

# Northern Planning Committee

## Agenda

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<b>Date:</b>	<b>Wednesday, 22nd December, 2010</b>
<b>Time:</b>	<b>2.00 pm</b>
<b>Venue:</b>	<b>The Capesthorne Room - Town Hall, Macclesfield SK10 1DX</b>

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The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

**Please note that members of the public are requested to check the Council's website the week the Planning/Board meeting is due to take place as Officers produce updates for some or all of the applications prior to the commencement of the meeting and after the agenda has been published.**

### **PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT**

**1. Apologies for Absence**

To receive any apologies for absence.

**2. Declarations of Interest/Pre Determination**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests and for Members to declare if they have pre-determined any item on the agenda.

**3. Minutes of the Meeting (Pages 1 - 4)**

To approve the Minutes as a correct record.

**4. Public Speaking**

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For any apologies or requests for further information, or to arrange to speak at the meeting

**Contact:** Sarah Baxter  
**Tel:** 01270 686462  
**E-Mail:** [sarah.baxter@cheshireeast.gov.uk](mailto:sarah.baxter@cheshireeast.gov.uk)

A total period of 5 minutes is allocated for each of the planning applications for Ward Councillors who are not Members of the Planning Committee.

A period of 3 minutes is allocated for each of the planning applications for the following individuals/groups:

- Members who are not Members of the Planning Committee and are not the Ward Member
- The Relevant Town/Parish Council
- Local Representative Groups/Civic Society
- Objectors
- Supporters
- Applicants

5. **10/4254M-Variation of Conditions 1 & 2 from Approval 5/5/5116 to allow Maximum of 12 Caravans to be occupied between 1st March and 15th January annually, The Caravan Site, Elm Beds Farm, Elm Beds Road, Poynton for Mr Victor Whittaker (Pages 5 - 18)**

To consider the above application.

6. **10/4083M-Variation of Conditions 9,10, 12 Relating To 06/2254p (Appeal Decision App/C0630/A/07/2033939). The Purpose of this application is to ensure one of the Units can be occupied full time by a Manager including during the closed season, Rode Heath Wood, Back Lane, Eaton for Mr & Mrs Noad (Pages 19 - 26)**

To consider the above application.

7. **10/3803M-Application to remove condition 12 on Planning Permission 06/2254P (Appeal reference APP/C0630/A/07/20339390) for change of use of land to allow siting of 32 timber clad twin unit Caravans, access works and landscaping, Rode Heath Wood, Back Lane, Eaton for MR David & Mrs Yvette Noad (Pages 27 - 36)**

To consider the above application.

8. **10/3805M- Application to remove condition 12 on Planning Permission 06/2254P (Appeal reference APP/C0630/A/07/20339390) for change of use of land to allow siting of 32 timber clad twin unit Caravans, access works and landscaping, Rode Heath Wood, Back Lane, Eaton for MR David & Mrs Yvette Noad (Pages 37 - 46)**

To consider the above application.

9. **10/4283M-Demolition of Holford House and the erection of a replacement dwelling, along with the relocation of two existing park homes, Holford House, Holford Drive, Mossways Park, Wilmslow, Cheshire for W Flannigan (Pages 47 - 58)**

To consider the above application.

10. **10/4280M-Replacement Dwelling, Chrisovalantou, Mereside Road, Mere for Mr G Cavill, BWD LTD** (Pages 59 - 66)

To consider the above application.

11. **Broadheath House, Slade Lane, Over Alderley, Alderley Edge - Judicial Review of decision to grant planning permission** (Pages 67 - 72)

To consider the above report.

12. **Appeal Summaries** (Pages 73 - 74)

To note the Appeal Summaries.

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## **CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Northern Planning Committee**  
held on Wednesday, 1st December, 2010 at The Capesthorpe Room - Town  
Hall, Macclesfield SK10 1DX

### **PRESENT**

Councillor B Moran (Chairman)  
Councillor R West (Vice-Chairman)

Councillors C Andrew, H Gaddum, M Hardy, O Hunter, D Neilson,  
L Smetham, D Stockton, D Thompson and C Tomlinson

### **72 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors J B Crockatt and R  
J Narraway.

### **73 DECLARATIONS OF INTEREST/PRE DETERMINATION**

None.

### **74 MINUTES OF THE MEETING**

RESOLVED

That the minutes be approved as a correct record and signed by the  
Chairman.

### **75 PUBLIC SPEAKING**

RESOLVED

That the public speaking procedure be noted.

### **76 10/3666M-DEMOLITION OF EXISTING DWELLING HOUSE AND CONSTRUCTION OF REPLACEMENT DWELLING HOUSE- RESUBMISSION OF 10/0053M, KAMIROS, MACCLESFIELD ROAD, ALDERLEY EDGE FOR MR & MRS J BANKS**

Consideration was given to the above application.

It was noted that Members of the Committee had received  
correspondence from both the agent acting on behalf of the applicant and  
the agent acting for the neighbouring objector).

(Councillor F Keegan, the Ward Councillor, Denise Emery, the agent  
acting on behalf of an objector and Mr Fillingham, the agent for the  
applicant attended the meeting and spoke in respect of the application).

### RESOLVED

That the application be approved subject to the following conditions:-

1. A03FP - Commencement of development (3 years)
2. A02EX - Submission of samples of building materials
3. A06GR - No windows to be inserted
4. A25GR - Obscure glazing requirement
5. A04AP - Development in accord with revised plans (numbered)
6. A22GR - Protection from noise during construction (hours of construction)
7. Gates - To be in accordance with submitted plans
8. Bats - To comply with the mitigation proposals
9. Method Statement - for building construction works in relation to potential extraction of bedrock
10. A01TR - Tree retention
11. A02TR - Tree Protection including ground protection within the RPR of the Beech outside the protective fencing.
12. A03TR - Construction Specification / Method Statement for the foundations of the garage within the RPR of the Beech and the reconstruction of the boundary wall fronting Macclesfield Road
13. A05TR - Arboricultural Method Statement
14. A06TR - Levels survey which provides for the retention of trees on site
15. A02EX - Submission of samples of building materials (already recommended in main committee report)
16. A10EX - Rainwater goods...cast-metal, painted in a dark colour to be agreed with the LPA
17. A16EX - Specification of window design / style...external...fabricated in timber or powder-coated metal
18. A20EX - Submission of details of windows – scale drawings
19. A19EX - garage doors shall be constructed in timber, vertically boarded
20. Any use of decorative or preservative treatments for external timber on the property shall be agreed with the LPA before works commence.
21. A01LS - for a landscaping plan so that full details of species/planting/establishment can be included. (For example, 2 trees shown in the front garden area are in the line of access to the garages)

- 22. A04LS - Landscaping conditions (implementation)
- 23. A10LS - Additional landscaping details required - details of the following landscape matters are required: "The landscaping scheme shall include full details and plans of all existing planting to be retained."
- 24. A12LS - Landscaping to include details of boundary treatment for boundary treatments, for full details of all wall and hardworks boundary feature construction.
- 25. A15LS - Submission of additional landscape details for details of levels and earthworks to take account of level changes and gradients needed for the North West boundary and the front boundary area, in relation to existing vegetation.
- 26. No pile driving
- 27. Construction method statement (including wheel wash, parking during construction and protection of the highway from debris) to be submitted prior to commencement.

**77 10/3672M-PROPOSED DEMOLITION OF DWELLING (CONSERVATION AREA CONSENT)- RESUBMISSION OF 10/0051M, KAMIROS, MACCLESFIELD ROAD, ALDERLEY EDGE FOR MR & MRS J BANKS**

Consideration was given to the above application.

RESOLVED

That the application be approved subject to the following conditions:-

- 1. A03CA - Standard Time Limit
- 2. A02CA - Demolition as precursor of redevelopment

The meeting commenced at 2.00 pm and concluded at 3.27 pm

Councillor B Moran (Chairman)

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**Application No:** 10/4254M

**Location:** THE CARAVAN SITE, ELM BEDS FARM, ELM BEDS ROAD, POYNTON, SK12 1TG

**Proposal:** VARIATION OF CONDITIONS 1 & 2 FROM APPROVAL 5/5/5116 TO ALLOW MAXIMUM OF 12 CARAVANS TO BE OCCUPIED BETWEEN 1ST MARCH AND 15TH JANUARY ANNUALLY

**For** MR VICTOR WHITTAKER

**Registered** 27-Oct-2010

**Policy Item** Yes

**Grid Reference** 394487 382724

**Date Report Prepared:** 13 December 2010

**SUMMARY RECOMMENDATION:** Refuse.

**MAIN ISSUES:** Impact on neighbours.

Impact on Green Belt and character of the area.

Impact on highway.

## **REASON FOR REPORT.**

The site has particular local resident interest and is considered to be contentious. The proposal raises issues which are best considered in an open forum.

## **DESCRIPTION OF SITE AND CONTEXT.**

The application site is occupied and used by Elm Beds Caravan Park, which is a recreational caravan park accessed off Elm Beds Road. Elms Bed Road is an unadopted road with a mixed uneven surface of stone setts and tarmac.

Planning permission was originally granted for the caravan park in June 1961 under planning application 5/5/5116. The conditions attached to this consent require the site to be closed seasonally, between 31 October to 1 March each year.

There is a total of 54 caravans on site which are located to the south of the site.

To the north of the application site lies Elm Beds Farmhouse, and an area designated for caravan storage and two areas designated for touring caravans and tents.

The application site is situated within the Green Belt and an Area of Special County Value as designated by the Macclesfield Borough Local Plan. Macclesfield Canal Conservation Area lies to the east of the site and has been extended to include a length of Elms Bed Road which extends for a short length within the red edge site plan.

## **DETAILS OF PROPOSAL.**

Planning permission was granted on 20<sup>th</sup> June 1961 for the use of this site as a caravan park. This permission was conditional and conditions 1 and 2 read as follows;

Condition Nos. 1:

*“This permission shall not authorise the use of the land as a site for caravans except during the period from 1<sup>st</sup> March to 31<sup>st</sup> October each year, and such use shall not supersede the normal use of the land for agricultural purposes.”*

Condition Nos. 2:

*“No caravans shall be occupied for human habitation except during the period 1<sup>st</sup> March to 31<sup>st</sup> October in each year.”*

This planning application seeks consent to vary these conditions to allow a maximum of 12no. caravans to be occupied between 1<sup>st</sup> March and the 15<sup>th</sup> January annually. The remaining 42 static caravans would not be available for occupation between 31<sup>st</sup> October and 1<sup>st</sup> March in line with the original consent and site licence.

## **RELEVANT HISTORY.**

07/2420P     Removal of conditions one and two attached to application 5/5/5116 to enable caravans to be occupied between 1st March and 15th January annually  
Withdrawn 01.11.2007

08/0802P     Certificate of lawfulness for the existing use of land as caravan site and for caravan storage  
Positive Certificate granted 04.08.08 for:  
*Use of area edged red for the stationing of 54 static caravans offering seasonal occupation between 1st March and 31<sup>st</sup> October each year, the area hatched orange (discluding the permanent residential caravan – hatched black) for the use of*

*the land for recreational pitches for tents and touring caravans and the area hatched green for the storage of 12 touring caravans, as indicated on the local planning authority's location plan.*

- 08/0803P That one caravan has offered permanent residential occupation throughout the year  
Positive Certificate granted 04.08.08 for:  
*The stationing of one residential static caravan (as indicated on the Local Planning Authorities location plan)*
- 08/1447P Variation of conditions 1 & 2 from approval 5/5/5116 to allow a maximum of 12 caravans to be occupied between 1st March and 15th January annually  
Approved 10.09.08  
Temporary consent expired 10.09.10
- 09/0362M Retention of caravan for use as temporary dwelling (Elm Lodge)  
Refused 01.06.09  
Appeal dismissed 19.03.10.
- 10/3116M Removal/variation of conditions attached to application 5/5/5116 for caravans approved 20<sup>th</sup> June 1961 to extend opening period to 10.5 months each year.  
Refused 13.10.10.

## **POLICIES.**

### **Regional Spatial Strategy.**

DP1 Spatial Principles  
DP7 Promote Environmental Quality.

### **Local Plan Policy.**

NE1	Areas of Special County Value
BE3	Conservation Areas
BE6	Macclesfield Canal Conservation Area
DC3	Amenity
DC6	Circulation and Access
RT13	Promotion of Tourism

### **Other Material Considerations.**

PPS4 – Planning for Sustainable Economic Growth  
PPS6 - Planning and the Historic Environment.  
PPS7 – Sustainable Development in Rural Areas  
Good Practice Guide on Planning for Tourism

## **CONSULTATIONS (External to Planning)**

### **Highways:**

The Highway Engineer notes there were a number of highway issues raised on the previous application for all caravans to have the occupation period extended and considers these issues are still relevant to this application despite the reduction in use of the number of caravans. The access is constrained to one way flow and is very poorly maintained and the junction does not provide the required level of visibility. I would not wish to see the use of the access intensified above that already consented through existing planning permissions. Therefore, it is not recommend that the conditions are removed.

### **Environmental Health:**

Do not object to this application subject to the following comments

Understand that this application is in relation to the expired temporary permission 08/1447P. It is suggested that the caravans be nominated on a plan including pitch number and also owner occupier details confirmed and stipulated clearly to enable clarity and ease planning enforcement if so permitted.

## **VIEWS OF THE PARISH / TOWN COUNCIL**

Poynton Town Council recommend refusal on the same grounds as the previous application for extended use of amenity, impact on Conservation Area and highway safety.

## **OTHER REPRESENTATIONS.**

Seven neighbour letters of objection has been received summarised on the following grounds;

- previous temporary consent for 12 caravans caused great resentment from residents who bitterly opposed any erosion of the 4 month period of respite from the constant problems of noise, disturbance, road safety and potential property damage. Reasons to refuse previous application still relevant now.
- Local authority received many complaints during course of this ill-conceived experiment which was believed only an excuse to permit permanent residents to live and work from the site.
- Residential cul-de-sac of Elms Bed Road is a Conservation Area and is now in a parlous state of disintegration due to excessive and heavy use.

- When temporary permission was in force during severe weather, there were many incidents involving site traffic which had to be dealt with by residents.
- Elms Bed Road is not classed as a highway and should never have been. The existing caravan site does not have a legal right to use road. Example of court case provided where it was found access granted for agricultural use was excessive when dominant land was converted into a 200 placement caravan site. Court found claimant was not entitled to use the right of way to that extent since it exceeded that which was contemplated at the time. Grant entitled to use right of way for a small number of caravans that would be no more onerous than agriculture.
- Elms Bed Rd is substandard and does not comply with national design standards. Junction with Shrigley Rd is very narrow with poor visibility splay confirmed by the Highway Engineer.
- Increase damage to road and property caused by size and quantity of vehicular traffic.
- Power supply problems with increase demand leading to increase in possible more power losses.
- Only 17 houses on Elms Bed Rd, allowing 12 caravans extended season could easily double vehicular traffic.
- Site can resolve problem by organising its own access over land it possesses.
- Site is not sustainable but is badly situated, with poor access.
- Trusts authority will serve a Planning Contravention Notice to gauge activities being carried out on site. Believe site not satisfactorily policed over previous 2 years.
- Believe any further permission to extend use of the site for 12 caravans will only encourage further illegal residential use and applications to extend.
- Unresolved issues concerning previous applications need to be resolved. Cannot comprehend how further applications can be considered until original issues resolved.
- Caravans being used as primary residencies and 6 week closure makes substitute accommodation easy to obtain.
- Only benefit site owners not local tourism.
- Not a sustainable site as only limited public transport and Poynton village being 1.5 miles away. No benefit to local community of businesses.

One neighbour letter has been received whilst not having any objection to the presence of a caravan site at the end of the road although being quite flattered that people should want to holiday in the area where I am privileged to live, I do object to any further development that will effect the essential character of the area. Considers the extension of the permitted opening months will effectively change the nature of the site from one of recreation to a permanent residence, thus nibbling away at the rural nature of the area. I understand that some of the recreational caravan owners have expressed an understandable wish to spend Christmas/New year at the site, in order to accommodate this I suggest the creation of a two week window,

encompassing this holiday period, during which time the site might briefly reopen.

One letter received confirming not objecting to a limited number of caravans being given approval.

British Waterways have confirmed after due consideration of the application details have no objections to the proposed variation of conditions.

### **APPLICANT'S SUPPORTING INFORMATION.**

In a letter attached to the submitted application, the applicant confirms the number of caravans being applied for having the restriction being removed has been reduced and now requests only 12 caravans to be occupied for an extended period of 10.5 months. This follows on from a temporary permission being granted for a 2 year period under reference 08/1447P.

The applicant confirms the reason for the application is to extend the recreational use of the site and argues the proposal is supported by National Policy and Guidance contained in PPS7, PPS4 and The Good Practise Guide on Planning for Tourism. Briefly the applicant argues PPS7 supports tourism and leisure particularly when located close to service centres or villages and it is noted the proximity of Higher Poynton and Poynton.

