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| Planning Reference No: | 09/3413M |
| Application Address: | Land to West of Kiln Croft Lane, Handforth |
| Proposal: | Extension of Time Limit For Outline Application for BI (Use Class) Units (06/0278P) |
| Applicant: | Tesco Stores Ltd |
| Application Type: | Extension To Time Limit |
| Grid Reference: | 386227 383506 |
| Ward: | Wilmslow North |
| Earliest Determination Date: | 9 December 2009 |
| Expiry Date: | 17 January 2010 |
| Date Report Prepared: | 14 December 2009 |

SUMMARY RECOMMENDATION - Refuse extension of time on grounds of insufficient information

MAIN ISSUES

Whether there is sufficient information submitted to enable an extension of time to the original outline permission 06/0278P

1. SCOPE OF THIS APPLICATION

Extensions to the time limits for implementing existing planning permissions was brought into force on 1 October 2009. The new system was introduced in order to make it easier for developers to keep planning permissions alive for longer during the economic downturn. It includes provisions for a reduced fee and simplified consultation and other procedures.

The Government's advice is for Local Planning Authorities to take a positive and constructive approach towards applications that improve the prospects of sustainable development being brought forward quickly. It is the Government's advice for Local Planning Authorities to only look at issues that may have changed significantly since that planning permission was previously considered to be acceptable in principle.

In short, it is not intended for Local Planning Authorities to re-open debates about principles of any particular proposal except where material circumstances have changed, either in development plan policy terms or in terms of national policy or other material considerations such as Case Law.

The original planning permission (ref 06/0278P) concerns a major office development on land to the north of the Handforth Dean shopping complex. The original report for the approved scheme is attached to this report as Appendix 1.

2. APPLICANT'S SUPPORTING INFORMATION

The extension is required due to the downturn in the market, however, the applicant is still committed to the delivery of the development.

The application is submitted in accordance with the Regulations as set out in the Town and Country Planning (General Development Procedure) (England) Order 2009. The original permission was granted permission before 1 October 2009 but would expire on 26 October 2009.

3. CONSULTATIONS (External to Planning)

United Utilities: No objections subject to drainage being on a separate system

Manchester Airport Reserve right to comment on reserved matters details.

Environment Agency : The original application for this site (06/0278p) was submitted to the Environment Agency in February 2006, prior to Planning Policy Statement 25: Development and Flood Risk (PPS25) becoming a material consideration in December 2006. The Environment Agency have therefore not had sight of a Flood Risk Assessment.

The site lies within Flood zone 3 therefore in line with PPS25 all development proposals in this zone should be accompanied by a Flood Risk Assessment (FRA). An objection is raised in the absence of such information being submitted with the application.

Cheshire East Nature Conservation Officer: The site is adjacent to a site where it is known that the Great Crested Newt (a European Protected Species) are breeding. As a European protected species has been recorded on land adjacent to the development site and may be affected by the proposed development the Council must have regard to the test Prescribed by the Habitat regulations when determining this application. An objection is raised on the grounds that a habitat survey has not been submitted in support of the application.

4. OTHER REPRESENTATIONS

None received

5. MATERIAL CHANGES IN POLICY/CIRCUMSTANCES SINCE PREVIOUS APPLICATION

There are considered to be fundamental changes in policy and important material considerations, namely changes in legal interpretation of protected species issues as interpreted by the Courts since the scheme was originally determined in 2006.

In addition, Planning Policy Statement 25: Development and Flood Risk (PPS25) was adopted in December 2006, after the original development was granted outline planning permission. No flood risk assessment was submitted with that scheme. It is incumbent upon the Applicant to ensure that adequate information is submitted with the application in the first instance.

The application site lies within Flood Zone 3 defined by Planning Policy Statement 25: Development and Flood Risk (PPS25) as having a high probability of flooding. Paragraph E9 of PPS25 requires applicants for planning permission to submit a FRA when development is proposed in such locations.

