

3/08/0840/OP- Outline planning permission for the erection of 50 dwelling houses together with access road and landscaping at Land off Tylers Close, West of Greenways, Buntingford for Mr Greg Hodge

Date of Receipt: 07.05.08

Type: Outline

Parish: BUNTINGFORD

Ward: BUNTINGFORD

RECOMMENDATION

- a) That subject to no objections being raised by the Secretary of State following referral to him as an application involving a departure from the Development Plan, and
- b) The applicants entering into a legal obligation pursuant to S106 of the Town and Country Planning Act 1990 to cover the following matters:-
 - 1. The provision of financial contributions of £625 per 1 bed residential unit, £750 per 2 bed unit, £1125 per 3 bed unit, and £1500 per 4+ bed units towards sustainable transport schemes and measures in the vicinity of the site;
 - 2. The provision of a financial contribution of £9000 towards public transport infrastructure improvements;
 - 3. The provision of library contributions, in accordance with the current HCC Contributions Table;
 - 4. The provision of Nursery, Middle and Upper Education contributions, in accordance with the current HCC Contributions Table;
 - 5. The provision of Youth and Childcare infrastructure contributions, in accordance with the current HCC Contributions Table;
 - 6. The provision of parks and public spaces and provision for children and young people contributions, in accordance with the standard charges in East Herts Council's Planning Obligations Supplementary Planning Document October 2008;
 - 7. The provision of fire hydrants;
 - 8. The provision of 40% affordable housing comprising 75% rented and 25% intermediate market housing;

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9. The provision of 15% of the dwellings to be built to 'Lifetime Homes' standards and scaled drawings to be submitted at reserved matters stage of internal layout and external spaces for these dwellings.
- (c) The Director of Neighbourhood Services be authorised to **GRANT** outline permission subject to the following conditions:
1. Outline permission time limit (1T03)
 2. Outline – submission of details (2E01)
 3. Programme of archaeological work (2E02)
 4. No development, including site clearance or any archaeological investigation, shall take place within the bird breeding season (1 March – 31 August), unless otherwise agreed in writing by the local planning authority. If breeding birds are found during site clearance, work must stop immediately and a statutory authority or suitably qualified ecologist informed. An appropriate mitigation strategy to address this issue, should these circumstances arise, be devised by the applicant and agreed in writing by the LPA. Once agreed, any measures shall be implemented as such and subsequently retained, where appropriate.

Reason: To protect the habitats of breeding birds under the Wildlife and Access to the Countryside Act 1981, and in accordance with policy ENV16 of the East Herts Local Plan Second Review April 2007.

5. Prior to the commencement of any works on the site, an ecological survey of the site, shall be carried out and details including an assessment of the impact of the proposed development and any appropriate measures to alleviate such impact, shall be submitted to for the written approval of the Local Planning Authority. Mitigation measures shall be carried out in accordance with the approved scheme and thereafter be retained where appropriate.

Reason: To enable proper consideration of the effect of the development on the contribution of nature conservation interests to the amenity of the area, in accordance with Policies SD4 and ENV16 of the East Herts Local Plan Second Review April 2007.

6. Construction parking and storage (3V22)
7. Wheel washing facilities (3V25)
8. Contaminated Land survey and remediation (2E332)

Directives

1. Planning Obligation (08PO)
2. Please note that if either before or during construction works it is discovered that the site is contaminated the responsibility for safe development and secure occupancy of the site lies with the developer.

Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (East of England Plan May 2008, Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and East Herts Local Plan Second Review April 2007), and in particular policies SD1, SD2, SD4, HSG3, HSG4, HSG6, GBC2, GBC3, TR2, TR3, TR7 ENV1, ENV2, ENV11, ENV16, BH1, BH2 and BH3. The balance of the considerations having regard to those policies and other material considerations is that permission should be granted.