PPS4 policy EC7 is most relevant and states LPA's should support sustainable rural tourism and leisure developments. This policy supports expansion of tourist facilities where the scale is appropriate to its location and where expansion may help to secure the future viability.

The Good Practise Guide on Planning for Tourism recognises sites close to settlements will generally be more sustainable. With better caravan standards and trend towards tourism as a year round activity, authorities should give sympathetic consideration to applications to extend the opening periods. Reference is made to Annex B of the guide. Occupancy conditions can be designed to ensure holiday accommodation is used for its intended purpose ensuring caravans do not become part of the housing stock.

The applicant considers the four reasons for refusal of the application to remove all restrictions, (10/3116M), have been addressed in reducing the number of caravans to 12. The recreational use of 12 caravans for the extended period will not lead to any material harm to the amenities of residents or detrimental to highway safety. Similarly the applicant believes it cannot be argued extending the use of 12 caravans would be harmful to the character or appearance of the Conservation Area.

The applicant contends in granting the temporary planning permission in 2008 it was agreed the extended period of 12 caravans was acceptable and there have been no changes in circumstances or policy that could lead to any different conclusion.

## **OFFICER APPRAISAL.**

### **Principle of Development.**

The main issue considered to be addressed in assessing this application is whether there has been any material changes in policy or circumstances following the temporary consent granted in allowing a maximum of 12 of the 54 caravans on site to be used without the restrictions on occupation provided by the original consent in 1961.

In this assessment regard has to be given to the two previous consents which are the temporary consent being granted in September 2008 for the relaxation now being applied for, and the refusal in October 2010 for the extension of the opening period of all the caravans on the caravan park to 10.5 months of the year.

The application 10/3116M was refused on four grounds summarised below;

- Noise and disturbance for nearby residents would result as a result of an increase in activity at the site contrary to Policy DC3.
- Contrary to interests of highway safety as it would result in additional traffic using junction of Shrigley Road and Elms Bed Road which is substandard.
- An increased hazard to other road users on Elm Beds Road and Shrigley Road.
- Elms Bed Road is in a Conservation Area and increased traffic movements will cause further damage to road surface contrary to Policies BE3 and BC6.

Whilst this decision was based on all 54 caravans being subject to the extended occupation dates, the limit of 12 caravans now proposed will have a significant reduction on the impact. It has to be assessed as to whether this incremental increase would have a significant impact to justify refusal of this application.

Consideration for this application includes assessing the potential benefits of providing additional tourist accommodation during the winter months, the impact the additional use of the site will have on the amenity of residents of Elm Beds Road, and the access to the site in Highway Safety terms, and the impact on the character of the Conservation Area.

### **Appraisal.**

As there were local concerns about the caravans being permanently occupied, it was recommended that a temporary consent be granted for two years, with conditions attached requiring the applicant / site manager to

submit a plan before the 31 October each year clearly indicating which static caravans are to be occupied between 31 October and 15 January each year. This would enable the Local Authority to monitor the use of each of the static caravans on the site, in accordance with the site licence conditions.

Records have been received by the Planning Enforcement section detailing the caravans and occupants during the extended period which were all in order. Any permanent consent granted should also be subject to this condition. In order to fully assess the proposal consideration needs to be given, and the issues addressed, to the reasons for refusal on the previous application for all the caravans on site.

In order to assess this application regard has to be given to the reasons for refusal on the previous application and be mindful of the purpose of the application which is to extend the period of occupation of only 12 of the total number of caravans on site.

### **Amenity.**

In order to address the objectors concerns about the potential for caravans to be permanent residence a condition can be attached to any approval granted ensuring the caravans are for holiday accommodation only as suggested within The Good Practice Guide on Planning and Tourism. Furthermore there would still be a seasonal break which would be sufficient in combination with the occupancy condition.

Complaints/objections have been received on the grounds of disturbance caused by vehicle movements to and from the site at unsociable hours. There are no planning restrictions on vehicle movements to and from the site only restrictions on occupation. This would not prevent owners of the caravans arriving on site for routine maintenance or repair.

Whilst it is recognised that there is a consent in place to allow access to the site between 1<sup>st</sup> March and 31<sup>st</sup> October per year, the key consideration is whether an extended opening season would exacerbate the problems that are already experienced by local residents, in particular, a loss of amenity by virtue of noise and disturbance caused by the traffic along Elm Beds Road.

At present, the only respite the residents have is during the 16 week closed period. Residents are already aggrieved by the traffic to the site and it is considered that reducing the closed period to just 6 weeks per year even for just 12 caravans will have a significant adverse impact on residential amenity, by virtue of increased traffic movements, noise and disturbance, contrary to policy DC3 of the Local Plan.



### **Highway Issues.**

Access to the site is the key issue in respect of this application.

Access to the site is off Ringley Road via Elms Bed Road and the Highways Department have raised an objection to the application. They consider that the site is served from a single private track which is in a very poor state of repair and cannot accommodate a two-way flow of traffic. In addition, the junction with Elm Beds Road has restricted visibility in the southerly direction.

As the access serves both the caravan site and residential units the access to these properties is well below the standard that should be provided. Although there is already a consented development that generates traffic for a number of months in the year, this should not be further intensified by removing the conditions.

### **Impact on the Conservation Area.**

With reference to the damage to Elms Bed Road, the caravan park has a total of 54 caravans all using this road. This would result in a potential maximum number of vehicle movements of 108 assuming one vehicle per caravan over the occupation time of the site between 1<sup>st</sup> March to 31<sup>st</sup> October. This eight month period is proposed to be extended by 2.5 months for only 12 caravans. Assuming 12 caravans are occupied during the proposed extended time, this would result in a maximum number of vehicle movements of 24 over the additional 2.5 month period.

A number of concerns have also been raised in respect of increased traffic movements and damage to Elm Beds Road as a result of proposal.

The access to the land which this application applies is via the historic Elm Beds road (contained within the Macclesfield Canal Conservation Area) and has for some time been in a poor state of repair exacerbated by poor utility company reinstatement and heavy vehicle movements. In the c19 this farm track gave access to Elm Beds farm and was very much associated with agricultural activity, its new found use as an access not only for domestic dwellings but also for additional vehicle movements associated with serving a caravan site has stretched the traditional construction of the road to a point that is beyond its design capability. There is concern that if any additional strain were to be put on this road it would be compromised and no longer be an asset to the conservation area.

PPS5 Policy HE6 requires applicants to assess the significance of any heritage asset within a conservation area, this has not been done; the road makes a positive contribution to the conservation area and should be considered as a heritage asset, therefore any potential for damage (policy HE6.2) to an asset that any application makes should be taken under consideration. Again PPS5 policy HE7.2 assessment on the impact of

heritage asset should be considered; the fact that a heavier traffic load would be generated with an increase in opening times is a significant contributing factor to any potential damage to this asset. Policy HE7.3 suggests that this asset has significance within the local community as such community views should be of high value. Policy HE7.4 highlights the positive role the asset has within place shaping and the positive contribution the asset has within that community. Deterioration of this asset would undermine its value, policy HE9.2 amplifies the need to not harm the heritage asset and the public benefit would not outweigh the harm to this asset.

The Conservation Officer objects to the proposal due to the impact additional traffic will have on Elms Bed Road and recommends refusal of the application.

### **National Planning Policy.**

National planning policies seek to promote rural tourism, in appropriate, sustainable locations.

The relevant guidance to consider when assessing this application are Planning Policy Statement 4: Sustainable Development in Rural Areas and the Good Practice Guide on Planning for Tourism.

PPS4 Policy EC7 (Planning for tourism in rural areas) advises authorities support sustainable rural tourism and leisure developments that benefit rural businesses, communities and visitors. Such proposals however should not harm the character of the area. Through the LDF process support should be provided for expansion of tourist and visitors facilities balancing need against impact. Tourist/visitor facilities where possible should be located in existing buildings and extensions to existing tourist accommodation should be supported where the scale is appropriate.

The policy covers extensions of the built form but also can be regarded as covering expansion of existing facilities by removing restrictions on use. Whilst visual intrusion is a major factor in assessment with compliance with this policy, the main impact is one of amenity as whilst buildings on site will not increase, impact on amenity would become an issue with potential increase in traffic and physical impact on the highway.

The site is situated within a rural location with no amenities within reasonable walking distance of the site. Poynton Town Centre is located approximately 2 km from the application site. The main means of transport to the site is by private car. Access to the site by bus is possible, however the bus service along Shrigley Road is not a regular service.

The Good Practice Guide on Planning for Tourism published in May 2006 (replacing Planning Policy Guidance Note 21) offers specific guidance in relation to holiday, touring caravan and chalet parks. This guidance is supportive of seasonal accommodation whilst acknowledging the need to protect landscape and environmentally sensitive areas. Support is given subject to the imposition of conditions ensuring the site is closed for 6 weeks of a year.

The current application proposes that the site would close between 15 January and 1 March each year in accordance with Government Guidance.

The Good Practice Guide on Planning for Tourism advises that planners will need to weigh up the other benefits of a tourism proposal against any disadvantages arising from its location. Paragraph 5.4 of the guide, advises that for small-scale schemes, the traffic generated is likely to be fairly limited and additional traffic movements are therefore unlikely to be a reason for refusal for otherwise suitable tourism developments.

It is recognised that access to the site is one of the key issues in respect of this application. Whilst it is acknowledged that there is a consent in place to allow access to the site between 1<sup>st</sup> March and 31<sup>st</sup> October per year, the key consideration is whether an extended opening season would exacerbate the problems that are already experienced by local residents, in particular, a loss of amenity by virtue of noise and disturbance caused by the traffic along Elm Beds Road. The site would be open for a further 6 weeks per year, 46 weeks per year in total although the additional period would only relate to 12 caravans. At present, the only respite the residents have is during the 16 week closed period. Local residents are already aggrieved by the traffic to the site; it is considered that reducing the closed period to just 6 weeks per year will have a significant adverse impact on residential amenity, by virtue of increased traffic movements, noise and disturbance, contrary to policy DC3 of the Local Plan.

### **Local Planning Policy**

RT13 of the Macclesfield Borough Local Plan encourages improvements to services and facilities associated with existing tourist attractions. Whilst there is no specific guidance available within the Local Plan with regards to static caravans, these are valuable assets to the provision of tourism/leisure facilities and it is considered general support for the expanded occupation of 12 caravans would be provided under this policy.

### **Objections received.**

The court case referred to by an objector appears to make reference to a decision being made on what is 'excessive' where it was found agreement to use the right of way for agricultural use then changed to access for a 200 unit caravan park was excessive and not covered by the grant of right to use the

access. Whilst there are similarities with this particular case, the site is for only 54 caravans and the number of units will not change as a result of this proposal. Using Elm Beds Road has always been the access to the site.

The legal right for Elm Beds Road to be used as the sole vehicular access to the caravan park is not an issue the Council can confirm. This is a matter the site owner and residents of Elm Beds Road need to address. Granting planning permission will not provide rights on the applicant to use Elm Beds Road.

With reference to existing planning issues, the Planning Enforcement Officers are currently investigating allegations of permanent residencies and will be taking appropriate action following their investigations.

If further expansion of either the site generally or the season of occupation of the caravans is proposed, then this would be subject to further applications which will be considered on their merits.

## **CONCLUSIONS AND REASON(S) FOR THE DECISION**

Whilst it is accepted in policy the addition of tourist accommodation can be beneficial, the accommodation must be provided in appropriate, sustainable locations. The application site is not considered to be appropriate or sustainable.

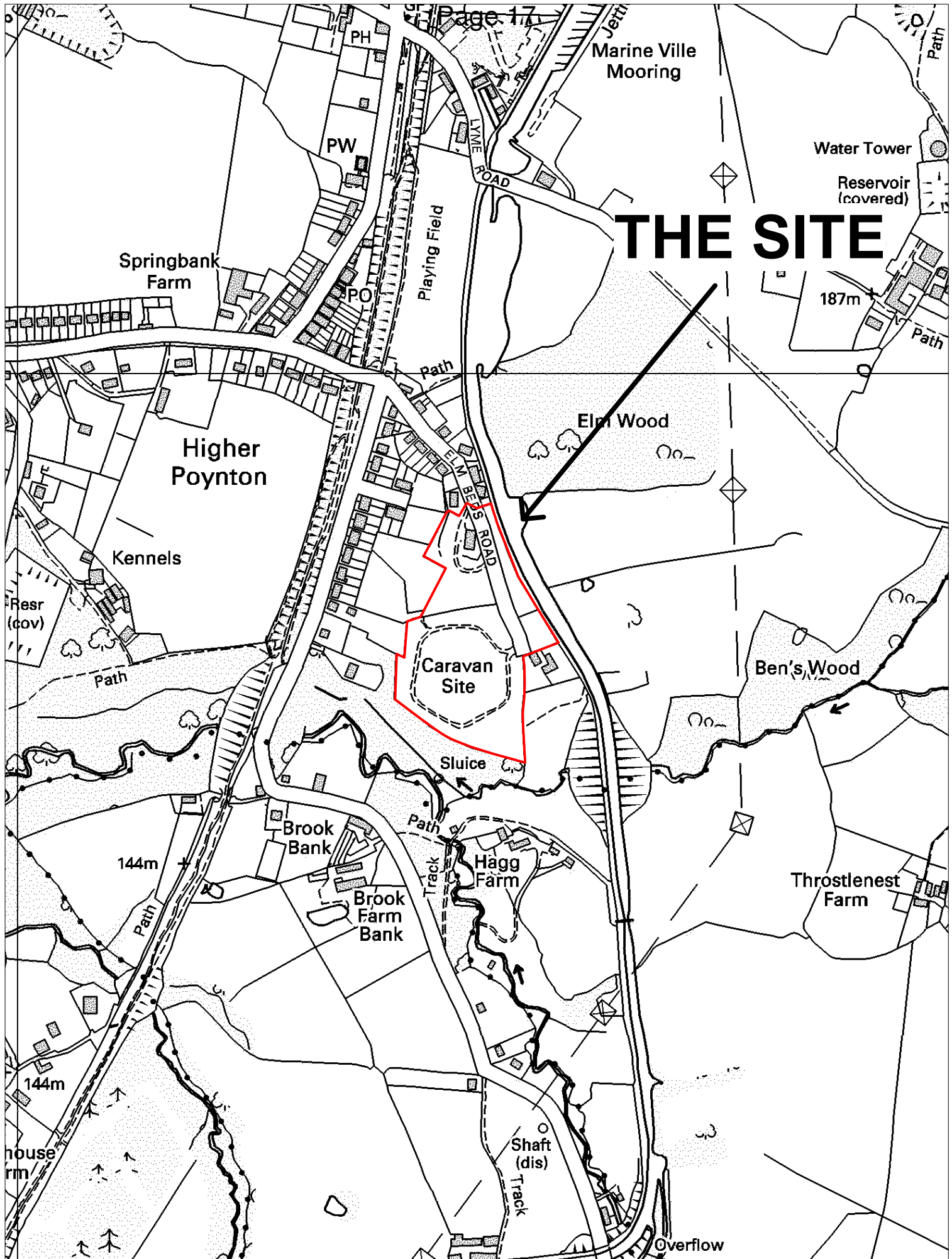
Access to the site is poor, and gives rise to significant residential amenity and highways safety issues and vehicle movements to and from the site are damaging Elms Bed Road which is regarded as a Conservation Asset.

In this instance it is considered that the provision of additional tourist facilities do not outweigh the harm caused by loss of residential amenity, highway safety and adverse impact on the character of the Conservation Area and on the basis of the above information, a recommendation of refusal is made.

Application for **Full Planning**

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

1. R07MS - Unneighbourly use
2. R01CA - Adverse effect on Conservation Area
3. R07HW - Unacceptable increase in traffic at the junction of Shrigley Road and Elm Beds Road



10/4254M THE CARAVAN SITE, ELM BEDS FARM, ELM BEDS ROAD, POYNTON, SK12 1TG  
 NGR- 394,470:382,720

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**Application No:** 10/4083M

**Location:** RODE HEATH WOOD, BACK LANE, EATON

**Proposal:** VARIATION OF CONDITIONS 9, 10, 12 RELATING TO 06/2254P (APPEAL DECISION APP/C0630/A/07/2033939). THE PURPOSE OF THIS APPLICATION IS TO ENSURE ONE OF THE UNITS CAN BE OCCUPIED FULL TIME BY A MANAGER INCLUDING DURING THE CLOSED SEASON.

**For** MR & MRS NOAD

**Registered** 15-Oct-2010

**Policy Item** No

**Grid Reference** 387269 366585

#### **SUMMARY RECOMMENDATION**

Refuse

#### **MAIN ISSUES**

- Whether there is a functional need for a residential managerial presence to justify an isolated dwelling in the countryside.

#### **DESCRIPTION OF SITE AND CONTEXT**

The application site comprises a caravan site that is currently under construction within existing woodland. The site is located within Countryside Beyond the Green Belt as identified in the MBLP.