In the absence of a FRA, the flood risks resulting from the proposed development are unknown. The absence of a FRA is therefore sufficient reason in itself for a refusal of planning permission. This reflects the precautionary approach to development in flood risk areas set out in paragraphs 10 and E9 of PPS25.

This is an important material consideration which is fundamentally different to when the detailed scheme to which this application seeks an extension was originally determined. In the absence of a detailed Flood Risk Assessment in support of this application, the precautionary approach must be taken.

IMPACT UPON PROTECTED SPECIES AND MATERIAL CHANGES IN CIRCUMSTANCES SINCE THE SCHEME WAS ORIGINALLY GRANTED PERMISSION

The EC Habitats Directive 1992 requires the UK to maintain a system of strict protection for protected species and their habitats. The Directive only allows disturbance, or deterioration or destruction of breeding sites or resting places, if there is

- no satisfactory alternative
- no detriment to the maintenance of the species population at favourable conservation status in their natural range
- a specified reason such as imperative, overriding public interest.

The UK implemented the EC Directive in The Conservation (Natural Habitats etc) Regulations 1994 which contain two layers of protection

- a licensing system administered by Natural England which repeats the above tests
- a requirement on Local Planning Authorities ("LPAs") to have regard to the Directive's requirements.

Circular 6/2005 advises LPAs to give due weight to the presence of a European protected species on a development site to reflect .. [EC] ...requirements ... and this may potentially justify a refusal of planning permission."

In PPS9 (2005) the Government explains that LPAs "should adhere to the following key principles to ensure that the potential impacts of planning decisions on biodiversity are fully considered..... In taking decisions, [LPAs] should ensure that appropriate weight is attached to protected species... ... Where granting planning permission would result in significant harm [LPAs] will need to be satisfied that the development cannot reasonably be located on any alternative site that would result in less or no harm..... If that significant harm cannot be prevented, adequately mitigated against, or compensated for, then planning permission should be refused."

With particular regard to protected species, PPS9 encourages the use of planning conditions or obligations where appropriate and advises, "[LPAs] should refuse

permission where harm to the species or their habitats would result unless the need for, and benefits of, the development clearly outweigh that harm.”

The converse of this advice is that if issues of species detriment, development alternatives and public interest seem likely to be satisfied, no impediment to planning permission arises under the Directive and Regulations.

Recent legal challenges and interpretation of the Habitat Regulations by the Courts are considered to result in a material change in circumstances in this case. No ecological reports or information/mitigation has been submitted in support of this application.

The site is adjacent to a site with known conservation interest. The precautionary approach must be taken in terms of this issue.

SCALE PARAMETERS

Circular 01/06 introduced changes to the Planning System which included changes to information submitted in support of outline planning applications. For the first time scale parameters (i.e. maximum and minimum heights/widths/lengths of building were required to be submitted to define the scope of built form in any outline scheme.

The conditions attached to the original permission are prescriptive in terms of floor area and height. In this respect, whilst no specific scale parameters are submitted, the conditions could be replicated which would address this particular change in circumstances.

7. CONCLUSIONS AND REASON(S) FOR THE DECISION

Whilst it is recognised that there are situations where flexibility and responsiveness to the challenging circumstances faced by the development community can easily be accommodated by the Local Planning Authority.