_____ (084008OP.FH)

1.0 Background

- 1.1 Members will recall that this application was reported to the Development Control Committee on 22 October 2008. It was deferred to enable Members to consider further information that would be available in relation to Housing Land Supply following the Local Development Framework Executive Panel meeting on 6 November 2008.
- 1.2 The application site is located to the north west side of Buntingford, within the Rural Area Beyond the Green Belt and outside the development boundary for the town, as shown on the attached OS extract. The site is rectangular in shape and is some 1.69 hectares in size. It is approximately 300 metres in length and 30 metres in width.
- 1.3 To the west of the site is the A10 dual carriageway, to the south, The Old Farmhouse, a grade II Listed building and Tylers Close, a small modern residential complex, to the north a public footpath and open fields and to the east, Greenways and The Willows. The site appears generally as 'scrubland' and contains a considerable number of protected trees. TPO 519 currently protects a belt of individual trees which run in a north - south direction in the centre of the site and on the eastern boundary. An area of trees located in the north of the site is protected in the same Order, as woodland. These trees include field maple, ash, hawthorn, blackthorn etc. There are also a large number of other self sown trees/hedge located on the site which are not protected by the TPO. These are located on the western and eastern boundaries.

- 1.4 The current application seeks outline planning permission to establish the acceptability of a development of 50 dwellings on the site, which equates to 30 dwellings per hectare. All detailed matters relating to layout; scale; appearance; access and landscaping are reserved for later consideration.
- 1.5 The application submitted includes a Transport Assessment, Report on Road Traffic Noise, Landscape and Visual Supporting Statement, Tree Survey, Sustainability Statement, Ecological Appraisal and Supporting Planning Statement. In addition an illustrative layout of the proposed development has been submitted which shows the access to the site from Tylers Close at the southern end.

2.0 Site History

- 2.1 The eastern half of the site was originally included as a housing allocation (Site 65) at the 2001 Deposit Stage of the East Herts Local Plan Review. However, Site 65 was deleted by the Council from the Re-Deposit Version in 2004. Site 65 was deleted as an allocation because the Council considered that an alternative site - Site 82 (part) - to the south of the town could, in conjunction with adjacent Site 85, be developed more comprehensively and as a well designed urban extension to the town.
- 2.2 The housing allocations in the Local Plan are based on a Proportional Catchment Based Distribution (PCBD) approach with sites being allocated to meet the apportioned housing requirement for each town (e.g. 109 dwellings for Buntingford). In line with this and given the requirements of PPG3, the Local Plan Inspector did not feel it appropriate to re-allocate Site 65 for housing or to include it within the Buntingford settlement boundary. The Inspector's conclusions in respect of Site 65 are set out below:

"I take the view that the site is well contained and that its development would have no significant impact on the landscape, as it is both visually and physically separated from the wider countryside. Although there is a Tree Preservation Order on the site, the trees are mainly of group value and from the sketch masterplan submitted I consider the majority of trees worthy of retention could be retained. Perhaps the scrub at the northern end may be valuable to wildlife, but this would be a matter for consideration at the planning application stage.

Although the A10 adjoins the site, I do not believe that the noise from the highway would preclude development, as the housing could be set back from the road and contained much within the boundary of the site originally proposed by the Council. In addition, appropriate measures could be taken to ensure adequate sound insulation, if required.

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Vehicular access into the site could be readily obtained with traffic passing through the unusual "island" junction serving Greenways.

There have been objections from local residents to the development of this site and this is understandable, as they have had the advantage of the openness the site provides. Nevertheless, I consider the site is suitable for development and a logical expansion of the town."

3.0 Consultation Responses

- 3.1 CPRE comments that the application falls within the Rural Area beyond the Green Belt and would extend the urban envelope of Buntingford. It would be contrary to Policy GBC2 and meets none of the criteria set out in GBC3 and therefore should be refused.
- 3.2 Natural England objects to the proposed development on the grounds that the application lacks sufficient survey information to demonstrate whether or not the development would have an adverse effect on legally protected species.
- 3.3 Thames Water does not object to the proposal however advises that it is the responsibility of the developer to make proper provision for drainage to ground, water courses or a suitable sewer.
- 3.4 Hertfordshire Biological Records Centre advises that they agree with the findings and the recommendations in the ecological appraisal submitted by the applicant. HBRC advises that the site contain areas of rough grassland, scattered trees and boundary hedges and notes that a number of different species were found on the site and the site has the potential to support a number of protected species. It is therefore recommended that conditions be included requiring the provision of further ecology reports as part of any full planning application to ensure that the potential impact of development on species and habitats is addressed as well as conditions restricting the clearance of the site to between 1 March to 30 August to protect breeding birds.
- 3.5 County Highways does not object to the proposed development. It advises that, subject to conditions regarding the provision of detailed drawings of on site roads and junction works, the construction of on and off site footways and bus stops prior to occupation, wheel washing facilities, on site storage of materials and details of construction vehicle movements and access arrangements, the principle of residential development is acceptable in a highway context. In addition it is requested that a legal agreement be required to ensure the construction of the junction and footway improvements; a financial contribution towards Sustainable Transport

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Programmes, which will be dependent on unit sizes and a financial contribution of £9000 toward public transport infrastructure improvements.

