - House Types and Mix
IF1 - Development and Infrastructure
IF4 - Transport Infrastructure and New Development
IF7 - Parking Provision and New Development
En1 - Nature Conservation
En2 - River Mease Special Area of Conservation
EN3 - The National Forest
He1 - Conservation and Enhancement of North West Leicestershire's Historic Environment
Cc2 - Water - Flood Risk
Cc3 - Sustainable Drainage Systems

Other Policies/Guidance

National Planning Practice Guidance.
Leicestershire Highway Design Guide.
Good Design for North West Leicestershire SPD - April 2017.

5. Assessment

Principle of Development

In accordance with the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point for the determination of the application is the development plan which, in this instance, includes the adopted North West Leicestershire Local Plan (2021).

Development was approved for the erection of 7 dwellings under application 22/00546/OUT which was determined by planning committee in June 2022. This was subject to a legal agreement and permission was issued for the development in February 2023 with it remaining valid until February 2026.

The application site is located within Packington and within the defined limits to development where the principle of residential development is supported under policy S2 subject to all other planning considerations being adequately addressed. Policy S2 of the adopted Local Plan identifies Packington as a sustainable village which has a limited range of services and facilities where a limited amount of growth will take place within the defined Limits to Development.

In view of the above the application has already been found to be acceptable in principle by the granting of the original and still extant permission for this site.

Ecology

Policy EN1 of the Local Plan supports proposals that conserve, restore or enhance the biodiversity of the district. Leicestershire County Council Ecologists have been consulted in connection with the proposal and advise that the submitted information and mitigation measures should be accepted.

The proposed site is permanent semi-improved grassland which has historically been managed for the purposes of keeping horses with associated grazing and stabling. Therefore, as grass land, this was considered to be of low ecological value. Over the last 3 - 4 years the site has been unused / unmanaged allowing the grassland to become overgrown with the dominant species now being Creeping Thistle, Ribwort Plantain and Dock resulting in any herb species which may have been present being smothered out. The current site is considered to offer Low Ecological Value. No evidence was identified of the site being used by protected species for any purpose.

Biodiversity Net Gain

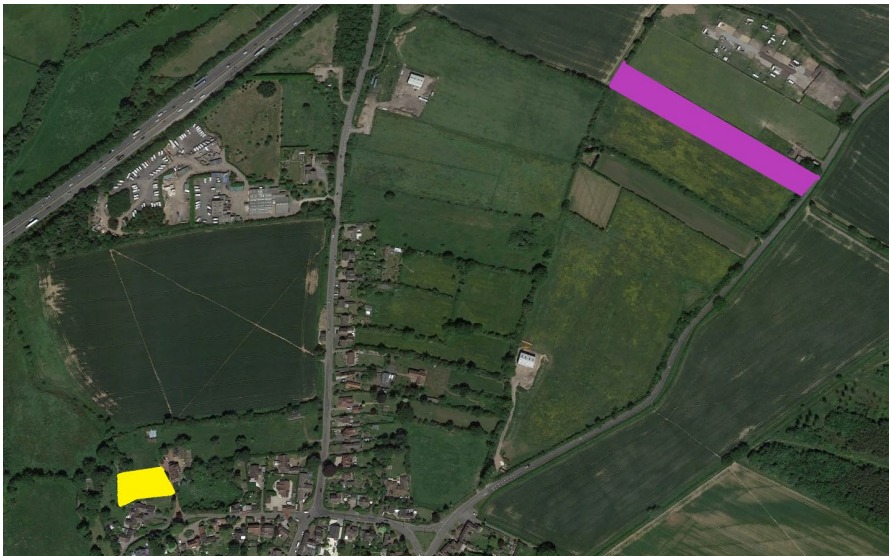
Biodiversity net gain (BNG) is the governments new initiative for creating and improving natural habitats. BNG makes sure development has a measurably positive impact ('net gain') on biodiversity, compared to what was there before development.

BNG is becoming mandatory in January 2024 under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021). Once this is mandatory developers must deliver a Biodiversity Net Gain of 10% in connection with their development. This means a development will result in more or better quality natural habitat than there was prior to the development. Whilst BNG is not yet mandatory, consideration must still be given to this legislation in all current applications.

The applicant has previously proposed to mitigate the loss for this development through both onsite hedgerow improvements and offsite mitigation in the form of enhancements and management of two land parcels under the applicants control adjacent to the application site. This has been previously secured through a Section 106 agreement. The existing mitigation is shown below.

Figure 3 – Approved mitigation

Zones 1 and 3 both provide onsite BNG with Zones 2 and 4 being offsite due to them falling outside of the application's red line of development. Zone 2 was originally proposed as an orchard, and this is the only area that would be amended by this application.