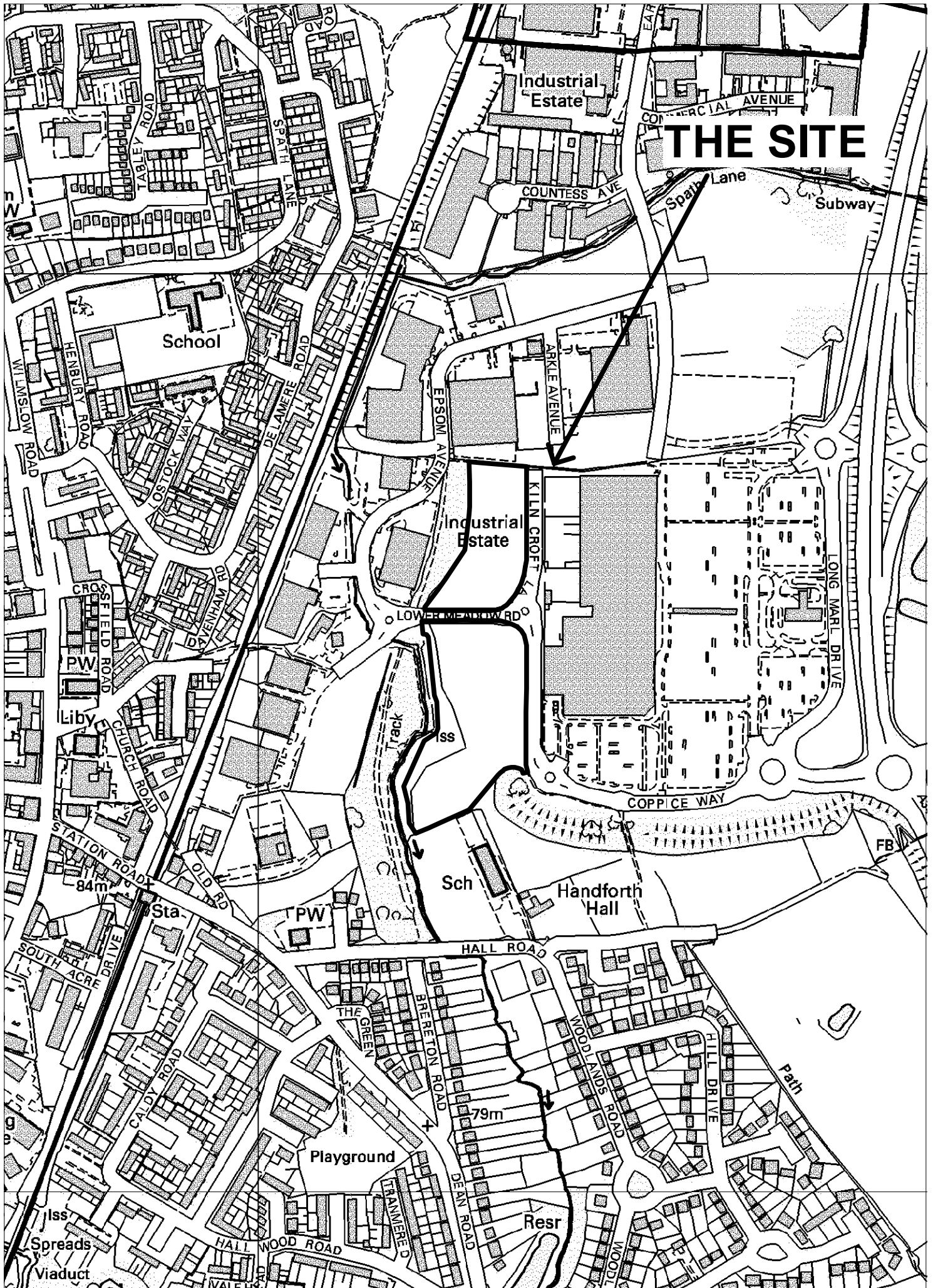
It is considered that such support for time extensions to development schemes that have a planning permission can only be accommodated where there are no material changes in policy either at development plan level or at national government level.

In this case there are fundamental changes to the planning policy framework that require both a flood risk assessment and Habitat Surveys for both the Great Crested Newts and Badgers.

As no such supporting information is submitted, there is insufficient information to determine this application and on this basis it should be refused permission.

8. RECOMMENDATION

That planning permission should be refused due to insufficient information and the development's potential to harm the habitat of a European protected species and to exacerbate or suffer from flooding.



06/0278P: LAND TO WEST OF KILN CROFT LANE, HANDFORTH, WILMSLOW

N.G.R: 386,220 - 383,610

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APPENDIX 1

REPORT FOF PLANNING APPLICATION 06/0278P

DATE REPORT PREPARED

13 March 2006

POLICIES

Most of the site is designated as an Employment Area in the Local Plan and the southernmost part is identified as Proposed Open Space. Relevant policies consist of Cheshire Replacement Structure Plan Policies IND1, T3, GEN3 and GEN7, and relevant policies in the Local Plan NE9, NE11, BE1, E1, E3, E4, T3, T5, RT1, RT6, IMP1, IMP2, DC1, DC3, DC5 – 10 .