#### **DETAILS OF PROPOSAL**

This application seeks to vary conditions 9, 10 and 12 from appeal reference APP/C0630/A/07/20339390 to allow one of the units (plot 10 on the approved layout plan) to be occupied all year round by a full time site manager.

Condition 9 states, *"The caravans shall be occupied for holiday purposes only."*

Condition 10 states, *"The caravans shall not be occupied as a person's sole or main place of residence."*

Condition 12 states, *"No caravan shall be occupied between 14<sup>th</sup> January and 1<sup>st</sup> March in any year."*

## **RELEVANT HISTORY**

09/3544M - Change of use of land to allow the siting of 23 timber clad twin unit caravans – Not determined, Appeal allowed 12.07.2010 (Costs awarded against the Council)

09/1509M – Change of use of land to allow the siting of 23 timber clad twin unit caravans - Refused 14.08.2009, Appeal allowed 12.07.2010 (Costs awarded against the Council)

08/2729P - Creation of temporary access (in location of existing field access) to allow delivery of static caravans, and erection of boundary fence and gates - Approved with conditions 26/03/09

08/2291P - Variation of conditions 5 (lighting), 7 (ecology) and 21 (drainage) on application 06/2254P (pre-commencement conditions) to allow works to commence on the internal road only, in accordance with the badger licence granted by Natural England - Withdrawn 18.11.2008

06/2254P - Change of use of land to site 32 timber-clad twin-unit caravans, alterations to access and landscaping - Refused 06.11.2006, Appeal allowed 03.12.2007 (Costs awarded against the Council)

## **POLICIES**

### **Regional Spatial Strategy**

DP1 - Spatial Principles

DP4 - Make the Best Use of Existing Resources and Infrastructure

DP5 - Manage Travel Demand; Reduce the Need to Travel, and Increase Accessibility

DP8 - Mainstream Rural Issues

RDF2 - Rural Areas

W7 - Principles for Tourism Development

### **Local Plan Policy**

RT13 - New Tourist Attractions

GC5 - Countryside Beyond the Green Belt

GC6 – Countryside Beyond the Green Belt

### **Other material considerations**

- Good Practice Guide for Tourism
- PPS7 (Sustainable Development in Rural Areas)
- PPG13 (Transport)
- Tourism Matters – A report on Tourism in Macclesfield Borough (2002)
- A Vision and Strategy for tourism to 2015 - Cheshire and Warrington Tourism Board (2004)
- PPS4 (Planning for Sustainable Economic Growth)
- Circular 11/95 Use of Conditions in Planning Permission



## **CONSULTATIONS (External to Planning)**

North Rode Parish Council – Object on the grounds that the application is premature as there are no units at Rode Heath Wood being occupied. Similar sites have permanent barriers in the closed season.

## **OTHER REPRESENTATIONS**

None received

## **APPLICANT'S SUPPORTING INFORMATION**

A supporting letter has been submitted on behalf of the applicant suggesting that in addition to the variation of conditions outlined above, a new condition is imposed to read:

*“The occupation of the caravan to be sited on plot 10 shall be limited to a person solely or mainly employed as an on site manager for the holiday park (including any dependents of such a person residing with them)”*

The supporting letter also makes reference to paragraph 24 of the Good Practice Guide where it acknowledges that for many types of holiday parks a residential managerial presence is essential. The responsibilities of the site manager are also listed. In this case the high quality service that the site is seeking to provide requires an on site presence. The policy tests in Annexe A to PPS7 for occupational dwellings in the countryside are also addressed.

## **OFFICER APPRAISAL**

### **Principle of Development**

The proposed variation of conditions will have the effect of providing a unit of permanent residential accommodation for a site manager. Paragraph 24 of The Good Practice Guide on Planning for Tourism states that, *“a residential managerial presence is often essential, to achieve quality service to the customer, security for the property, and to meet the obligations of health and safety regulations”*.

Policy GC6 of the Macclesfield Borough Local Plan states that in the open countryside new dwelling will normally be allowed if *“they are required for a person engaged in agriculture, forestry, or other rural enterprise appropriately located in the countryside, and a location in the countryside is essential for the efficient working of the enterprise”*. PPS7 identifies that isolated new houses in the countryside require special justification for planning permission to be granted. In this case it is considered that as an occupational dwelling, paragraph 15 of Annex A to PPS7 is relevant where it advises Local Authorities to *“apply the same stringent levels of assessment to applications for such new occupational dwellings as they apply to applications for agricultural and forestry workers’ dwellings”*. The following tests should

therefore be applied to the extent that they are relevant to the nature of the enterprise concerned.

**(i) Clear evidence of a firm intention and ability to develop the enterprise concerned.**

It is acknowledged that significant investment has been made in the site by providing some infrastructure, hard and soft landscaping and some of the caravans. The site has also been marketed with a website, promotional literature and with advertisements in the press, and it is understood that a number of the units have been sold. Collectively, these factors are considered to indicate a firm intention and ability to develop the caravan park.

**(ii) Functional need.**

The supporting information submitted on behalf of the applicant outlines the responsibilities of the site manager, which they consider demonstrate a functional need for an on site manager. These are:

- To provide high quality support and 24 hour service to visitors.
- On site security during open and closed periods.
- To deal with late/early arrivals/departures.
- To manage the travel plan including picking up / dropping off at stations, local restaurants and attractions (including out of hours).
- Emergency repairs during the open and closed season.
- To manage deliveries / waste collections etc.
- To manage cleaning and other staff who will often work outside normal working hours.

The above information does indicate that there is a role for a manager on the site. However, the functional test in PPS7 is whether, *“it is essential for the proper functioning of the enterprise for one or more workers to be readily available at most times”*.

Having regard to the identified responsibilities of the manager, it is not clear what the “high quality support and 24hr service to visitors” actually involves. As the site is not yet up and running it is not known how it operates, nor what services are offered to owners, and what demand there is for these services. It is also unclear if these responsibilities would extend to a requirement for a full time worker.

On site security could be provided by the simple presence of occupants of other caravans, or perhaps by CCTV. As the units are to be individually owned, it is assumed that they would be permitted to arrive at / depart from their own caravan without supervision. Therefore, is it essential for somebody to be there to greet them immediately upon arrival?

Similarly, is it essential for the driver of a minibus to be permanently present on site, when travel arrangements could be organised by telephone? As the site is not currently operational, the uptake of the minibus service by the caravan owners is unknown. Any costs associated with this service may influence its popularity, and again these details are unknown. This service could even be contracted out until its popularity is gauged.

No details have been provided regarding the division of responsibilities for maintenance on the site. It is considered that most emergency repairs could be dealt with as you would with your own home, by calling tradesmen as and when required. Also, the management of deliveries is not considered to be a particularly onerous task and one which would be expected to take place during normal working hours.

Finally, in terms of the management of staff, it is not known who the other staff would be. There is a reference to cleaning staff, but again as the site is not operational there are no details of what would be cleaned, management arrangements with caravan owners, etc. or why this would take place outside of normal working hours. It is considered that all these responsibilities could be undertaken during normal working hours, together with an out of hours telephone number for emergencies.

Paragraph 15 of Annex A to PPS7 which relates specifically to occupational dwellings in the countryside states that Local Authorities should apply the criteria and principles included in paragraphs 3 -13 of the Annex, which refer to permanent and temporary agricultural dwellings. Paragraph 3 states that new permanent dwellings should only be allowed to support existing agricultural activities on well established agricultural units. Applying this to the current proposal, the caravan site, although approved, is not operational and therefore cannot be considered to be well established. Given that the responsibilities of the site manager will be dependent upon how the site operates, and the demands made upon the manager by owners, it is not considered to be possible to state at this time that it is essential for the successful operation of the business for a manager to be resident on site. The functional test is not considered to be met at this time.

**(iii) Clear evidence that the proposed enterprise has been planned on a sound financial basis.**

The applicant's supporting letter notes that the development was approved by an Inspector, the original proposal was accompanied by a detailed needs assessment and that it is clearly being planned on a sound financial basis.

The financial test as it relates to an agricultural workers dwelling seeks to ensure that the farming enterprise is economically viable, and to provide evidence of the size of dwelling the unit can sustain. In this case, the dwelling will be one of the 32 caravans approved on this site, and the marketing of the site indicates that the prices of the caravans will be between £159,000 and £425,000. It is not clear who will fund the cost of the caravan; the site manager or the site owner. The actual start up costs of the site are unknown, as are the number of units that need to be sold for the business to move into profit. Does the sale of one caravan fund the purchase of the next? If only a small number of the caravans are sold, would the site owner be able to afford to forego the profit on one of these caravans to accommodate a site manager? Additionally, and referring back to the functional need for a manager, if only some of the units are sold, then the need for a permanent on site presence would surely diminish. Finally, no details have been submitted

of how income will actually be generated on the site, having regard to the fact that all units are to be individually sold. Once they are sold, how would the manager, the staff, the maintenance, etc. be funded? In the absence of any reference to the above matters, the clear evidence that the proposed enterprise has been planned on a sound financial basis has not been demonstrated.

**(iv) The functional need could not be fulfilled by another existing dwelling on the unit, or any other existing accommodation in the area which is suitable and available for occupation by the workers concerned.**

As noted above, there is not considered to be a functional need at this time. Management responsibilities could be carried out during a normal working day, with out of hours contact details. In addition a wide range of accommodation is available in nearby Congleton, 4.5 kilometres to the south of the site.

**(v) Other normal planning requirements, e.g. siting and access, are satisfied.**

As the application seeks to utilise one of the caravans that was shown on the plans approved as a result of the 2007 appeal, it is considered that all other normal planning requirements are satisfied.

**Other material planning considerations**

The proposed variation of the of the conditions is not considered to have any significantly greater impact upon the character and appearance of the countryside, highway safety, residential amenity, trees, or any other matter of public interest compared to the previous permission.

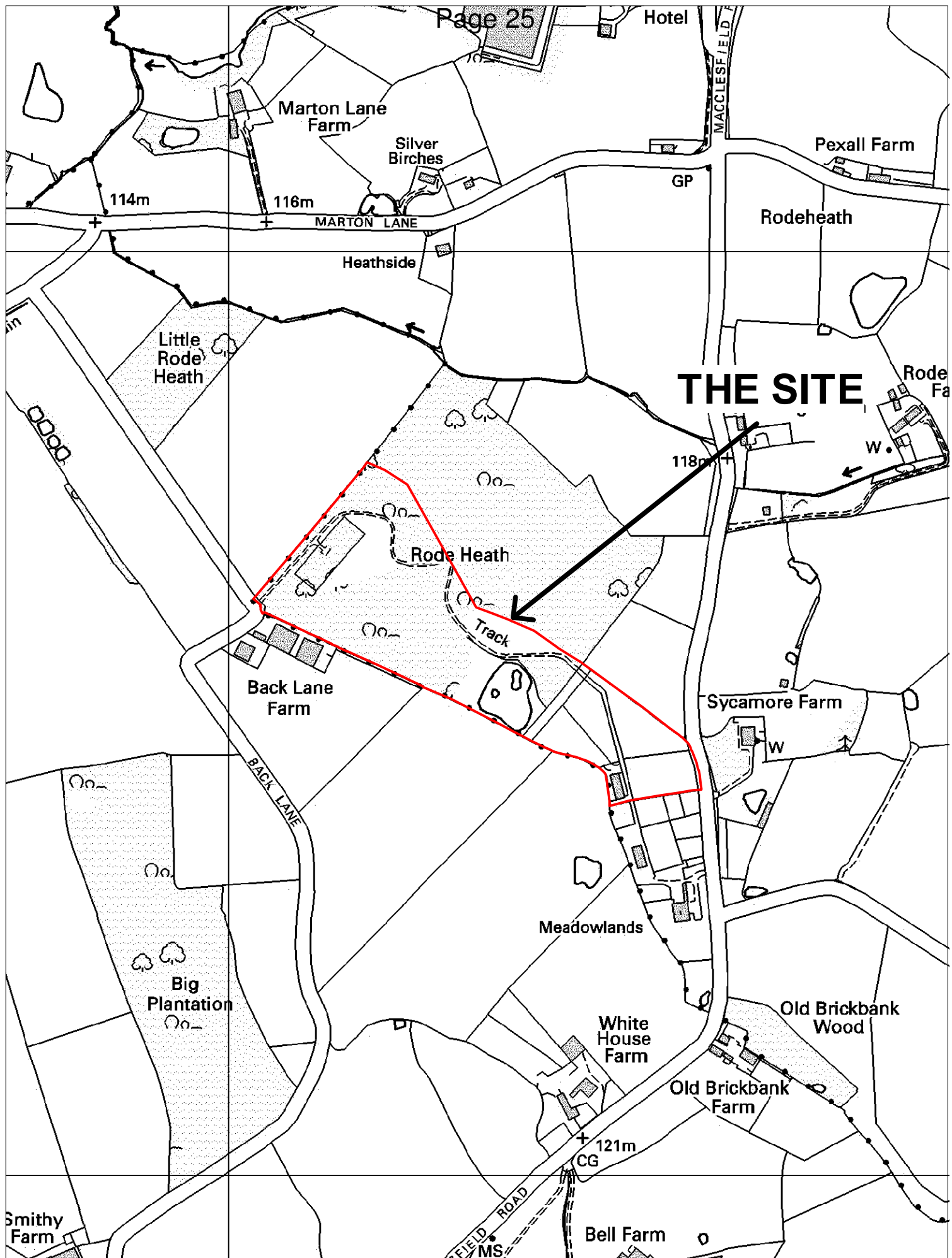
**CONCLUSIONS AND REASON(S) FOR THE DECISION**

The proposal raises many unanswered questions relating to the functional and financial aspects of the occupational dwelling tests of PPS7. As the site is not currently open, there is considered to be insufficient information with the application to understand how the business will operate functionally and financially, particularly with regard to justifying a permanent site manager's caravan. A permanent dwelling is not considered to be essential at this time, and is therefore contrary to policies GC5 and GC6 of the Macclesfield Borough Local Plan 2004. The proposal also does not meet the tests of Annexe A to PPS7 and is therefore contrary to this national policy. Accordingly, a recommendation of refusal is made.

Application for **Full Planning**

**RECOMMENDATION : Refuse for the following reasons**

R06LP - Inadequate justification



10/4083M - RODE HEATHWOOD BACK LANE EATON  
N.G.R: 387.258 - 366.561

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**Application No:** 10/3803M

**Location:** RODE HEATH WOOD, BACK LANE, EATON

**Proposal:** APPLICATION TO REMOVE CONDITION 12 ON PLANNING PERMISSION 06/2254P (APPEAL REFERENCE APP/C0630/A/07/20339390) FOR CHANGE OF USE OF LAND TO ALLOW SITING OF 32 TIMBER CLAD TWIN UNIT CARAVANS, ACCESS WORKS AND LANDSCAPING

**For** MR DAVID & MRS YVETTE NOAD

**Registered** 27-Sep-2010

**Policy Item** No

**Grid Reference** 387269 366585

**Date Report Prepared:** 10 December 2010

#### **SUMMARY RECOMMENDATION**

Refuse

#### **MAIN ISSUES**

- Whether the removal of condition 12 on appeal reference APP/C0630/A/07/20339390 would allow permanent residential occupation of the caravans.

#### **REASON FOR REPORT**

The application has been brought to the Committee by the Head of Planning & Housing as it relates to the removal of a condition on a site that has previously been considered by the Committee.

#### **DESCRIPTION OF SITE AND CONTEXT**

The application site comprises a caravan site that is currently under construction within existing woodland. The site is located within Countryside Beyond the Green Belt as identified in the MBLP.

#### **DETAILS OF PROPOSAL**

This application seeks to remove condition 12 from appeal reference APP/C0630/A/07/2033939 to allow all year round occupation of the caravans.

Condition 12 states, "*No caravan shall be occupied between 14<sup>th</sup> January and 1<sup>st</sup> March in any year*".

An accompanying application 10/3805M appears elsewhere on the agenda, which seeks to remove the same condition from appeal references APP/R0660/A/10/2121609 and APP/R0660/A/10/2121614 that relate to the extended part of the site.

## **RELEVANT HISTORY**

09/3544M - Change of use of land to allow the siting of 23 timber clad twin unit caravans – Not determined, Appeal allowed 12.07.2010 (Costs awarded against the Council)

09/1509M – Change of use of land to allow the siting of 23 timber clad twin unit caravans - Refused 14.08.2009, Appeal allowed 12.07.2010 (Costs awarded against the Council)

08/2729P - Creation of temporary access (in location of existing field access) to allow delivery of static caravans, and erection of boundary fence and gates - Approved with conditions 26/03/09

08/2291P - Variation of conditions 5 (lighting), 7 (ecology) and 21 (drainage) on application 06/2254P (pre-commencement conditions) to allow works to commence on the internal road only, in accordance with the badger licence granted by Natural England - Withdrawn 18.11.2008

06/2254P - Change of use of land to site 32 timber-clad twin-unit caravans, alterations to access and landscaping - Refused 06.11.2006, Appeal allowed 03.12.2007 (Costs awarded against the Council)

## **POLICIES**

### **Regional Spatial Strategy**

DP1 - Spatial Principles

DP4 - Make the Best Use of Existing Resources and Infrastructure

DP5 - Manage Travel Demand; Reduce the Need to Travel, and Increase Accessibility

DP8 - Mainstream Rural Issues

RDF2 - Rural Areas

W7 - Principles for Tourism Development

### **Local Plan Policy**

RT13 - New Tourist Attractions

GC5 - Countryside Beyond the Green Belt

### **Other material considerations**

- Good Practice Guide for Tourism
- PPS7 (Sustainable Development in Rural Areas)
- PPG13 (Transport)
- Tourism Matters – A report on Tourism in Macclesfield Borough (2002)



- A Vision and Strategy for tourism to 2015 - Cheshire and Warrington Tourism Board (2004)
- PPS4 (Planning for Sustainable Economic Growth)
- Circular 11/95 Use of Conditions in Planning Permission

### **CONSULTATIONS (External to Planning)**

Environmental Health – The removal of the conditions would not materially affect the licensing of the site.