New Biodiversity Impact Assessments have been submitted with this application to relocate one of the approved areas for biodiversity mitigation. The Aerial view above shows the approved location of the biodiversity mitigation "Zone 2" (in yellow), which is proposed to be replaced by an alternative location on Coleorton Lane (in purple). Photos of the existing and proposed mitigation sites are shown below.

Figure 4 - Existing Mitigation Site (Zone 2)

Looking east



Looking south-west



Figure 5 - Views of land at Coleorton Lane

Looking south-west



Looking north-east



The National Guidance for Biodiversity net gain embeds a fundamental principle for spatial hierarchy of habitat delivery, where there is a preference for onsite or local enhancements. Onsite and local offsite units must be the first option explored.

The BNG hierarchy for the purpose of the statutory framework for BNG is set out in Article 30A of the Development Management Procedure Order. This hierarchy is distinct from the mitigation hierarchy set out in the National Planning Policy Framework.

The biodiversity gain hierarchy means the following actions in the following order of priority:

- a) avoiding adverse effects of the development on onsite habitat with a habitat distinctiveness score, applied in the biodiversity metric, equal to or higher than six;
- b) so far as those adverse effects cannot be avoided, mitigating those effects;
- c) so far as those adverse effects cannot be mitigated, habitat enhancement of onsite habitat;
- d) so far as there cannot be that enhancement, creation of onsite habitat;
- e) so far as there cannot be that creation, the availability of registered offsite biodiversity gain;
- f) so far as that offsite habitat enhancement cannot be secured, purchasing biodiversity credits.

Local planning authorities must consider the above Biodiversity Net Gain Hierarchy when considering whether the biodiversity objective has been met and when determining whether to approve the Biodiversity Gain Plan.

In this instance the approved location for the mitigation is already “offsite”, as it falls outside the application red line. The proposed alternative site on Coleorton Lane is also offsite. Whilst the new location would be further away, the Coleorton Lane site is still within the local area and would still be within the North West Leicestershire District. As the biodiversity land was already offsite it is therefore within the same hierarchy category as the new site.

The planning agent has advised that at the time of the original application the applicant was in the early stages of negotiating alternative areas of land in the vicinity that were considered to be more suitable for taking the biodiversity enhancement. The original application was submitted with only the biodiversity enhancement sites that were available to the applicant at the time however more suitable sites have now become available to the applicant and this has resulted in submission of this variation of condition application.

The submitted information advises that the relocated site has greater biodiversity connectivity credentials, with open countryside on all sides, including adjacent meadow land and being bordered by mature hedgerows and trees.

The County Ecologist has advised that the relocation of the biodiversity enhancements will improve the chances of a successful establishment of the designed habitat.

In the local plan Policy En1 (Nature conservation) states that “Proposals for development will be supported which conserve, restore or enhance the biodiversity in the district”, the proposal relocates the biodiversity land circa 560m away within the district. The Environment Act 2021 allows for the delivery of biodiversity offsite. The proposal is in adherence to relevant legislation and in accordance with the local plan and an objection or refusal on environmental grounds could not be sustained on this basis.

It is noted that neighbours have objected on the grounds that the relocation of the mitigation would be a loss to the local community / amenity and to the Conservation Area. The requirement for this mitigation is to provide mitigation for ecological benefits due to the loss of biodiversity habitat and not for heritage, conservation, or public benefits. Whilst this application would result in less mitigation being sited within the village of Packington, there is no planning policy requirement to secure the land for the benefit of the local community or the Conservation Area. Notwithstanding this, the onsite mitigation will remain as per the approved application, which is adjacent to the approved dwellings, therefore those areas of mitigation will still be retained within the existing village.

Neighbour concerns have also been raised that the loss of the additional planting in this location would adversely impact on local flooding. The landscaping is not a mandatory requirement for flooding mitigation for this application therefore there is no planning policy reason to refuse the application on this basis.

As mentioned above, a deed of variation is required to amend the original legal agreement for application 22/00546/OUT to change the location of the biodiversity mitigation locations. Subject to the deed of variation being completed to secure the new location, it is considered that the application would accord with Policy En1 of the adopted Local Plan, the Environment Act 2021 and the NPPF.

River Mease Special Area of Conservation/SSSI Habitat Regulations Assessment

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC). The Gilwiskaw Brook, one of its tributaries, lies around 100 metres to the west. Discharge from the sewage treatment works within the SAC catchment area is a major contributor to the phosphate levels in the river.