Policy 4 of the draft Cheshire Replacement Waste Local Plan identifies the site as a preferred site for a household waste recycling centre.

RELEVANT PREVIOUS APPLICATIONS

05/1000P – Erection of B1 Use Class Units (outline) – refused 20 June 2005 (appeal lodged).

05/2340P- Erection of B1 Use Class Units (outline) – refused 20 December 2005

06/0052P – Household Waste Recycling Centre on land to north of Lower Meadow Road only – no decision yet (County Council application)

CONSULTATIONS

Highways Authority – no objections, subject to all matters being reserved for subsequent approval at detailed application stage, including parking provision, visibility splays and servicing facilities (including turning). The developer will be required to enter into a S106, which incorporates Travel Plan requirements and the basis for this has effectively been agreed with their traffic consultant. As with the previous application 05/2340P, which was refused, the developer will be required to undertake some signing and some carriageway marking on the approach to the southerly roundabout junction where Coppice Way meets with the A34 Bypass. This and other matters can be addressed by conditions.

Cheshire County Council Public Rights of Way Unit – the development potentially affects a public footpath, which crosses both parts of the site. This was subject of a Diversion Order in 1989, before development took place in the area. A discrepancy exists between the text of the Order and the associated plan. It is assumed the intention was that the line of the path should follow subsequently constructed Kiln Croft Lane. This is not the case and it is recommended that a new Order would be needed to deal with the discrepancy.

Community Leisure Section – formal comments awaited, but see “Landscaping and Tree Implications” section below.

United Utilities raise no objection subject to compliance with various statutory requirements relating to the drainage and supply of water on the site.

Environment Agency – no objection, subject to conditions
Stockport Metropolitan Borough Council – comments awaited.

PUBLICITY

Newspaper advertisement, site notice and neighbour notification with last date for comments on 8 March 2006.

REPRESENTATIONS

Cheshire County Council Waste Management Service objects since the application fails to satisfy criteria in Cheshire 2016 Structure Plan Policy IND1. This is more recent than policies in the Macclesfield Borough Local Plan. The County Council is obliged to provide waste management facilities and these have been lacking in the Wilmslow area since 2000. The site is allocated as a Household Waste Recycling Centre (HWRC) in the Redeposit Draft of the Cheshire Replacement Waste Local Plan. Following a robust appraisal of all options, an application was submitted to the County Council in January for an HWRC on the northern part of this application site. It would be prejudicial to provision of the HWRC for which there is a much greater public need. Determination should be deferred until after the County Council's decision on the HWRC. The application also lacks information in relation to nature conservation.

Three letters of objection have been received from residents, objecting on the following grounds:

- St. Benedict's School would be adversely affected by noise, light and air pollution, as well as the development's visual impact.*
- Handforth Hall is a listed building and historic garden which would also be adversely affected.*
- The local residential area has, over the past few years, had to endure increasing noise, pollution and litter problems due to the by-pass and retail area, a business development would add to this even further.*
- It would add to traffic problems in the area. At busy times the traffic comes to a standstill at the Stanley Green and Marks and Spencer roundabouts as well as the roads through the trading estate.*
- The proposed area encroaches on a rich wildlife habitat.*
- There are plenty of unoccupied business units in the local area, so more are not needed.*
- Should planning permission be granted a continuation of the existing environmental bund should be provided to protect against noise, light and air pollution and against the development's visual impact.*

APPLICANTS SUBMISSION

The application is accompanied by a planning statement, a landscape assessment, a traffic assessment and a travel plan. The following is a summary of these documents, which are available for inspection.