North Rode Parish Council – Object as the application relates to one of the most important conditions requiring a closed season, and which lies at the very heart of the permission, in what would otherwise be the building of a permanent village of timber clad caravans.

Eaton Parish Council – Object on the grounds that the removal of these clauses could lead to permanent housing for residential purposes and the closed season does limit the possibility of this. At each of the public inquiries, the inspectors have considered that the imposition of a closed season was necessary to stop the development becoming occupied for the full twelve months giving a lead in to permanent residency.

### **OTHER REPRESENTATIONS**

Eight letters of representation have been received from local residents objecting to the proposal on the following grounds:

- The conditions were imposed to prevent permanent residential accommodation, and their removal would weaken this restriction.
- The condition is still included in Circular 11/95 where emphasis is placed on appropriate restrictions to prevent permanent residential use of accommodation.
- Good Practice Guide was in effect at time of both appeals, as it is today, and both Inspectors had regard to this at the time of their decisions.
- No condition was attached in the submitted appeal decision relating to a site in Tavistock, however, this does not appear to have been an issue that was argued at the appeal. The second submitted appeal decision relates to a site in Denbeigh, which is of a much smaller scale (8 caravans) and any work required to monitor such a site is minimal.
- Removal of condition will place significant pressure upon existing Local Authority resources to monitor the holiday use of the site.
- Original conditions not yet complied with.
- Two Inspectors considered the condition to be necessary after giving the matter independent consideration in light of relevant policy advice.
- Nothing in Good Practice Guide that advises against use of both holiday occupancy and closed season conditions in appropriate cases.
- No reason given why the applicant requires the removal of the condition, only that it duplicates restrictions.
- Issues of drainage still to be resolved for holiday use, let alone permanent residential use.

An additional letter has been received from two Eaton residents in reply to the applicant's written response to the letters of objection stating that:

- If the conditions were removed then the development would become an unauthorised residential development in the open countryside.
- The applicant's agent refers to that "standard holiday occupancy conditions", however, what he is actually referring to is an example given in The Good Practice Guide of the approach by East Riding of Yorkshire Council. Paragraph 1.3 of the Good Practice Guide addresses the use of examples in this policy document, which ensures that such examples do not become regarded as standard conditions.
- The distinction between occupancy and seasonal conditions is fully understood, however the applicant's agent believes conditions (that are the subjects of these applications) were seasonal and not occupancy, and suggests that on this basis there is no justification for their imposition.

### **APPLICANT'S SUPPORTING INFORMATION**

A supporting letter has been submitted on behalf of the applicant outlining the policy background to holiday and seasonal occupancy conditions. Two recent appeal decisions have also been submitted, one of which relates specifically to the matter of a seasonal occupancy condition. The other is a proposal for a similarly sized caravan site to the application site where a closed season condition was not attached.

A second letter on behalf of the applicant has been submitted in response to the letters received in representation, reiterating the distinction between occupancy and seasonal conditions as outlined in the Good Practice Guide. It is the seasonal conditions that the applicant is seeking to remove as there is no special reason for their imposition (such as impact upon breeding birds etc). The holiday occupancy conditions alone can ensure that the static caravans do not become permanent dwellings.

A third letter has also been submitted, again in response to a letter of representation that suggested the closed season condition was not challenged in relation to the appeals in June 2010. The applicant's letter states that this was incorrect and the issue of the condition was addressed. Contrary to the letter of objection, the applicant states that the whole permission would not be challenged on the basis of such a condition; rather the condition is being challenged through the current applications. Circular 11/95 advises that an applicant's agreement to a condition does not mean that it should be imposed. A condition would still need to meet the relevant tests in the circular. The applicants did offer the condition in relation to the first appeal (in 2007), but they did not in relation to the second appeals in 2010.

## OFFICER APPRAISAL

### Principle of Development

The suitability of the site and the principle of the development have already been assessed by two Planning Inspectors against the policy framework outlined above, and both concluded that the site was appropriate for tourism purposes. In terms of the current application, it is necessary to examine whether there will be any significant harm to the objectives of relevant planning policy or other matters of public interest arising from the removal of the condition.

The existing permission for the change of use of land to allow the siting of 32 timber clad twin unit caravans, access and landscaping includes a set of conditions designed to prevent the caravans being occupied as a main place of residence. In addition to the condition that is the subject of this application, the appeal decision includes conditions:

- 9) *The caravans shall be occupied for holiday purposes only.*
- 10) *The caravans shall not be occupied as a person's sole or main place of residence.*
- 11) *The owners/operators of the site shall maintain an up to date register of the names of all owners/occupiers of individual caravans on the site and of their main home addresses and shall make this information available at all reasonable times to the local planning authority.*

### Potential for permanent residential accommodation

It is clear that the key concern with this application is that the removal of the condition would result in the use of the site for permanent residential accommodation. Due to its countryside location, there is a fundamental national and local policy objection to an unrestricted residential use of the site. However, it should be noted that this proposal does not seek a permanent and unrestricted residential use, as conditions relating to the occupancy of the caravans for holiday purposes only will remain.

Within appeal decision letters in general, Inspectors do not provide specific reasons for each individual condition as the Council would when issuing a planning approval, rather they justify them in the body of their report/letter. In this case the Inspector noted, *"The Good Practice Guide includes a set of conditions designed to prevent holiday homes and caravans being occupied as a main or sole place of residence. These conditions together with a 'close season' are sufficient, in my view, to prevent the caravans being occupied as a main place of residence."*

The condition that is the subject of this application prevents occupation of the caravans between 14<sup>th</sup> January and 1<sup>st</sup> March in any year. Such conditions are commonly referred to as seasonal occupancy conditions, as opposed to holiday occupancy conditions that restrict the use of the units to holiday purposes only. Circular 11/95: Use of Conditions in Planning Permission advises that a holiday occupancy condition is more appropriate than a seasonal occupancy condition in circumstances where holiday

accommodation is acceptable, but where the provision of permanent housing would be contrary to planning policies relating to development in the countryside, as is the case with this current application. Paragraph 115 of Circular 11/95 states that seasonal occupancy conditions may be appropriate to *“prevent the permanent residential use of holiday chalets which by the character of its construction or design is unsuitable for continuous occupation.”* In this case the applicants have stated that the caravans will be built to a minimum standard of BS3632, which does allow for all year round use of the caravans if required. The Circular maintains that seasonal occupancy conditions may also be appropriate to protect the local environment, such as fragile habitats required to allow seasonal breeding or winter feeding. Such environmental circumstances do not exist in this case.

The Good Practice Guide on Planning for Tourism provides further, and more up to date, advice on seasonal and holiday occupancy conditions. Paragraph 3 of Annex B to the Good Practice Guide states that the aim of holiday occupancy conditions is *“generally to ensure that the premises are used by visitors and do not become part of the local housing stock”*. Reference to seasonal occupancy conditions is made in terms of them protecting the local environment, as in Circular 11/95. Protection of important species of bird during its breeding season or when it is winter feeding, is cited as an example of when such a condition may be used.

The reasoning for the seasonal occupancy condition, in addition to the holiday occupancy conditions, in the Inspector's decision is that when taken together, all the stated conditions are sufficient to prevent the caravans being occupied as a main place of residence.

The Lodges appear to provide a very high standard of accommodation, to the extent that they could lend themselves easily to use as permanent dwellings. It could also be argued that the nature and character of the site is also something that is not typical to more traditional ideas of caravan parks / sites where you might expect to see swimming pools, play facilities for children etc. The units would also be all individually owned. In addition to this, there is the fact that the Inspector imposed the seasonal occupancy condition in 2007, and a second Inspector imposed the same condition to an extension of this site as recently as July 2010. Both of these Inspectors had regard to the same policy framework and guidance at the time of the appeals that the current application must be assessed against today. These factors are specific to the application site, and therefore the key question is whether they are sufficient to justify the imposition of a seasonal occupancy condition in this case.

Members will also be aware of other similar caravan sites in the Borough where controlling the restriction on permanent residential accommodation of caravans has proven to be difficult. Whilst it is acknowledged that the ability of the Council to provide adequate resources to investigate and enforce against potential breaches should not influence the decision, each case must be assessed on its merits. An Inspector has examined the details of this site, and a second Inspector looked at similar details for the extended site and both

came to the conclusion that a “close season” condition was necessary in this case, in addition to the holiday occupancy conditions listed in the Good Practice Guide.

Paragraph 3 of Annex B to The Good Practice Guide advises that Planning Authorities will need to frame conditions “*so that they can be readily enforced by the authority but in a way that is not unduly intrusive for either owners or occupants*”. In this case the “close season” relates to a 6 week period between 14 January and 1 March in any year. Such a limited break can be readily enforced and is not considered to be unreasonable for either owners or occupiers.

Circular 11/95: Use of Conditions in Planning Permission lists 6 tests that all conditions should satisfy. In brief these explain that conditions should 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 aspects

Of these 6 tests, the applicant maintains that the closed season condition is not actually necessary as it duplicates the controls, and is therefore not a valid condition.

In this case, having regard to all of the above details, it is considered that the “close season” condition is necessary in addition to the holiday occupancy conditions. This combination of conditions is considered to provide the most effective and appropriate safeguard to ensuring that the caravans are not occupied as a main or sole place of residence. All other tests of the circular are considered to be met.

#### **Other material planning considerations**

The proposed removal of the condition is not considered to have any significantly greater impact upon the character and appearance of the countryside, highway safety, residential amenity, or trees compared to the previous permission.

With regard to comments received in representation relating to previous conditions not yet being complied with, this will be the subject of further investigation.

#### **CONCLUSIONS AND REASON(S) FOR THE DECISION**

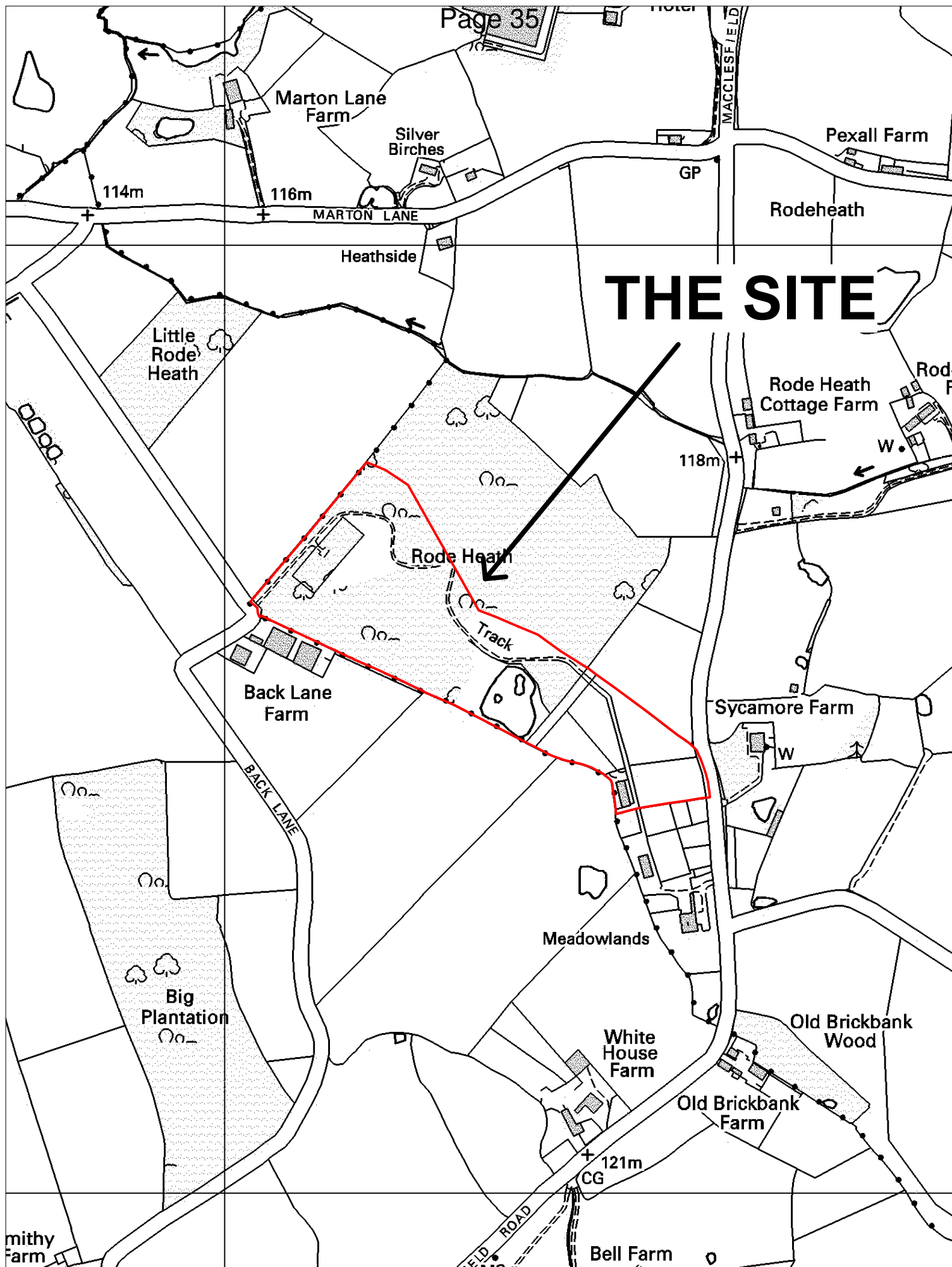
The original Inspector during the 2007 appeal and a second Inspector in 2010 on the extended part of the site both considered a “close season” condition to be necessary. These decisions were taken having regard to the Good Practice Guide on Planning for Tourism, and Circular 11/95, which were both as relevant then as they are today. Having regard to the specific circumstances of this case, and the details outlined above, the close season

and the holiday occupancy conditions are required together to ensure that the caravans are not occupied as a main or sole place of residence. Accordingly, a recommendation of refusal is made.

Application for **Full Planning**

**RECOMMENDATION : Refuse for the following reasons**

1. Closed season condition required in conjunction with holiday occupancy conditions to prevent caravans being occupied as a main place of residence, contrary to policies controlling development in the countryside.



# THE SITE

10/3803M RODE HEATH WOOD, BACK LANE, EATON  
NGR- 387,260:366,570

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**Application No:** 10/3805M

**Location:** RODE HEATH WOOD, BACK LANE, EATON

**Proposal:** APPLICATION TO REMOVE CONDITION 3 ON PLANNING PERMISSION 09/1509M (APPEAL REFERENCE APP/R0660/A/10/2121609/NWF) AND 09/3544M (APPEAL REFERENCE APP/R0660/A/10/2121614/NWF) FOR CHANGE OF USE OF LAND TO ALLOW SITING OF 32 TIMBER CLAD TWIN UNIT CARAVANS (EXTENSION TO PREVIOUSLY APPROVED SITE)

**For** MR DAVID NOAD & MRS YVETTE NOAD

**Registered** 27-Sep-2010

**Policy Item** No

**Grid Reference** 387417 366440

**Date Report Prepared:** 10 December 2010

#### **SUMMARY RECOMMENDATION**

Refuse

#### **MAIN ISSUES**

- Whether the removal of condition 3 on appeal references APP/R0660/A/10/2121609 and APP/R0660/A/10/2121614 would allow permanent residential occupation of the caravans.

#### **REASON FOR REPORT**

The application has been brought to the Committee by the Head of Planning & Housing as it relates to the removal of a condition on a site that has previously been considered by the Committee.

#### **DESCRIPTION OF SITE AND CONTEXT**

The application site comprises an area of open land currently used for the grazing of animals. The appeal decision allowed the siting of 23 timber clad twin unit caravans in addition to the 32 currently under construction with the adjacent woodland. The site is located within Countryside Beyond the Green Belt as identified in the MBLP.

## **DETAILS OF PROPOSAL**

This application seeks to remove condition 3 on appeal references APP/R0660/A/10/2121609 and APP/R0660/A/10/2121614 to allow all year round occupation of the caravans.

Condition 3 states, *“No caravan shall be occupied between 14 January and 1 March in any year”*.