As a result of the proposed development there could be an impact on the River Mease SAC, which may undermine its conservation objectives, from an increase in foul and surface water drainage discharge as well as due to its proximity to a tributary of the River Mease. Therefore an appropriate assessment of the proposal and its impacts on the SAC is required.

A contribution under DCS2 was secured under the original permission. The proposed changes in this application would not increase the occupation of the dwellings nor increase the level of roofs or hard surfacing across the site. A deed of variation is required to secure the River Mease Contribution for this variation of condition application and the applicant has already commenced proceedings to undertake the deed of variation.

In March 2022 Natural England published advice in respect of the nutrient neutrality methodology which can be used to mitigate against the impacts of additional phosphate entering the SAC from foul drainage associated with new development. The River Mease DCS is a mitigation scheme to mitigate against additional phosphate entering the SAC, and capacity within the DCS for this development has been previously secured under the original permission. Therefore an assessment under the nutrient neutrality methodology is not required in this case.

Subject to the above legal agreement being completed it can be ascertained that the proposal will, either alone or in combination with other plans or projects, have no likely significant effect on the internationally important interest features of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI, and would comply with the Habitat Regulations, the NPPF and Policies EN1 and EN2 of the submitted Local Plan.

HS2

The Government announced on the 4th of October 2023, that the Phase 2b route of HS2 (or HS2 East as outlined in the Integrated Rail Plan (IRP)) would not take place. Whilst this is the case there has been no subsequent announcement on how or when the safeguarded areas would be revoked and therefore consideration must still be given to the safeguarded zones for the time being.

The proposed off-setting site is close to the safeguarded HS2 route, however both HS2 Ltd and the County Ecologist have advised that the Environment Act 2021 makes provision for BNG mitigation sites to be created within the HS2 safeguarded zones if they are then off-set elsewhere as and when HS2 is developed. As such no objections have been raised by either HS2 Ltd or the County Ecologist.

Other

This application only relates to the relation of biodiversity net gain mitigation, and this would not directly impact on residential amenity, design, heritage or highway safety.

Neighbour concerns have been raised that the land currently proposed to provide mitigation (Zone 2 of Figure 3) would then become available for redevelopment. If this was the case, this would be a matter for a separate planning application and would be assessed separately to the current application.

Neighbour concerns have been raised that the land on Coleorton Lane is already being used to provide mitigation for other developments and this could compromise the availability of the site. For the avoidance of doubt, the land on Coleorton Lane submitted in this application has not already been allocated for use of biodiversity mitigation for other sites.

Conditions

Application ref: 22/00546/OUT was subject to 21 conditions. This application seeks to vary conditions 14 and 15 of 14/00415/FUL. These conditions were worded as follows:

14. Prior to occupation of the development, a scheme of onsite ecological mitigation as broadly described in the approved Ecological Appraisal by Wildlife Consultants dated March 2022 and received by the Authority on 11 April 2022 shall be completed, the exact details and specification of which shall first be submitted to and approved in writing by the Local

Planning Authority. The scheme shall be carried out in accordance with the approved details and thereafter retained in the approved form.

Reason: In the interests of mitigating the impact of the development on protected species and their habitats

15. Prior to occupation of the development, a scheme of offsite ecological mitigation and enhancement within the land edged in blue on the approved Site Location Plan and a timetable for its completion shall first be submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in accordance with the approved details.

Reason: In the interests of mitigating the impact of the development on protected species and their habitats

It is recommended that the conditions are updated as follows:

Condition 1 (Time for implementation) - Should be amended to ensure the development starts prior to 3 years from the approval date of the original application.

Condition 14 (BNG mitigation) – Should be amended to reflect the new location for biodiversity mitigation.

Condition 15 (BNG mitigation) - Should be amended to reflect the new location for biodiversity mitigation.

Some conditions have been discharged under other discharge of conditions applications therefore the wording of the following conditions should be amended to refer to the details approved under the discharge of condition application.

Condition 5 (Boundary Treatments),
Condition 9 (Contaminated Land),
Condition 10 (Land Contamination),
Condition 13 (Lighting),
Condition 17 (Public Right of Way Works),
Condition 18 (Drainage Maintenance),
Condition 19 (Soakaway Connection) and
Condition 21 (Means to Prevent Access Through Site)

Conclusion

The principle of the development has already been established under planning permission 22/00546/OUT. Subject to the above changes to the conditions originally approved under 22/00546/OUT, it is considered that the proposal would comply with the relevant policies in the adopted Local Plan, the advice in the NPPF and the Council's adopted Good Design SPD. It is therefore recommended that the application be permitted subject to the completion of a deed of variation and amending relevant conditions.

SECTION B- OTHER MATTERS