The site is split into two parts by Lower Meadow Road running through the middle of the site. Site A, which is 1.9 hectares is located to the south of this road and Site B which is 1.1 hectares is to the north. To the west of the site is existing open site and a stream corridor which is vegetated and beyond which lie similar B1 Uses to that proposed. To

the east are the shops at Handforth Dean. The sites have a level topography with a small embankments running around the parameters. All matters are reserved with the application, but various parameters can be established. The southern part of the Site A will be left undeveloped and will be retained for landscaping. Approximately 9,500 sq. m of B1 floor space is proposed and the buildings will be no greater than two/three-storeys, which reflects similar recent development on the Stanley Green Industrial Estate. The submitted master plan is indicative only, regarding layout and size of units.

Local Plan policies provide strong support for the development of the site for employment purposes. Regional Spatial Strategy for the North West, Policy SD4, indicates development plan allocation should be reviewed to ensure that any existing proposed land allocations in North Cheshire are fully justified. The Local Plan was recently reviewed and adopted in January 2004, so the proposal is in full accordance with regional planning policy. Nor was the allocation questioned in the Borough Plan's Monitoring Report in July 2004. Although the exact type of operators are not known at this stage it is envisaged that 80% of the uses would be offices and the remaining 20% would be research and development or light industry. A thorough land use survey of the Stanley Green Industrial Estate has been undertaken and this indicates that there is an existing wide range of uses and capacity to facilitate further development. The wide range of use would be in line with Local Plan Policy E3.

The site is accessible by walking, cycling and public transport. The proposals would aim to encourage such non-car modes by the implementation of a Travel Plan. Since the site is allocated in the Local Plan the Council will have already assessed the site in terms of its location and its accessibility. A capacity assessment has been carried out for all the junctions experiencing greater than 5% impact. The results show that they would operate within their practical capacity and with acceptable levels of queuing under all scenarios. Access to the site would be via two new junctions. These junctions and the internal layout will be designed to accommodate all vehicle types and parking will comply with national guidance.

The impact on the local environment is indicated in the landscape statement. The application will comply with all Local Plan policies and the built form, heights, materials and finish can be dealt with by conditions. Both the historic parkland and the proposed open space will be respected in the treatment of the site. There would be no adverse impact on residential amenity.

KEY ISSUES

This application relates to an area of open undeveloped land situated to the rear of Marks and Spencer and Tesco at Handforth Dean. A description of the site and application is provided in the applicant's submission above. The application is entirely outline so that all matters including, siting, design, external appearance, means of access and landscaping would to be approved as part of a subsequent reserved matters application. An earlier application (05/1000P) was refused due to insufficient information and this is subject of an appeal. Subsequently, application (05/2340P) was refused due to a failure to agree the contents of a unilateral undertaking with respect to the travel plan and open space provision. The main issues with this application are whether the information submitted overcomes the previous reasons for refusal. Other issues include whether it complies

with Local Plan policies, the impact on the surrounding highway network and the effect on the local environment including areas of open space.

RELEVANT PLANNING POLICIES

Local Plan Policy E1 states that permission for employment purposes will normally be granted on existing employment areas in accordance with Policies E3 – E5. Policy E3 allows up to 20 hectares of B1 Use at Stanley Green Industrial estate. The proposal would not exceed this requirement, but the supporting text states that it is necessary to restrict the amount of offices to ensure that a wide range of employment uses are available in the location. It is proposed that 80% of the floor areas of the buildings would be offices, as opposed to research and development or light industry. The applicants have undertaken an analysis of the land area on the industrial estate. The total figures includes adjacent retail development, roads and landscaping within the totals, which is considered to distort the true situation. However, if these areas are excluded, the resulting proportion of offices would still be approximately 50% of the estate. Policy E3 does not proscribe an upper limit, but it is considered that an objection is not warranted due to the mix of uses. A condition should be imposed to limit the amount of offices.

The land adjacent to St Benedict's School is proposed as informal open space in the Local Plan (Policy RT6). Application 05/1000P originally proposed that development should extend onto this land. This was amended during the course of the previous application and is now proposed as open space. Therefore, there is no policy objection and the detailed treatment/landscaping of this area is discussed later in the report.