An accompanying application 10/3803M appears elsewhere on the agenda, which seeks to remove the same condition from appeal reference APP/C0630/A/07/2033939 that relates to the original part of the site.

## **RELEVANT HISTORY**

09/3544M - Change of use of land to allow the siting of 23 timber clad twin unit caravans – Not determined, Appeal allowed 12.07.2010 (Costs awarded against the Council)

09/1509M – Change of use of land to allow the siting of 23 timber clad twin unit caravans - Refused 14.08.2009, Appeal allowed 12.07.2010 (Costs awarded against the Council)

08/2729P - Creation of temporary access (in location of existing field access) to allow delivery of static caravans, and erection of boundary fence and gates - Approved with conditions 26/03/09

08/2291P - Variation of conditions 5 (lighting), 7 (ecology) and 21 (drainage) on application 06/2254P (pre-commencement conditions) to allow works to commence on the internal road only, in accordance with the badger licence granted by Natural England - Withdrawn 18.11.2008

06/2254P - Change of use of land to site 32 timber-clad twin-unit caravans, alterations to access and landscaping - Refused 06.11.2006, Appeal allowed 03.12.2007 (Costs awarded against the Council)

## **POLICIES**

### **Regional Spatial Strategy**

DP1 - Spatial Principles

DP4 - Make the Best Use of Existing Resources and Infrastructure

DP5 - Manage Travel Demand; Reduce the Need to Travel, and Increase Accessibility

DP8 - Mainstream Rural Issues

RDF2 - Rural Areas

W7 - Principles for Tourism Development

### **Local Plan Policy**

RT13 - New Tourist Attractions  
GC5 - Countryside Beyond the Green Belt

**Other material considerations**

- Good Practice Guide for Tourism
- PPS7 (Sustainable Development in Rural Areas)
- PPG13 (Transport)
- Tourism Matters – A report on Tourism in Macclesfield Borough (2002)
- A Vision and Strategy for tourism to 2015 - Cheshire and Warrington Tourism Board (2004)
- PPS4 (Planning for Sustainable Economic Growth)
- Circular 11/95 Use of Conditions in Planning Permission

**CONSULTATIONS (External to Planning)**

Environmental Health – The removal of the conditions would not materially affect the licensing of the site.

North Rode Parish Council – Object as the application relates to one of the most important conditions requiring a closed season, and which lies at the very heart of the permission, in what would otherwise be the building of a permanent village of timber clad caravans.

Eaton Parish Council – Object on the grounds that the removal of these clauses could lead to permanent housing for residential purposes and the closed season does limit the possibility of this. At each of the public inquiries, the inspectors have considered that the imposition of a closed season was necessary to stop the development becoming occupied for the full twelve months giving a lead in to permanent residency.

**OTHER REPRESENTATIONS**

Eight letters of representation have been received from local residents objecting to the proposal on the following grounds:

- The conditions were imposed to prevent permanent residential accommodation, and their removal would weaken this restriction.
- The condition is still included in Circular 11/95 where emphasis is placed on appropriate restrictions to prevent permanent residential use of accommodation.
- Good Practice Guide was in effect at time of both appeals, as it is today, and both Inspectors had regard to this at the time of their decisions.
- No condition was attached in the submitted appeal decision relating to a site in Tavistock, however, this does not appear to have been an issue that was argued at the appeal. The second submitted appeal decision relates to a site in Denbeigh, which is of a much smaller scale (8 caravans) and any work required to monitor such a site is minimal.

- Removal of condition will place significant pressure upon existing Local Authority resources to monitor the holiday use of the site.
- Original conditions not yet complied with.
- Two Inspectors considered the condition to be necessary after giving the matter independent consideration in light of relevant policy advice.
- Nothing in Good Practice Guide that advises against use of both holiday occupancy and closed season conditions in appropriate cases.
- No reason given why the applicant requires the removal of the condition, only that it duplicates restrictions.
- Issues of drainage still to be resolved for holiday use, let alone permanent residential use.

An additional letter has been received from two Eaton residents in reply to the applicant's written response to the letters of objection stating that:

- If the conditions were removed then the development would become an unauthorised residential development in the open countryside.
- The applicant's agent refers to that "standard holiday occupancy conditions", however, what he is actually referring to is an example given in The Good Practice Guide of the approach by East Riding of Yorkshire Council. Paragraph 1.3 of the Good Practice Guide addresses the use of examples in this policy document, which ensures that such examples do not become regarded as standard conditions.
- The distinction between occupancy and seasonal conditions is fully understood, however the applicant's agent believes conditions (that are the subjects of these applications) were seasonal and not occupancy, and suggests that on this basis there is no justification for their imposition.

## **APPLICANT'S SUPPORTING INFORMATION**

A supporting letter has been submitted on behalf of the applicant outlining the policy background to holiday and seasonal occupancy conditions. Two recent appeal decisions have also been submitted, one of which relates specifically to the matter of a seasonal occupancy condition. The other is a proposal for a similarly sized caravan site to the application site where a closed season condition was not attached.

A second letter on behalf of the applicant has been submitted in response to the letters received in representation, reiterating the distinction between occupancy and seasonal conditions as outlined in the Good Practice Guide. It is the seasonal conditions that the applicant is seeking to remove as there is no special reason for their imposition (such as impact upon breeding birds etc). The holiday occupancy conditions alone can ensure that the static caravans do not become permanent dwellings.

A third letter has also been submitted, again in response to a letter of representation that suggested the closed season condition was not challenged in relation to the appeals in June 2010. The applicant's letter states that this was incorrect and the issue of the condition was addressed. Contrary to the letter of objection, the applicant states that the whole permission would not be challenged on the basis of such a condition; rather

the condition is being challenged through the current applications. Circular 11/95 advises that an applicant's agreement to a condition does not mean that it should be imposed. A condition would still need to meet the relevant tests in the circular. The applicants did offer the condition in relation to the first appeal (in 2007), but they did not in relation to the second appeals in 2010.

## **OFFICER APPRAISAL**

### **Principle of Development**

The suitability of the site and the principle of the development have already been assessed by two Planning Inspectors against the policy framework outlined above, and both concluded that the site was appropriate for tourism purposes. In terms of the current application, it is necessary to examine whether there will be any significant harm to the objectives of relevant planning policy or other matters of public interest arising from the removal of the condition.

The existing permission for the change of use of land to allow the siting of 23 timber clad twin unit caravans includes a set of conditions designed to prevent the caravans being occupied as a main place of residence. In addition to the condition that is the subject of this application, the appeal decision includes the following condition:

- 2) *The caravans shall be occupied for holiday purposes only. The caravans shall not be occupied as a person's sole or main place of residence; the owner/operators of the site shall maintain an up to date register of the names of all owners/occupiers of individual caravans on the site, and of their main home addresses and shall make this information available at all reasonable times to the local planning authority.*

### **Potential for permanent residential accommodation**

It is clear that the key concern with this application is that the removal of the condition would result in the use of the site for permanent residential accommodation. Due to its countryside location, there is a fundamental national and local policy objection to an unrestricted residential use of the site. However, it should be noted that this proposal does not seek a permanent and unrestricted residential use, as conditions relating to the occupancy of the caravans for holiday purposes only will remain.

Within appeal decision letters in general, Inspectors do not provide specific reasons for each individual condition as the Council would when issuing a planning approval, rather they justify them in the body of their report/letter. In this case the Inspector noted, *"I have also imposed a condition requiring a 'close season'. The previous Inspector considered such a condition to be necessary to establish the appropriate degree of restriction of use for the caravans in combination with the condition referred to above [holiday occupancy condition]. The 'close season' condition has not been formally*

*challenged by the appellants and there has been no material change in circumstances in the interim. I also consider a similar condition is necessary in these cases."*

The Inspector during the appeal in 2007 on the adjacent site stated, *"The Good Practice Guide includes a set of conditions designed to prevent holiday homes and caravans being occupied as a main or sole place of residence. These conditions together with a 'close season' are sufficient, in my view, to prevent the caravans being occupied as a main place of residence."*

The condition that is the subject of this application prevents occupation of the caravans between 14 January and 1 March in any year. Such conditions are commonly referred to as seasonal occupancy conditions, as opposed to holiday occupancy conditions that restrict the use of the units to holiday purposes only. Circular 11/95: Use of Conditions in Planning Permission advises that a holiday occupancy condition is more appropriate than a seasonal occupancy condition in circumstances where holiday accommodation is acceptable, but where the provision of permanent housing would be contrary to planning policies relating to development in the countryside, as is the case with this current application. Paragraph 115 of Circular 11/95 states that seasonal occupancy conditions may be appropriate to *"prevent the permanent residential use of holiday chalets which by the character of its construction or design is unsuitable for continuous occupation."* In this case the applicants have stated that the caravans will be built to a minimum standard of BS3632, which does allow for all year round use of the caravans if required. The Circular maintains that seasonal occupancy conditions may also be appropriate to protect the local environment, such as fragile habitats required to allow seasonal breeding or winter feeding. Such environmental circumstances do not exist in this case.

The Good Practice Guide on Planning for Tourism provides further, and more up to date, advice on seasonal and holiday occupancy conditions. Paragraph 3 of Annex B to the Good Practice Guide states that the aim of holiday occupancy conditions is *"generally to ensure that the premises are used by visitors and do not become part of the local housing stock"*. Reference to seasonal occupancy conditions is made in terms of them protecting the local environment, as in Circular 11/95. Protection of important species of bird during its breeding season or when it is winter feeding, is cited as an example of when such a condition may be used.

The Inspector's reasoning for the close season condition in this case refers to the Inspector's comments in the original appeal, which considered that such a condition was necessary to establish the appropriate degree of restriction of use for the caravans in combination with the holiday occupancy conditions. The original Inspector considered that when taken together, all the stated conditions are sufficient to prevent the caravans being occupied as a main place of residence. The second Inspector considered a similar condition was also necessary in these cases.

The Lodges appear to provide a very high standard of accommodation, to the extent that they could lend themselves easily to use as permanent dwellings. It could also be argued that the nature and character of the site is also something that is not typical to more traditional ideas of caravan parks / sites where you might expect to see swimming pools, play facilities for children etc. The units would also be all individually owned. In addition to this, there is the fact that the Inspector imposed the seasonal occupancy condition in 2007, and a second Inspector imposed the same condition to an extension of this site as recently as July 2010. Both of these Inspectors had regard to the same policy framework and guidance at the time of the appeals that the current application must be assessed against today. These factors are specific to the application site, and therefore the key question is whether they are sufficient to justify the imposition of a seasonal occupancy condition in this case.

Members will also be aware of other similar caravan sites in the Borough where monitoring the restriction on permanent residential accommodation of caravans has proven to be difficult. Whilst it is acknowledged that the ability of the Council to provide adequate resources to investigate and enforce against potential breaches should not influence the decision, each case must be assessed on its merits. An Inspector has examined the details of this site, and a second Inspector looked at similar details for the extended site and both came to the conclusion that a “close season” condition was necessary in this case, in addition to the holiday occupancy conditions listed in the Good Practice Guide.

Paragraph 3 of Annex B to The Good Practice Guide advises that Planning Authorities will need to frame conditions *“so that they can be readily enforced by the authority but in a way that is not unduly intrusive for either owners or occupants”*. In this case the “close season” relates to a 6 week period between 14 January and 1 March in any year. Such a limited break can be readily enforced and is not considered to be unreasonable for either owners or occupiers.

Circular 11/95: Use of Conditions in Planning Permission lists 6 tests that all conditions should satisfy. In brief these explain that conditions should 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 aspects

Of these 6 tests, the applicant maintains that the closed season condition is not actually necessary as it duplicates the controls, and is therefore not a valid condition.

In this case, having regard to all of the above details, it is considered that the ‘close season’ condition is necessary in addition to the holiday occupancy conditions. This combination of conditions is considered to provide the most

effective and appropriate safeguard to ensuring that the caravans are not occupied as a main or sole place of residence. All other tests of the circular are considered to be met.

**Other material planning considerations**

The proposed removal of the condition is not considered to have any significantly greater impact upon the character and appearance of the countryside, highway safety, residential amenity, or trees compared to the previous permission.

With regard to comments received in representation relating to previous conditions not yet being complied with, this will be the subject of further investigation.

**CONCLUSIONS AND REASON(S) FOR THE DECISION**

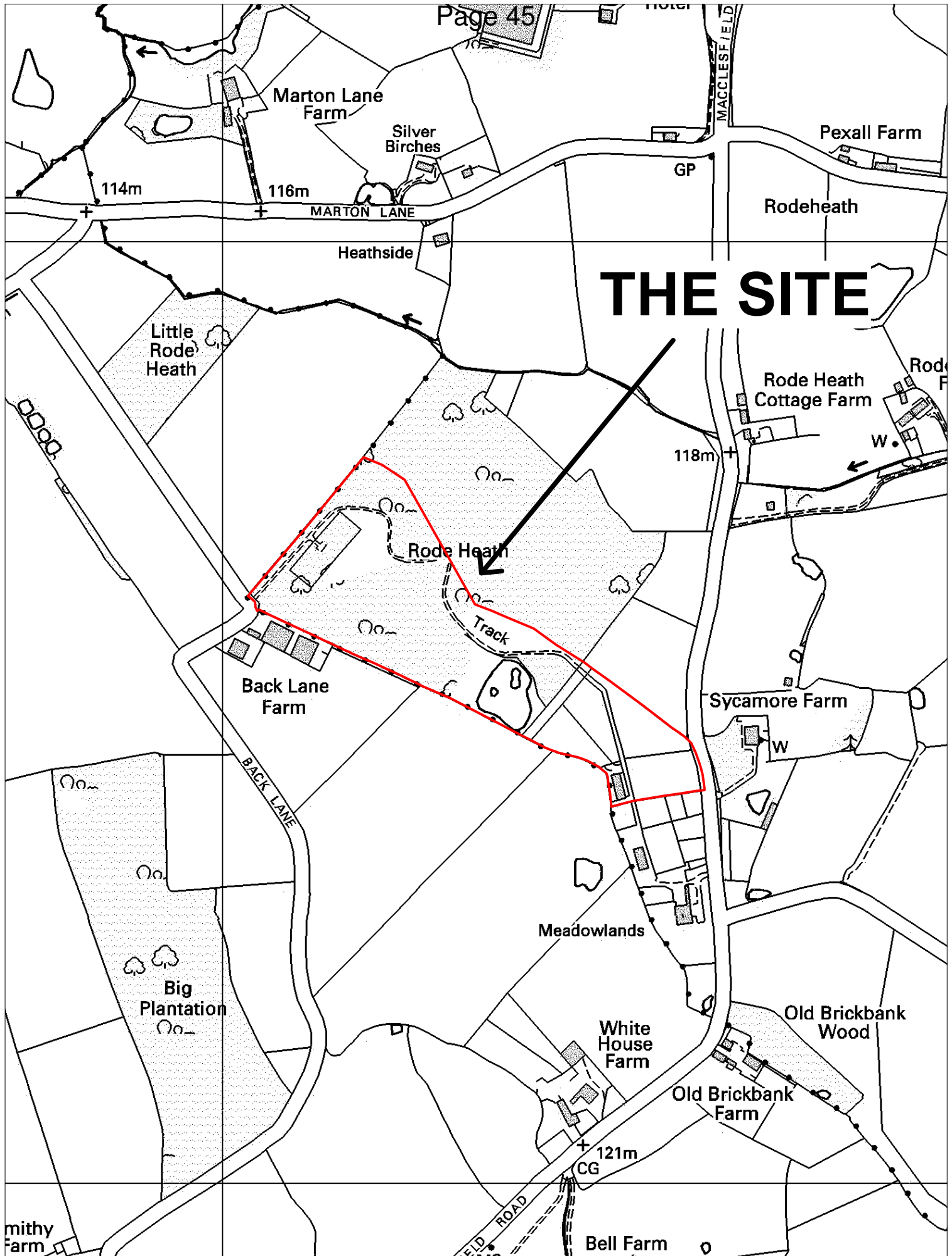
The Inspector during the 2007 appeal and a second Inspector in 2010 on the extended part of the site both considered a “close season” condition to be necessary. These decisions were taken having regard to the Good Practice Guide on Planning for Tourism, and Circular 11/95, which were both as relevant then as they are today. Having regard to the specific circumstances of this case, and the details outlined above, the close season and the holiday occupancy conditions are required together to ensure that the caravans are not occupied as a main or sole place of residence. Accordingly, a recommendation of refusal is made.