- 3.6 Hertfordshire County Council's Property Section advises that the proposal falls within the thresholds whereby financial contributions are sought to minimise the impact of the development on Hertfordshire County Council services for the local community. Contributions towards education, childcare, youth and libraries are sought as is fire hydrant provision.
- 3.7 Hertfordshire County Council's County Development Unit advises that consideration should be given to the Hertfordshire County Council Waste Local Plan 1999 specifically in relation to waste minimisation, the re-use of waste and recycled materials and conditions should be included to ensure its objectives are met.
- 3.8 Hertfordshire County Council's Historic Environment Unit advises that the site is located close to evidence of occupation of possible Late Iron date. It is therefore considered that the development is likely to have an impact on significant archaeological remains and a condition is recommended to ensure that an appropriate programme of archaeological work is undertaken.
- 3.9 East Herts Housing Manager comments that 40% of the units proposed should be provided as affordable housing. These should be a mix of 2, 3 and 4 bed units, 75% of which would be rented and 25% intermediate housing. In addition 15% lifetime homes should be provided and all the affordable housing should be built to the Housing Corporations Design and Quality standards.
- 3.10 East Herts Environmental Health Team advises that there are no objections to the proposal subject to conditions regarding construction hours of working, dust and the investigation of any soil contamination being included.
- 3.11 East Herts Landscape Officer advises that the indicative layout shows the removal of some of the TPO trees from the site including the woodland to the north. In addition it is likely that a significant number of self sown trees would also need to be removed to develop the site. It is however noted that the tree survey indicates that the majority of the Grade B class trees could be retained. The combined loss of the TPO trees and the self sown trees will have a considerable impact on the visual appearance of the site and any development will need to include a strong replacement planting scheme.

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- 3.12 East Herts Policy Team advises that the recently published East of England Plan sets out an increased housing requirement for East Herts of 12,000 additional dwellings between 2001 and 2021; an average of 600 dwellings per annum (up from the average of 555 from the Structure Plan). The housing requirement in the East of England Plan should be treated as “*minimum targets to be achieved, rather than ceilings which should not be exceeded*” (Policy H1). In addition the Council’s 2007/08 Annual Monitoring Report (AMR), which was approved in December 2008, calculated that when including all sites and Local Plan Allocations under construction, with planning permission, and subject to S106 agreement, as well as the remaining Local Plan Allocations without planning permission, East Herts can demonstrate just four years supply for the period 2009-2014 - which is below the minimum requirement of PPS3.
- 3.13 It further advises that when the Local Plan Reserve Housing Land sites, further identified sites and a proportion of the Areas of Special Restraint (ASR) are included in the calculation, East Herts is able to demonstrate exactly five years supply for the period 2009-2014. This assumes that all the sites identified will come forward for development by 2014. Furthermore, it is advised that guidance from the Local Government Association’s IDeA Planning Advisory Service points out that “ideally, authorities should be able to show a supply of deliverable sites sufficient to meet more than five years’ requirements, perhaps a six to seven year supply”.
- 3.14 The Policy team therefore considers that there is insufficient justification to refuse the application on grounds of planning policy housing land availability.

4.0 Town Council Representations

- 4.1 Buntingford Town Council objects to the proposal for the following reasons:
- The land forms an effective landscape buffer, in terms of visual impact and noise reduction. The development of this linear site would be difficult to achieve whilst still maintaining the mature landscape buffer. The development of the industrial estate on the A10 has further increased the need for this landscape buffer.
 - The development would result in the loss of 34 of 89 trees together with a small area of protected woodland. There is also important hedgerow within the site. The development would be detrimental to wildlife, in particular bats.
 - It would result in an additional 100 cars accessing the site from an already busy junction near to the main A10 road.

- The development of the site for 50 dwellings would result in overdevelopment
- There are more appropriate sites that have been identified to provide future housing for Buntingford.