The Redeposit Draft of the Cheshire Replacement Waste Local Plan identifies most of the application site as a preferred site for a Household Waste Recycling Centre (HWRC). Consequently, this does not preclude other employment uses in accord with Macclesfield Borough Local Plan. This application and the one submitted to the County Council for a HWRC need to be assessed on their own individual merits and it is feasible that two planning permissions for different uses of the northern part of the site could exist in tandem.

STRATEGIC IMPACT OF THE DEVELOPMENT

Policy SD4 of the Regional Spatial Strategy encourages restraint in North Cheshire given the high demand for employment development. It states that Local Planning Authorities should review allocations to ensure that they are fully justified. The applicant's analysis of this policy is broadly accepted in that the Local Plan has been reviewed relatively recently. Whilst the policy encourages restraint it is not considered to override the designation of the site for employment purposes in the Local Plan. The development is also considered to meet the requirements of structure Plan policy IND1. It requires the review of existing commitments, directing development to sites, including those on previously developed land or on the edge of towns and with regard to access by public transport walking and cycling. Although the site is not developed, it is in an otherwise built up area and is within walking distance of public transport facilities in the centre of Handforth.

SITE PLANNING FACTORS

Existing buildings surrounding the site are largely in commercial use, so residential amenity is not considered to be of significant concern. The distance between the part of the site to be developed for commercial purposes and the nearest dwelling would be approximately 150 metres. This property is Handforth Hall which is listed, but the proposals would be sufficiently distant not to cause harm to its setting. There is an existing landscape buffer to the south of Coppice Way which already provides some screening, and this could be further extended further along the southern boundary of the proposed open space which abut St Benedict's Primary School.

DESIGN

The layout showing the erection of 12 buildings on the land is illustrative in nature. The same applies to the illustrations of proposed buildings shown in the landscape statement. The layout of buildings, as shown, particularly on Site A to the rear of Marks and Spencer's, could relate better to Kiln Croft Lane and the woodland to the west. The applicants have sought permission for two/three-storey development, whilst neighbours have requested that only 2 storey development be permitted. It is considered that no development on the southernmost part of the site, directly to the west of Marks and Spencer's car park should be more than two-storey. However, on the remainder of the two sites a case can be made for a limited amount of three-storey development. This takes account of the need to make efficient use of the land, the sheer bulk of the existing neighbouring buildings (notably the retail development) and the fact that some variation in roof height would facilitate greater interest in the design. The precise nature of these height limitations are set out in the conditions below.

LANDSCAPING AND TREE IMPLICATIONS

Various self seeded trees have established themselves on the western side of Site A, in effect, providing an extension to the existing woodland. A specific objection is not raised to the loss of these trees individually, although mitigation would be required to compensate for their loss which collectively form an important part of the setting of the woodland. Landscaping proposals for the site as a whole would be a critical issue when determining any subsequent detailed reserved matters application.

The Council's Supplementary Planning Guidance on Section 106 Agreements indicates that commuted sums should normally be paid in connection with commercial development to contribute towards to both recreation/sports provision as well as open space. In the case of open space, this needs to take into account the fact there is land designated for such purposes on the site. This also incorporates a small finger of land allocated for employment proposes, which due to its shape would be impracticable to develop. At the time of report preparation, detailed discussions were still taking place with the Borough Council as to how the future of the public open space could be best secured. It is likely that this would take the form of a unilateral undertaking submitted by the applicants. This would include relevant clauses which would otherwise be contained within a Section 106 Agreement. A summary of the likely contents of such an undertaking are provided at the end of this report.

The exact form and layout of the proposed space is yet to be determined. Local residents have requested that a landscape bund is provided of a similar nature to the one to the south of Coppice Way. Whilst it is agreed that a landscape buffer would be appropriate at the boundary site with the school, this need not be of the same width (30M) as the existing, which would leave virtually no room for any other informal recreational use of the land. It lends itself to be used for such purposes in conjunction with the woodland to the west, which is partly in the control of the Borough Council. Where commuted sums for open space are not spent on the site itself, there is potential to upgrade public access to the land the ecological value of adjacent woodland.