Application for **Full Planning**

**RECOMMENDATION : Refuse for the following reasons**

1. Closed season condition required in conjunction with holiday occupancy conditions to prevent caravans being occupied as a main place of residence, contrary to policies controlling development in the countryside





10/3805M RODE HEATH WOOD, BACK LANE, EATON

NGR- 387,260:366,570

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**Application No:** 10/4283M

**Location:** HOLFORD HOUSE, HOLFORD DRIVE, MOSSWAYS PARK, WILMSLOW, CHESHIRE, SK9 5PA

**Proposal:** DEMOLITION OF HOLFORD HOUSE AND THE ERECTION OF A REPLACEMENT DWELLING, ALONG WITH THE RELOCATION OF TWO EXISTING PARK HOMES

**For** W Flannigan

**Registered** 21-Oct-2010

**Policy Item** No

**Grid Reference** 382073 381467

**Date Report Prepared:** 13 December 2010

<b>SUMMARY RECOMMENDATION</b>	<b>Refuse</b>
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**MAIN ISSUES**

- Whether the proposed replacement dwelling is materially larger than the existing dwelling and if so, whether there are any very special circumstances to outweigh the harm caused to the Green Belt by inappropriateness and any other harm
- Whether the design and appearance of the proposed dwelling is acceptable
- Whether the proposal would have any adverse impact on residential amenity
- Whether access and parking arrangements are acceptable
- Whether the proposal would have an acceptable impact on existing trees and landscaping

**REASON FOR REPORT**

This application has been called into Committee by one of the Ward Members Cllr Macrae as he considers that the proposed development could result in harm to the Council's current adopted policies for the protection of the Green Belt, by nature of the size, siting and design of the dwelling.

**DESCRIPTION OF SITE AND CONTEXT**

The site lies within the Green Belt and forms part of an existing residential caravan site. It contains an existing two-storey residential property which also contains a site office. Four residential caravans are also located within the site. The site is located to the south of Eccups Lane. Detached residential

properties are located to the north of the site on the opposite side of Eccups Lane. The remainder of the caravan site lies to the east of the site, with agricultural land located to the west.

## **DETAILS OF PROPOSAL**

Planning permission is being sought for a replacement dwelling. It is proposed to demolish the existing dwelling and to re-locate it to a position adjacent to the entrance to the site. This would involve the re-location of two existing residential caravans. A new vehicular access point would be formed off Eccups Lane. The proposed new dwelling would be two-storey in height, would contain an office at ground floor and would have a basement extending across the entire footprint of the dwelling.

This application follows the withdrawal of two previous applications for a replacement dwelling at the site entrance (09/0205P & 09/1726M) and follows the approval of a replacement dwelling on the site of the existing dwelling (09/2933M). The latter permission remains extant until 11 December 2012. This means that if the Council were minded to approve this application, a legal agreement would be required to ensure that both consents for replacement dwellings on different footprints could not be implemented.

## **RELEVANT HISTORY**

09/2933M  
Full Planning  
REPLACEMENT DWELLING  
Approved with conditions

09/1726M  
Full Planning  
REPLACEMENT DWELLING  
Withdrawn

09/0205P  
Full Planning  
REPLACEMENT DWELLING  
Withdrawn

08/0228P  
Full Planning  
FIRST FLOOR SIDE EXTENSION  
approved with conditions

06/0479P  
Certificate of Lawful Existing Use/ Dev  
CERTIFICATE OF LAWFULNESS FOR EXISTING USE OF SITE AS  
RESIDENTIAL CARAVAN PARK  
positive certificate 20061005

04/2497P

Certificate of Lawful Existing Use/ Dev

CERTIFICATE OF LAWFULNESS FOR EXISTING USE OF SITE AS  
RESIDENTIAL CARAVAN PARK

positive certificate 20050422

## **POLICIES**

### **Regional Spatial Strategy**

DP1 (Spatial Principles)

DP5 (Manage Travel Demand, Reduce the Need to Travel, and Increase  
Accessibility)

DP7 (Promote Environmental Quality)

RDF4 (Green Belts)

### **Local Plan Policy**

NE11 (Nature Conservation)

BE1 (Design Guidance)

GC1 (Green Belt – New Buildings)

H13 (Protecting Residential Areas)

T2 (Public Transport)

DC1 (New Build)

DC3 (Amenity)

DC6 (Circulation and Access)

DC9 (Tree Protection)

DC38 (Space, Light and Privacy)

### **Other Material Considerations**

PPG2: Green Belts

## **CONSULTATIONS (External to Planning)**

**Highways:** no objections.

**Public Rights of Way Unit:** the property is adjacent to public footpath Mobberley No.54 and restricted byways Wilmslow No.s 34 and 99. No objections subject to an informative regarding the public right of way.

**Environmental Health:** no objections subject to appropriate conditions.

**Manchester Airport:** no comments received to date.

## **VIEWS OF THE PARISH / TOWN COUNCIL**

**Mobberley Parish Council:** recommends refusal due to concerns regarding the size of the building including basement, stated objective of being able to

observe the entrance would not be possible if the office is in the basement, new access to Eccups Lane is undesirable.

Another concern raised was with regard to the accommodation and compensation of existing residents who would be forced to move as part of the overall proposal. This is not a material consideration when determining the application.

## **OTHER REPRESENTATIONS**

To date, 4 representations have been received in relation to the application

- Property will be unduly dominant when viewed from adjoining and opposite properties markedly spoiling the appearance of the Park environment
- Current dwelling Holford House is set back from the road and is relatively unobtrusive to the surrounding park homes
- Holford House is away from the 'traffic' attracted by the existence of a legal footpath/byway
- When consider the amount of traffic using the entrance to the Park, the proposal will only make matters worse
- What has happened to the permission to rebuild Holford House?
- No.2 The Orchard has been recently fitted out as a site office so why is there a need for another office
- Concern about the lack of information regarding the height of the boundary wall adjacent to No.3 The Orchard given its proximity to that property
- Proposed wall would adversely affect the open plan nature of the Park
- Concern about the impact of additional traffic on Eccups Lane which is already used by heavy vehicles
- Proposed property would spoil the entrance to the Park
- Far Meadow (another property on Eccups Lane) is sited well back and barely visible from the road
- Application appears to differ little from the previous two
- There are at present 4 members of staff working in the site office, each of them arriving by car. The application makes no provision for staff or visitor parking to the office with any overspill parking likely to take place at either the site entrance or on Eccups Lane causing possible congestion
- If the house is intended for a site manager, it would surely be better placed in the centre of the Park for the purposes of accessibility and any necessary surveillance
- New property will be nearer to and overlook Brookside on Eccups Lane

Other issues have been raised relating to the proposed re-location of existing park homes. However these concerns are not considered to be material considerations when considering this application.

## **APPLICANT'S SUPPORTING INFORMATION**

A Planning Statement and a Design & Access Statement has been submitted with the application. The Planning Statement concludes that:

- The design of the proposed replacement dwelling has already been judged to be appropriate through the approval of application 09/2933M and the principle of relocating the proposed replacement dwelling has previously been accepted subject to a S106 legal agreement
- It has been demonstrated that special circumstances (secured by a S106 agreement) exist to justify the grant of planning permission for an otherwise inappropriate development within an existing park homes site
- The proposal would improve and enhance the quality of the local area and would have no significant impact on the amenity of neighbours or occupiers and generally accords with the principles of local and national policy guidance
- The proposals seek to provide and maintain a home suitable for a site manager and their family

## **OFFICER APPRAISAL**

### **Principle of Development**

The principle of replacement dwellings in the Green Belt need not be inappropriate provided that the replacement dwelling is not materially larger than the existing dwelling to be replaced (paragraph 3.6 of PPG2). If it is considered to be materially larger, very special circumstances will need to be demonstrated that outweigh the harm caused by inappropriateness and any other harm.

### **Green Belt**

Local Plan policy GC1 reflects the advice contained within PPG2 and allows for the replacement of existing dwellings, subject to policy GC11. Policy GC11 is not a saved policy and is not therefore relevant to the consideration of the application.

The existing dwelling is located within the residential caravan site, approximately 75m away from the entrance to the site on Eccups Lane. It is a two-storey dwelling with a total floorspace of 188m<sup>2</sup> and a ridge height of 6.6m (eaves height 4.4m). In March 2008 consent was granted for a first floor extension to the dwelling (08/0228P). This would have added a further 27m<sup>2</sup> of floorspace giving a total floorspace of 215m<sup>2</sup>. This consent remains extant until March 2011.

The replacement dwelling proposed by this application would be located at the entrance to the residential caravan site approximately 9.8m back from Eccups Lane at the nearest point. It would have a total floorspace of 332 m<sup>2</sup>, over three floors including a basement. This would be approximately 76% larger than the existing dwelling. The ridge height would be 7.3m (eaves height 5.5m). This represents a ridge height increase of 0.7m and an eaves height increase of 1.1m. In this case, it is considered that the overall increase in floorspace in combination with the increase in eaves and ridge height of the proposed dwelling when compared to the existing, results in a dwelling that is

materially larger. In reaching this conclusion, regard was had to the fact that much of the floorspace increase is as a result of the addition of a basement which is intended to be fully subterranean. However, in this case, as the above ground size of the dwelling would also increase, overall the size increase is considered to be material. The proposal is therefore inappropriate development in the Green Belt.

Before considering whether there are any very special circumstances to outweigh the fact that the proposal is inappropriate development, it is first necessary to assess whether there is any other harm. When considering the two previous applications for a replacement dwelling at the entrance to the site, it was considered that in some cases it may be possible to re-site replacement dwellings provided that there is no greater impact on the Green Belt. However in this case, it was considered that the fact that the existing house is set within the park home site together with its modest scale means that its impact on openness is limited. By contrast the previous and current proposals involve the provision of a larger dwelling in a more prominent location at the edge of the site. As a result, it is considered that as well as being inappropriate development, the proposal would also reduce the openness of the Green Belt due to the increased size and prominence of the new dwelling.

## **Highways**

Vehicular access to the dwelling is to be provided via a new access point off Eccups Lane, close to the existing entrance to/exit from the park home site. Pedestrian access to the office is to be provided off the existing site access road.

The Strategic Highways Manager has raised no objections to the proposal. However a number of highways related concerns have been expressed by third parties relating to increased traffic along Eccups Lane and concern regarding parking facilities for staff and visitors. Whilst these concerns have been noted, given that the application is for a replacement dwelling, it is not considered that it would result in a significant increase in traffic using Eccups Lane. Any traffic associated with the construction of the dwelling could be controlled by a construction method statement condition. With regard to parking, again, it is considered that this could also be addressed by a condition as it appears that the area of land associated with the new dwelling is sufficient to meet any necessary parking requirements.

## **Design**

The design and appearance of the replacement dwelling is as approved under application reference 09/2933M. There is no objection in principle to the design of the proposed dwelling which represents a significant improvement over the quality of the existing dwelling. There is a mixture of dwelling styles and designs within the vicinity of the site. Whilst some concerns were raised by third parties with regard to the impact of the proposal on the appearance of the site entrance and on the open plan nature of the site, other than concerns



regarding impact on openness, it is not considered that any objections could be raised to the proposal on design grounds alone as boundary treatment details could be dealt with by condition to ensure that the impact of the proposal on the streetscene is acceptable.

### **Amenity**

Existing park homes are located to the rear and on the opposite side of Holford Drive to the proposed replacement dwelling. No.3 The Orchard has windows facing towards the rear of the site of the proposed dwelling, one of which is located towards the rear of the home and is the only window to the main bedroom of the property. A new boundary wall, the height of which it is stated is to be agreed with the local planning authority, is proposed approximately 3.8m from this property with the nearest point of the rear elevation of the proposed house approximately 15.8m away. The rear elevation of the dwelling would contain habitable room windows at ground and first floor levels and would also contain a first floor balcony to the main bedroom the nearest point of which would be approximately 14m away from No.3 The Orchard.

Local Plan policy DC38 provides guidelines on space between buildings and states that there should be a minimum distance of 21m front to front and 25m back to back between habitable rooms within buildings. Whilst the proposed boundary wall is likely to impact on the amenity of No.3, a wall up to 2m in height could be built without planning permission (though this may be affected by site licence legislation). It is not therefore considered that any objections can be raised to the wall and in any event it seems that the applicant is willing to negotiate the height of the wall. With regard to the impact of the proposed dwelling on No.3, whilst the space between existing park homes tends to be in breach of DC38 as the siting of the homes is covered by site licensing regulations, it is nevertheless considered appropriate to assess the proposal against DC38 given that the proposed dwelling is much larger than a park home. DC38 states that there should be a minimum distance of 14m between habitable rooms facing non habitable rooms (or blank walls), with a further 2m to be added to this distance where there is a difference in levels between buildings. As previously stated, the nearest point of the main part of the replacement dwelling would be 15.8m away from No.3, just short of the guidelines stated within DC38. However, the proposed balcony would be 14m away and would be located on the part of the dwelling nearest to the bedroom of No.3. As a result it is considered that there is significant potential for overlooking from the balcony towards the bedroom to No.3. As such, it is considered that the proposal would have a significant adverse impact on the amenity of No.3 contrary to policies DC3 and DC38.

A park home is also located on the opposite side of Holford Drive (18 Newlands). This also contains a number of windows facing towards the site of the proposed dwelling, one of which appears to be a principal window. The distance between this property and the proposed dwelling is approximately 16m, with the side elevation of the proposed dwelling containing a number of windows, one of which on the ground floor appears to serve a habitable room.

However, the position of the habitable room windows in each of the properties means that there are no directly facing relationships. Whilst the proposed dwelling may result in some loss of light to No.18 due to the fact that it is sited to the west of that property, it is not considered that there would be significant loss of amenity.

The occupier of a property known as Brookside on Eccups Lane has also raised concerns regarding the fact that the proposed dwelling would be nearer to and overlook that property. Whilst these concerns are noted and whilst it is acknowledged that the proposed dwelling would be nearer to Brookside, it is not considered that this would result in any significant impact on the amenity of the occupiers of either Brookside or the other nearby property, Far Meadow.

### **Ecology**

The Council's Nature Conservation Officer was consulted on the application and does not anticipate there being any significant ecological impacts associated with the development.

### **Landscaping and Tree Implications**

There are a number of trees located on the western boundary of the site. The proposed site plan indicates that the existing trees and shrubs are to be retained and there will be a no dig hard surface. The views of the Council's Tree Officer are currently awaited, though no objections are anticipated as none were raised to a previous proposal with the dwelling sited in the same position as now proposed. It was previously noted that the position of the proposed replacement dwelling presents no worse relationship/social proximity to the two mature field boundary Oaks (south west) than is currently presented by the existing park homes and no changes have been made to the position of the proposed dwelling. Any comments received from the Tree Officer will be reported to Committee.

### **Very Special Circumstances**

As it is considered that the proposal represents inappropriate development in the Green Belt and as it is also considered that the proposal would cause further harm by impacting on openness, it is necessary to consider whether there are sufficient very special circumstances to outweigh the harm caused.

A number of very special circumstances have been put forward on behalf of the applicant. In summary these are:

- Area to which house is to be re-located to already contains buildings (2 park homes) which would be re-located to the area occupied by the existing house and would not encroach further into the Green Belt. The swap would have an immaterial impact upon the openness of the Green Belt

- Preference for re-locating the house is because it marks the entrance to the site and would also enable improved management and supervision to the entrance to the Park. It would contain a site office where the park manager would work from and where visitors and residents may have to go if they have any queries, hence it is a logical position.
- Proposed location also offers surveillance of visitors entering and leaving the site, for overall improved management
- The proposed dwelling would be sited adjacent to existing dwellings (Far Meadow and Brookside) having a cluster relationship with this built form and would offer the advantage of direct access onto the external road
- Proposed house is not materially larger than the existing house and the contemporary design of the proposed dwelling would be a significant improvement on the existing house
- Not considered that the dwelling would cause material harm to the Green Belt as whilst the existing dwelling is set within the existing caravan park, it is situated immediately adjacent to a field boundary, with the long rear elevation running parallel to the boundary. The proposed dwelling would present a smaller elevation in terms of width to the field boundary
- Not proposed to include a free standing garage or any other structure, hence there would be no impact on the openness of the Green Belt
- In order to afford the above special circumstances significant weight, the applicant proposes to enter into a S106 legal agreement to tie the replacement dwelling to the ownership of Mossways Park; limit its occupation to the site manager and their dependants and allow the provision of ancillary office accommodation associated with the management of the site

Additionally, whilst not listed by the applicant's as part of the very special circumstances argument, it is considered that the fact that an extant consent exists for a replacement dwelling of the same size on the site of the existing dwelling is a material consideration to be given weight in considering whether sufficient very special circumstances exist to outweigh the harm identified.

At the time of considering the previous applications for replacement dwellings at the site, it was not considered that the proposed replacement dwellings (one of which now has an extant consent) were materially larger than the existing dwelling. Therefore the only harm identified was in relation to the re-location of the dwelling to the entrance which was considered to impact on openness. When considering the impact of that harm, it was previously considered that the circumstances of the proposal i.e. the justification for re-locating the dwelling to the entrance, the improved design of the dwelling and the fact that other detached residential properties are located nearby on the opposite side of Eccups Lane were capable of outweighing the harm caused by the reduction in openness. However in order for these factors to be given sufficient weight, it was considered that a S106 agreement tying the ownership and occupation of the dwelling to the wider site and to control the demolition of the existing dwelling was required. The applicant was previously unwilling to provide this, though now appears willing to do so.