NATURE CONSERVATION FEATURES AND IMPLICATIONS

The site currently supports wildlife habitats within an otherwise intensively developed setting, but it is not the subject of any formal designation. It is recommended that habitat surveys are conducted with any reserved matters application. The proposed open space area could also be in part used for the enhancement of biodiversity on the site. A condition would be required to ensure that breeding birds are not disturbed. The main potential concern relating to nature conservation is the impact on badgers. The adjacent woodland contains a substantial badger set and the application site is used as foraging ground. Recently introduced guidance in PPS7 states that disturbance to foraging habitat is capable of being a material consideration. To avoid an adverse impact on badger populations, it may be necessary to provide mitigation in the form of relocation. This may involve land outside the application site and in the Borough Council's ownership. It has been concluded that this is a matter that can be addressed by a condition.

HIGHWAY AND TRANSPORT IMPLICATIONS

The Highway Authority has analysed the submitted Transport Assessment and Travel Plan with regard to the impact on highways in the Borough. While the development would generate additional traffic, it has been necessary to take account of the fact that the land is allocated for employment purposes. The travel plan would reduce reliance on the private car. The failure to reach an agreement on this issue was one of the reasons the last application was refused, but it is understood that an acceptable form of wording has now been found. The developer would need to undertake new signage and carriageway marking on the approach to the A34 from Coppice Way. In addition, the views of Stockport Metropolitan Borough Council will be of importance. This is due to the fact that traffic flows are likely to have an impact on highways within their area. On the previous application no objection was raised, subject to a commuted payment towards a highway scheme improving traffic flows in the area of Earl Road and Stanley Road. The appropriate level of parking would have to be determined at the reserved matters stage. Assuming the level of parking satisfies the Highway Authority, taking account of national and local standards, it would be difficult to reject the scheme on the basis that it could result in additional on-street parking on Hall Road or other highways in the vicinity.

Maps of the area indicate a public footpath running parallel to the Kiln Croft Lane frontage of the site roughly 4m back from this highway. There are no obvious signs of such a path on site and as explained by the Public Rights of Way Unit above, this may be a discrepancy due to an error when it was previously diverted. This issue is not a reason to refuse the application, but permission would need to indicate that the route would need to be protected or diverted under the appropriate procedures.

ENVIRONMENTAL FACTORS

Part of the site is identified as a flood risk zone. This consists of areas adjoining the woodland and would be predominantly within an area designated as proposed open space and the Environment Agency does not object regarding this issue. The Head of Environmental Health has previously indicated that this is not a location or form of development which would warrant an air quality assessment to be undertaken.

OTHER RELEVANT INFORMATION

As members will recall the previous application was refused due to the failure of the applicants to submit a unilateral undertaking within the time limits specified by the Committee, which provided adequate commitment with regard to the Travel Plan and public open space. While agreement has been reached in principle with respect of the former, discussions are still taking place in relation to the latter. The recommendation of approval is therefore dependent on satisfactory clauses with regard to public open space/recreational provision being agreed. It is envisaged that the unilateral undertaking would provide for the following:

- A commitment to submit a schedule of groundwork/landscaping for the proposed open space to be agreed with the Council.*
- Provisions for the retention of the land as public open space including maintenance costs for a specified period.*
- Phasing of the provision of open space relative to the remainder of the site.*
- A commuted sum for off-site provision of recreation and sports facilities and open space in the Handforth area.*
- Payment of a commuted sum for any highway works deemed necessary by Stockport Borough Council*
- Implementation of an agreed Travel Plan.*

CONCLUSION

Since the application is outline, there are inevitably a number of uncertainties relating to the proposal. However, sufficient details have been submitted with this application to enable the Local Planning Authority to make an informed decision. The consent would form a framework for the development of the site, the full details for which would still need to be submitted as a reserved matter application(s). Certain matters can be dealt with by conditions as set out below. The main outstanding matter is reaching an agreement on the recreational elements of the unilateral undertaking.