However, whilst noting the very special circumstances put forward by the applicant including his willingness to now enter into a S106 agreement it is considered that there has been a significant change in circumstances since the previous applications were considered. Firstly, new case law following the Broad Heath House judicial review decision has altered the way that the Council assesses replacement dwellings containing basements meaning that the proposed replacement is now considered to be materially larger and inappropriate. This means that additional harm has been identified which the applicant would need to overcome. Secondly, it now appears that a new site office has been created within an existing park home closer to the site entrance meaning that the benefits of re-locating the dwelling, including the office, offered by this proposal are reduced. Whilst consent exists for an identical sized replacement dwelling on the site of the existing dwelling, it is not considered that this fact together with other circumstance put forward by the applicants are sufficient to outweigh the harm that would be caused by the proposal.

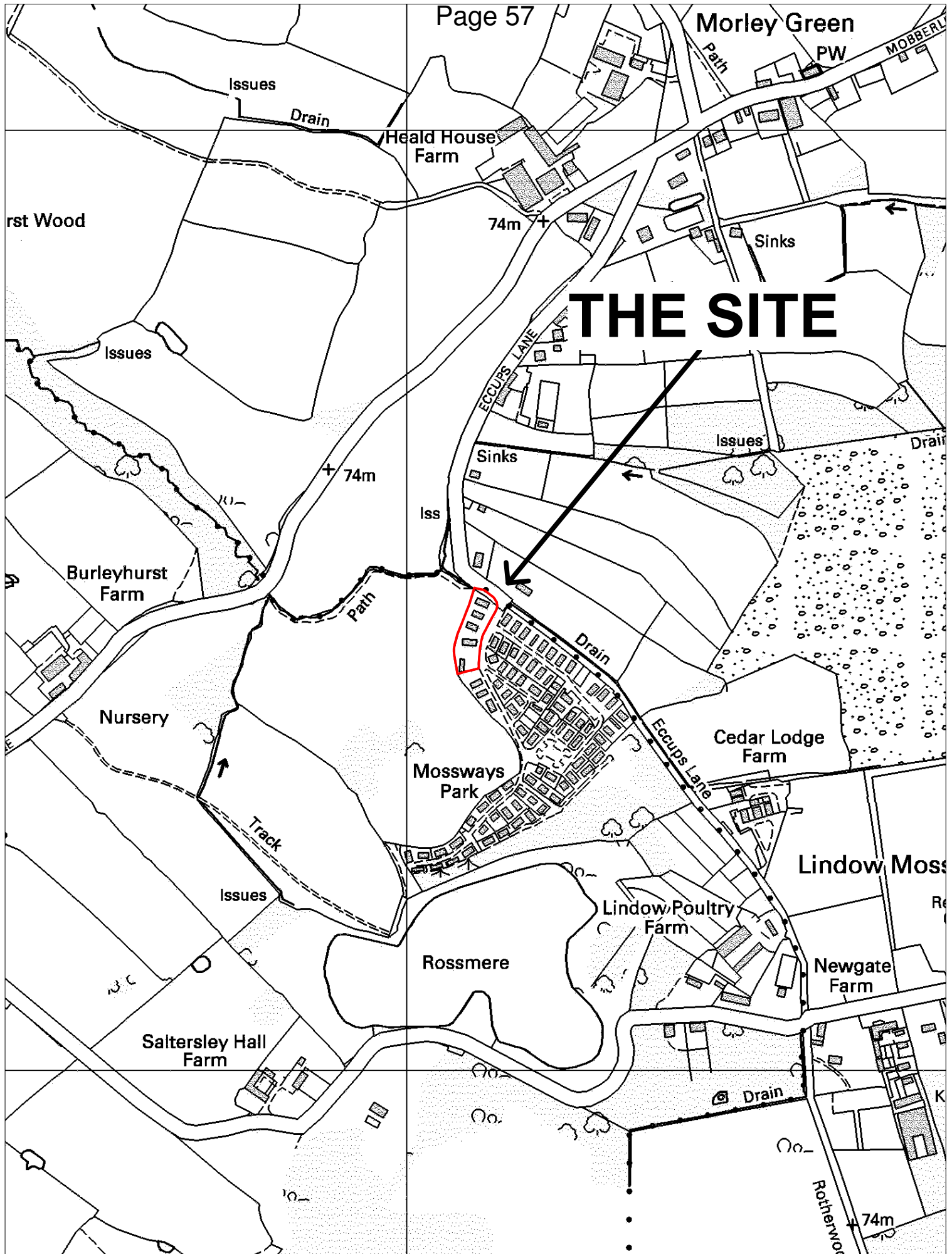
### **CONCLUSIONS AND REASON(S) FOR THE DECISION**

The replacement dwelling proposed by this application is considered to be materially larger than the existing dwelling on site and is therefore inappropriate development in the Green Belt. Additionally the proposed dwelling due to its increased size and prominence would adversely impact on the openness of the Green Belt. Whilst a number of very special circumstances have been put forward by the applicant and whilst there is an extant consent for a replacement dwelling of an identical size on the site of the existing dwelling, it is not considered that there are sufficient very special circumstances to outweigh the harm that would result from the proposal. The proposal would also result in a significant adverse impact on the amenity of the occupiers of No.3 The Orchard, a park home located adjacent to the site of the proposed replacement dwelling.

Application for **Full Planning**

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

1. R02RD - Loss of privacy
2. R05LP - Harmful to appearance of the countryside
3. Contrary to Green Belt policy



10/4283M HOLFORD HOUSE, HOLFORD DRIVE, MOSSWAYS PARK, WILMSLOW, CHESHIRE, SK9 5PA  
NGR- 382,070:381,470

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**Application No:** 10/4280M  
**Location:** CHRISOVALANTOU, MERESIDE ROAD, MERE, WA16 6QR  
**Proposal:** REPLACEMENT DWELLING

**For** MR G CAVILL, BWD LTD

**Registered** 20-Oct-2010  
**Policy Item** No  
**Grid Reference** 373399 382244

**Date Report Prepared:** 10 December 2010

**SUMMARY RECOMMENDATION: Approve with conditions.**

**MAIN ISSUES:** Impact on Green Belt  
Impact on character of the area  
Impact on living conditions of adjoining property

#### **REASON FOR REPORT.**

The application has been called in by Councillor Macrae who considers the size and siting of the proposed re-development of the site together with ancillary buildings and structures could cause harm to current local policies, overdevelopment of the curtilage, un-neighbourly to adjacent dwellings.

#### **DESCRIPTION OF SITE AND CONTEXT.**

The application site is adjacent to Little Mere and is currently occupied by a large two storey house with detached double garage and rear raised terrace/patio. Access to the site is off Mereside Road.

The site lies between Little Mere to the west and Mereside Road to the east with large detached dwellings to both north and south.

The site extends along part of Little Mere and this area has mature tree coverage.

#### **DETAILS OF PROPOSAL.**

The proposal originally intended to include a tree house in the western area of the site and a boathouse. Both these structures were of a significant size and the applicant has confirmed these should now be deleted from the proposal.

The proposal now intends to demolish the existing building and provide a replacement dwelling with basement and detached double garage.

To the rear (west) of the proposed dwelling will be a patio area approximately 1.2 metres above ground level with glass panels around the perimeter.

There is also proposed a quadruple garage 4 metres from the front of the replacement dwelling. This will have living accommodation above comprising living room, bedroom and bathroom and will not be self contained accommodation. The size of the floor area of the garage will be approximately 18 square metres.

The garage will have a pitched roof with ridge running west to east. On the northern roof plane there is proposed two small dormers with 4no. small rooflights on the southern roof plane.

### **RELEVANT HISTORY.**

10/2840M – Erection of garden fence with trellis on top. Approve 9/11/2010.

98/2377P – Two storey rear extension. Approve 24/2/1999.

79026P – Retention of 1.2 metre satellite dish. Approve 18/10/1994.

57391P – Extension to form additional bedroom. Approve 6/4/1989.

56202P – Extension for additional bedroom. Refused 26/1/1989.

### **POLICIES**

#### **Regional Spatial Strategy**

DP1 Spatial Principles.

DP7 Promote Environmental Quality.

#### **Local Plan Policy.**

NE1 Areas of Special County Value.

BE1 Design Guidance.

GC1 New Buildings.

DC1 New Build

DC3 Amenity.

DC6 Circulation and Access.

DC9 Tree Protection.

DC38 Space, Light and Privacy.

DC41 Infill Housing Development or Redevelopment.

#### **Other Material Considerations.**

PPS 1: Delivering Sustainable Development.

PPS 2: Green Belts.



## **CONSULTATIONS (External to Planning)**

### **Highways:**

As the application is for a replacement dwelling and there are no changes to the access proposed there are no highway objections to the application.

### **Environmental Health:**

## **VIEWS OF THE PARISH / TOWN COUNCIL**

Mere Parish Council are concerned that the replacement dwelling being considerably larger than the original footprint. The 1% increase stated includes within the existing footprint a large patio and terrace area. The proposed replacement garage is larger than others in the immediate vicinity and very close to the road. Consider the proposed boathouse/treehouse is inappropriate development in the green belt area and detrimental to the neighbouring properties.

## **OTHER REPRESENTATIONS**

Natural England originally objected to the proposal on the grounds of insufficient information. Now the ancillary buildings have been removed, their main objection is no longer relevant. They have requested details of a methodology statement covering issues of dust screens and storage areas to protect the Mere. Also requested were details of surface water drainage. Natural England have confirmed they would support a condition requiring the surface water to be directed straight to the mains supply instead of a soakaway system originally proposed. The applicant has confirmed agreement to this and with such a condition attached and sight of the methodology statement, it is anticipated Natural England will remove their objection.

## **APPLICANT'S SUPPORTING INFORMATION**

The following supporting documents have been submitted that can be viewed online:

Design and Access Statement  
Tree Report  
Protected Species Survey.

## **OFFICER APPRAISAL.**

The application seeks consent for the demolition of the existing detached two storey dwelling and detached garage and the erection of a replacement two-storey dwelling with basement accommodation and new detached garage. The existing vehicular access arrangement onto Mereside Road will be retained.

## **KEY ISSUES.**

The site lies within the Green Belt and it is considered that the key issues to be addressed in relation to this application are.

- Whether the proposal represents appropriate development in the Green Belt and if not whether there are any very special circumstances which would warrant approval of the application.
- Whether the design and appearance of the proposal and its visual impact on the character and appearance of the area is acceptable.
- Whether the proposal would have a detrimental impact on neighbours.

### Assessment.

Green Belt Policy GC1 seeks to prevent inappropriate development, except in very special circumstances, and protect openness and provides criteria for appropriate development which includes agricultural/forestry development and development essential for outdoor sport. Balanced against this is guidance provided in PPS 2 which indicates the replacement of existing dwellings need not be inappropriate development in Green Belt providing the new dwelling is not materially larger than the existing dwelling.

The difference in accommodation is:

	<u>Existing(m2)</u>	<u>Proposed(m2)</u>
Basement	-	347
Ground Floor	294.7	297.6
First Floor	172.2	276.9
Second Floor	47.6	158.1
Volume (m3)	1786	3346

(These figures do not include the accommodation above the proposed quadruple garage which is approximately 12 square metres)

The proposed dwelling will have a slightly larger footprint to the original dwelling of approximately 1%. However the replacement dwelling will have provision for basement accommodation of approximately 347 square metres and additional floorspace at both first and second floor.

The maximum height of the existing dwelling to ridge is 8.5 metres at the rear (west) and 9 metres to the front (east) and over 5.5 metres high to eaves on the two storey element. These dimensions are very similar to the proposed dwelling which is 9 metres to the front (east) and 9.5 metres to rear (west).

The maximum width of the existing dwelling is approximately 21.5 metres with a depth of approximately 19 metres. This needs to be assessed against the elevations of the proposed dwelling of 22.5 metres and 21 metres respectively.

The existing dwelling has areas which are single storey with associated lower eaves height of 3 metres. The increase in eaves height of the replacement dwelling is predominantly two storey and consequently the cumulatively impact of both proposed new eaves heights and increased dimensions is considered to have a significant impact on the massing of the building.

The assessment of what is materially larger needs to take in a numerous factors including footprint, floorspace, volume, height, massing, design, and position on the plot. With the provision of the basement accommodation and additional floor space at first and second floor (which increase the bulk and massing of the proposed dwelling), the replacement dwelling is considered to be materially larger than the existing dwelling and has an increased volume of approximately 96%. The proposal therefore constitutes inappropriate development, which is, by definition, harmful to the Green Belt.

National guidance PPG2 sets out the presumption against inappropriate development. Inappropriate development should not be approved, except in very special circumstances. It is for the applicant to demonstrate why permission should be granted. Very special circumstance will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

As it is established that the development is inappropriate development in the Green Belt, it is therefore important to establish *any other harm* before taking into account any considerations that may weigh in favour of the proposal.

The increased massing of the proposed dwelling compared to the existing dwelling has the effect of reducing the space around the building to the detriment of the openness of the Green Belt. Openness is the most important attribute of the Green Belt and therefore the loss of openness adds some weight against the proposal.

The basement accommodation whilst having a significant impact on additional floorspace, will not be entirely visible from any of the elevations being predominantly below ground level and has very little impact on the overall height/mass of the replacement dwelling. The proposed basement area will have no openings visible on any of the elevations and the swimming pool proposed within the basement will have rooflights along the floor of the proposed patio area to the rear. The elevated patio area will be formed by the part of the wall of the basement area. There is an existing raised patio area and it is considered the basement is acceptable and will have no visual impact or harm on Green Belt.

Whilst the massing of the proposed dwelling is increased and will impact on the openness of Green Belt, it is considered the increase in massing and dimensions are not significant enough to be detrimental to the visual appearance and character of the area or have an adverse visual impact on Green Belt as the properties along Mereside Road are of a significantly large size.

## **Other Considerations.**

Whilst the proposal is materially larger, it is noted in the past there have been several cases along Mereside Road, Clamhunger Lane, Chester Road and Warrington Road where it has been considered that very special circumstances exist within this area and have been subject to a “flexible” approach to Green Belt policy, taking into account the large houses and suburban character of the area.

However, each planning application should be assessed on its merits, and it is not considered a sufficiently strong argument to rely on past decisions in determining this application. Furthermore, the recent judicial review that the Council has faced in relation to how replacement dwellings are assessed has focused attention onto this issue.

It is recognised that this part of Mereside Road does have a suburban character, however this in itself is not considered to be sufficient to outweigh the harm by reason of inappropriateness and the additional harm by reason of loss of openness that has been identified. No very special circumstances are considered to exist that could allow this proposal.

## **Residential Amenity**

The application site has neighbours to the north and south. The substantial vegetation on the boundaries characterised by a large mature hedgerow and trees in places and the distance the properties are away from the boundaries, will minimise any impact of the development upon their residential amenity.

The detached quadruple garage will have a pitched roof with gable facing Mereside Road. The siting of the garage allows for a significant reduction in the visual appearance of the building and when viewed from the road with the backdrop of the replacement dwelling, it is considered the visual impact on the garage is considerably reduced.

For the avoidance of doubt, any approval granted could have a suitably worded condition attached ensuring the accommodation will not become self contained but is linked to the main dwelling.

## **Landscaping.**

There is substantial mature tree and hedge planting around the perimeter of the site which will be retained. This will ensure the proposal is not only screened but will also protect privacy of both neighbours and occupiers. Submitted with the application are details of tree protection measures which should ensure retained trees are protected.

The majority of the tree cover is located adjacent to the Mere in the eastern area of the site. This area is a considerable distance away from the proposed dwelling and will not be affected by the proposal.

### **Nature Conservation**

An ecological report was submitted with the application. The Council's Ecologist notes that there is no evidence of any protected species on site and does not anticipate there being any significant ecological impacts associated with the proposed development.

### **Highways/Transport**

The existing entrance onto Mereside Road is to be retained and the Highway Engineer has no objections.

### **Ecology**

The Ecology report submitted with the application confirms no evidence of bat activity and Natural England considers the proposal will not have any adverse impact on the Mere.

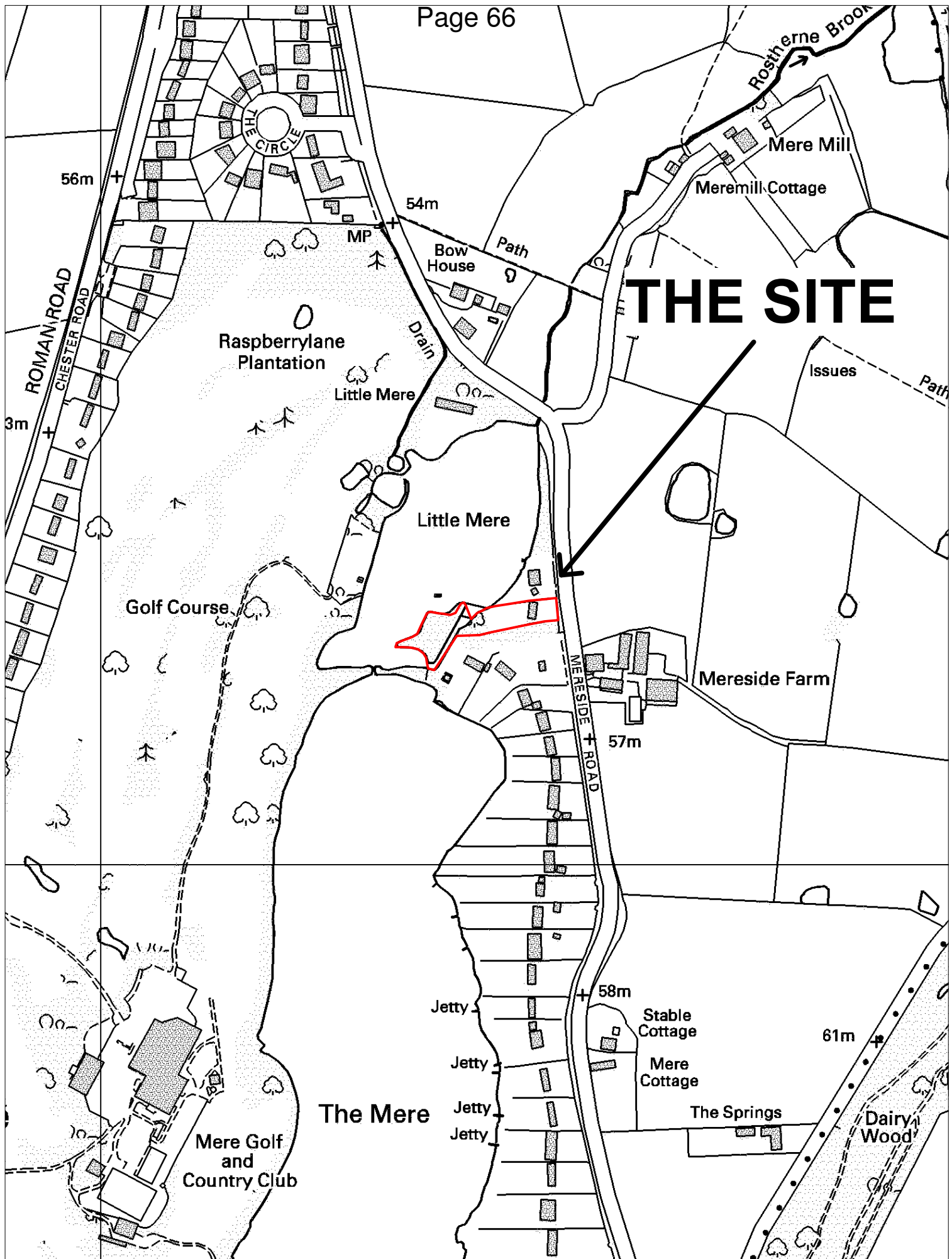
## **CONCLUSIONS AND REASON(S) FOR THE DECISION**

The proposed dwelling is materially larger than the existing dwelling it seeks to replace. The proposal amounts to inappropriate development in the Green Belt and the proposed dwelling will reduce the openness of the site within the Green Belt. The lack of harm to the character and appearance of the area or to visual amenity, and the character of surrounding properties, are not considered to be sufficient to clearly outweigh the identified harm to the Green Belt. As such the proposal is recommended for refusal contrary to national planning guidance PPG2 and Macclesfield Borough Local Plan policy GC1.

Application for **Full Planning**

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

1. Contrary to Green Belt policy



**THE SITE**

10/4280M CHRISOVALANTOU, MERESIDE ROAD, MERE, WA16 6QR

NGR- 373,400:382,260

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**NORTHERN PLANNING COMMITTEE**

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**Date of meeting:** 22 December 2010  
**Report of:** Head of Planning and Housing  
**Title:** Broadheath House, Slade Lane, Over Alderley, Alderley Edge - Judicial Review of decision to grant planning permission

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**1.0 Purpose of Report**

- 1.1 To notify members of the result of the Judicial Review proceedings brought against the decision of the Council to grant planning permission for the development at Broad Heath House, Slade Lane, Over Alderley, Alderley Edge, the Judicial Review application was successful and therefore the Planning Permission that had been granted was quashed by the Court.

**2.0 Decision Required**

- 2.1 To note

- (1) the decision of the High Court to quash the grant of planning permission
- (2) that a report on re-determination will be presented to the Strategic Planning Board which takes into account the judgment and the views expressed by Mr Justice Langstaff
- (3) the implications for future decisions that will be taken based on the judgment and views expressed by Mr Justice Langstaff

**3.0 Financial Implications for Transition Costs**

- 3.1 The Council will be required to meet its own external costs of defending this action in an amount of £12,929.95, and will also be required to meet the Claimants costs which have been agreed at £32,987.50.

**4.0 Legal Implications**

- 4.1 The decision of the High Court quashes the Planning Permission that was granted on 24 July 2009. The application therefore currently stands undetermined and will need to be re-determined having regard to the judgment.

**5.0 Risk Assessment**

- 5.1 Determination of applications for replacement dwellings in the Green Belt will need to be subject to a review, and guidance on whether proposed replacement dwellings are “materially larger” will need to be given to

Planning Officers. Such a review and guidance will minimize the likelihood of further challenge to decisions on such applications.

- 5.2 The possibility of the introduction of a Supplementary Planning Document to assist in the determination of applications that propose a replacement dwelling in the Green Belt needs to be considered.

## **6.0 Background and Issues**

- 6.1 It is relevant to set out some details of the Judicial Review process. This is a process which focuses on the way in which a decision is taken by a public body. It is not a way of challenging a decision on the planning merits.

- 6.2 The challenge will usually be on one or more of the following grounds:
- That there has been a failure to apply the law
  - That there has been a misinterpretation of the law.
  - That a relevant consideration has not been taken into account or an irrelevant one has been
  - That the decision is perverse.

- 6.3 The procedure which governs a claim for Judicial Review is as follows:
- The Claimant sends what is called a pre-action protocol letter to the Council. This sets out the nature of the concerns and the Council has 14 days to respond. The intention of this early step is to allow the Council to produce arguments which either resolve the Claimant's concerns or convinces the Claimant that the claim will not succeed.
  - If the Claimant decides to continue a claim is issued in the Administrative Court which sets out the detailed statement of grounds on which the case is based.
  - The Council must serve an Acknowledgement of Service within 21 days if it wishes to defend the case and must set out summary grounds of defence.
  - The case does not automatically then proceed to a hearing. Rather the claimant has to obtain Permission from the Court. This is a step which allows the Court to filter out hopeless cases. The threshold which the Claimant has to cross is, however, set quite low. Ordinarily the Court decides whether to grant Permission on the basis of the written documents which have been submitted by the parties. If, however, Permission is refused at this stage, the Claimant can require an oral hearing at which the parties attend and where the Claimant tries to convince the Court that Permission should in fact be granted.
  - If Permission is granted the Council then has 35 days to submit its evidence and any further defence it wishes to argue. The case then comes on for hearing.

- 6.4 This case concerned a planning application [09/0842M] which was for the replacement of a dwelling in the Green Belt. The application was



received by Macclesfield Borough on 2 February 2009, but determined by Cheshire East on 24 July 2009. The replacement dwelling included a large entirely subterranean basement which had the effect of significantly increasing the volume and gross floor area of the replacement dwelling as compared to the original but with much smaller increases in height and footprint.

6.5 The application had to be determined taking into account the guidance in Planning Policy Guidance 2 Green Belts and particularly paragraph 3.6 thereof. That Guidance indicates that a replacement dwelling may not be inappropriate development provided that it is not “materially larger” than the dwelling it replaces. That requirement has previously been considered by the Court of Appeal and this case centred on whether the Council, in granting planning permission, had applied the right test.

6.6 The challenge was two-fold:

6.6.1 that the Council had failed to show that it had properly taken into account the extent and effect of the basement. While the officer’s report, which recommended that the Committee should approve the application, mentioned the basement it was alleged that this was solely to do with issues of visual impact and not (as other case law provided) in order to make an objective size comparison.

6.6.2 that, even if the Council had properly taken account of the basement as required by the case law, the decision was flawed because it would be perverse for a local authority to conclude that, on the facts here, the replacement dwelling was not “materially larger”.

6.7 Permission to proceed with the Judicial Review application, at first instance, was in fact not granted on a consideration of the papers by Mr Justice Pelling. He concluded that the officer report showed that the correct question had been asked and that the Council had taken into account that which it was required to take into account.

6.8 Following this initial decision, the Claimant then asked for an oral review hearing at which Mr Justice Foskett granted Permission to continue. He indicated that, while he could see the force in Mr Justice Pelling’s conclusion and while his mind had wavered whilst considering the matter, he would allow the case to go forward although he expressly recognised that the arguments which had found favour with Judge Pelling might prevail.

6.9 The full hearing took place on 11 May 2010 before Mr Justice Langstaff. Both parties were represented by Counsel. The Judge decided that he could not be certain from the documentary evidence that the Council had properly considered the basement in determining if the replacement dwelling was “materially larger” and so quashed the grant of planning permission on that basis. He also ruled that the Council should pay the

Claimant's costs (the normal outcome when a Claimant succeeds). He did not however accede to the argument that the decision would have been perverse and, unusually, gave quite substantial guidance on how such applications should be dealt with in the future.

- 6.10 The following extract from the judgment indicates how the Council will need to approach the re-determination of the planning application and future applications for replacement dwellings in the Green Belt:

*“ 30. ...Here, I conclude that all necessarily depends in an assessment of “materially larger” upon the particular facts and circumstances of a case. It can be said, usually, whether one building is or is not larger than another; though reference may need to be had to particular measurements in respect of which it is said to be larger than the other. Whether it is “materially larger” has to be answered in accordance with the guidance given by the Court of Appeal; that is, primarily as a question of size. But it is not exclusively a question of size...*

*31. The expression “materially” invites a consideration of size in context; what is the relevant context? The relevant context necessarily has to be the object of and policies relating to establishing a Green Belt. It is possible to give several examples which may illustrate this, and may demonstrate that it is not a sufficient answer to suggest that a qualitative analysis is only relevant within very small increases in size. The first example was that given in the Surrey Homes case. There, the Deputy Judge pointed out that a building might have a much smaller footprint, and have the same overall floorspace, because it was built as a tower; yet if a tower replaced a bungalow, it is not difficult to see how the relevant considerations of size would have nothing to do with footprint, and nothing to do with floorspace, but everything to do with height. In the context of affecting the openness which green belt policy emphasises, the tower might be said to have much greater impact than the bungalow.*

*32. It is equally not difficult to see that some buildings may have a much larger floorspace as newly-built than those than they replaced, without altering in any way the external dimensions and footprint of the original building. For instance, where a large barn is converted or rebuilt; where a high-ceilinged building is replaced by one with more floors, and therefore more floorspace, but with no change to exterior dimensions. Similarly, it is not difficult to see how, if one replaced a bungalow with a two-storey building on a narrower footprint, the planning considerations relevant to a determination of material largeness would not depend at all upon floorspace or footprint, but in that case upon height and depth of the building.*

*33. The dictum of Carnwath LJ at the end of paragraph 36 made the point that if an extension were three times the size of the original - and I note that would mean a building four times the size of the*

*original, being the original plus the extension - it could not be regarded as proportionate. When looking at a replacement building, the test is not what is "proportionate", though material largeness is to be read in the same spirit. But that is very different, as it seems to me, from the situation here. It seems to me that, in this particular case, a very important fact and issue to which the local planning authority will wish to have regard in attributing whatever weight it thinks is appropriate to the size of the basement is the fact that, as part of the dwelling, that basement is intended to be entirely below ground level.*

34. *I could not, in short, have said that it would necessarily and obviously have been perverse for the local authority in this case to have concluded, if it did so having had regard to all proper considerations, that the replacement building was not materially larger than the existing. Providing it did not lose sight of the overall size and floorspace of the basement, the authority would be entitled, in my view, to come to a conclusion that the building above ground was such, and the basement such, that overall, the building, in the contexts to which I have referred, was not materially larger. Indeed, it is plain from (the Officer's statement) that they did not regard that conclusion as being to them, as an experienced planning officer, necessarily perverse.*
35. *But it does not follow that I can say that the decision to be reached by the local authority will necessarily be the same if it has regard to the matters to which it should properly have regard as that it actually reached which is the subject of this litigation...It seems to me that the size of the basement is significant. As a matter of sheer size, the issue of how that affects a conclusion as to whether it is or is not such as to make the building as a whole materially larger than that which it replaces, is not one which I can say necessarily should be determined one way or the other.*
36. *Although this last part of my decision, from paragraph 30 onward, is necessarily obiter, I hope that those observations are of assistance to the parties."*

6.11 As a general comment, it is clear from Mr Justice Langstaff's decision that the Local Planning Authority are entitled to take the view that in a given set of circumstances a proposed replacement dwelling that has a basement is not necessarily materially larger in the context of PPG2, and therefore not inappropriate development. This will, however, essentially involve a comparison of size, and the provision of a basement may well be a determining factor in reaching a decision that a replacement dwelling is materially larger, but there will need to be a judgment made on the circumstances of each case. Whatever decision is reached, there needs to be a clear and comprehensive assessment of the existing dwelling and the proposed replacement dwelling, within either the Committee report or the delegated report, that is explicit regarding what

has been included in that assessment and why. It is not sufficient for the Officer to have considered the matter without explaining that reasoning fully and comprehensively in their report, and the decision maker must then take account of that assessment in making their decision.

- 6.12 Clearly in this case, while the Officer's report was approved by a number of Officer's prior to reaching the Committee, the Judge was of the view that the basement issue was not clearly covered within the report, and therefore had not been clearly in the minds of members when they were making the decision. As such he was not able to determine whether proper regard had been had to the required points and if those points had been dealt with, that a different decision would not have been reached.

## **7.0 Reasons for Recommendation**

- 7.1 To ensure that members of the Planning Committee are aware of the decision of the High Court, are aware that this application will need to be re-determined, and about the future determination of replacement dwelling applications in the Green Belt across Cheshire East. A similar report has already been presented to the Strategic Planning Board.

For further information: Nicky Folan  
Background papers:

Decision of Mr Justice Langstaff dated 11<sup>th</sup> May 2010

Portfolio Holder: Jamie Macrae  
Officer: Nicky Folan  
Tel No: 01270 685851 or 01625 504261  
Email: [nicky.folan@cheshireeast.gov.uk](mailto:nicky.folan@cheshireeast.gov.uk)

Ref Number	Address	Description	Level of Decision Del/Cttee	Over turn Y/N	Rec and Decision	Appeal Decision
10/1421 M	1-3 Brook Sreet, Macclesfield	VARY THE HOURS OF OPENING OF AN A5 HOT FOOD TAKEAWAY	Delegated	n/a	Refused	Dismissed 15/11/2010
09/0695 M	(land off CoppiceWay, Handforth	DEVELOPMENT OF A CARE VILLAGE (SUI-GENERIS USE) COMPRISING 58-BEDROOM CARE HOME; 47 CLOSE CARE COTTAGES; 15 SHARED OWNERSHIP AFFORDABLE DWELLINGS; AND ASSOCIATED ACCESS ROADS, PUBLIC OPEN SPACE, LANDSCAPING, CAR PARKING AND ANCILLARY DEVELOPMENT.	SPB	y	Approve  Refuse	Dismissed  28-Oct-2010
09/0708 M	(LAND OFF COPPICEWAY , HANDFORTH	FORMATION OF NEW VEHICULAR ACCESS FROM COPPICE WAY & ENGINEERING WORKS	SPB	y	Approve  Refuse	Dismissed  28-Oct-2010
09/3023 M	(land off CoppiceWay, Handforth	OUTLINE PLANNING APPLICATION WITH MEANS OF ACCESS, LAYOUT, SCALE AND APPEARANCE FOR CONSIDERATION AND LANDSCAPING RESERVED FOR SUBSEQUENT APPROVAL FOR THE DEVELOPMENT OF A CARE VILLAGE	SPB	y	Approve  Refuse	Dismissed  28-Oct-2010

		COMPRISING 55 BEDROOM CARE HOME, 36 CLOSE CARE COTTAGES; 6 SHARED OWNERSHIP AFFORDABLE DWELLINGS - ALL FOR THE OVER 55'S; AND ASSOCIATED ACCESS ROADS, PUBLIC OPEN SPACE, LANDSCAPING, CAR PARKING AND ANCILLARY DEVELOPMENT.				
09/3050 M	(land off CoppiceWay, Handforth	FORMATION OF NEW VEHICULAR ACCESS FROM COPPICE WAY AND ASSOCIATED ENGINEERING WORKS	SPB	y	Approve  Refuse	Dismissed  28-Oct-2010
09/3983 M	75 Macclesfield Road, Prestbury	ERECTION OF ONE FIVE-BEDROOM DETACHED DWELLING	delegated	n/a	Refuse	Dismissed 27 October 2010
09/4335 M	land off Cumberland Drive, Bollington	erection of 4 dwellings	Committee	y	Approve  Refuse	Allowed  Costs awarded against Council  25 Oct 2010