5.0 Other Representations

5.1 The applications have been advertised by way of press notice, site notice and neighbour notification. 12 letters of representation have been received raising the following concerns:

- The tree survey is inadequate;
- Land not identified within the Local Plan for housing;
- Overdevelopment of constrained site;
- Loss of protected trees, woodland and 'important' hedgerow;
- Adverse impact on neighbouring properties in relation to loss of light, overlooking; noise pollution and light pollution;
- Adverse impact on flora and fauna including some protected species;
- Loss of green space;
- Loss of important landscape buffer which protects Greenways from industrial estate and A10;
- Impact on woodland at northern end of the site;
- Inadequate and hazardous access to the site;
- Significant increase in traffic;
- Access could impact on highway safety;
- Possible contamination on site;
- Possible encroachment onto land outside the ownership of the applicant;
- Inadequate parking facilities;
- Impact on existing utilities;
- Impact on Buntingford's local services, e.g. schools.

5.2 In addition Buntingford Civic Society objects to the scheme on the grounds that it is contrary to the Local Plan, which has already allocated sufficient land for housing; it is outside the currently defined settlement limit; the site has already been considered by the Inspector during the Local Plan Inquiry who did not include it as a site for housing; and if granted it would set a precedent for other sites in the district undermining the Local Plan.

6.0 Policy

6.1 The Policies of the adopted East Herts Local Plan that are most relevant to the consideration of this application are as follows:

SD1	Making Development More Sustainable
SD2	Settlement Hierarchy
SD4	Sustainable Development and Nature Conservation
HSG3	Affordable Housing
HSG4	Affordable Housing Criteria
HSG6	Lifetime Homes
GBC2	The Rural Area Beyond the Green Belt
GBC3	Appropriate Development in the Rural Area Beyond the Green Belt
TR2	Access to New Developments
TR3	Transport Assessments
TR7	Car Parking- Standards
ENV1	Design and Environmental Quality
ENV2	Landscaping
ENV11	Protecting of Existing Hedgerows and Trees
ENV16	Protected Species
BH1	Archaeology & New Development
BH2	Archaeological Evaluations and Assessments
BH3	Archaeological Conditions and Agreements

6.2 In addition, members will be aware that the Regional Plan for the East of England was finalised in May this year and that this plan now forms part of the Development Plan. Policy H1 of that plan relates to land supply.

7.0 Considerations

7.1 This application seeks outline permission for residential development on the site with all detailed matters being reserved. The main issue for consideration is therefore whether the principle of residential development on the site is acceptable. When considering the principle of development, consideration needs to be given to the traffic implications of residential development on the surrounding highway network and the impact development is likely to have on the existing landscaping and wildlife on the site and any other relevant detailed considerations.

Principle of development

- 7.2 The site lies within the Rural Area beyond the Green Belt, where the aims and objectives of relevant Local Plan policies are placed firmly on growth restraint. Within the Rural Area under the provisions of Local Plan Policy GBC3, permission will not be given for the construction of new buildings or changes of use, other than for those purposes listed under the policy as appropriate development. The proposal fails to fall within any of these exception categories and so constitutes “inappropriate” development.
- 7.3 One of the functions of local planning authorities is to plan for the delivery of new homes across the plan period. The East Herts Local Plan Second Review 2007 makes provision for 11,100 homes between 1991 and 2011; this district wide figure being set by the 1998 Hertfordshire Structure Plan.
- 7.4 However, since the East Herts Local Plan was adopted in April 2007, the Government has published (May 2008) the Regional Spatial Strategy (RSS) for the East of England: the East of England Plan. The RSS replaces the Structure Plan and together with the East Herts Local Plan, currently forms the statutory Development Plan for East Herts District. So, when considering whether a form of development is contrary to policy it is not only the Local Plan policies that must be considered.
- 7.5 In response to the Governments’ desire to increase the delivery of houses, the RSS sets out an increased housing requirement for East Herts of 12,000 additional dwellings between 2001 and 2021; an average of 600 dwelling per annum (up from the average of 555 from the Structure Plan). Although, because housing provision is continuous, taking into account those homes built between 2001 and 2006, the residual annual average for East Herts, 2006 to 2021 is 660. (This is because the average number of dwellings required has not been delivered in earlier years).
- 7.6 The Government’s approach to housing provision is set out in Planning Policy Statement 3: Housing (PPS3), published November 2006. In respect of determining planning applications paragraphs 68, 69, 71 and 72 state, respectively, that:

‘Local Planning Authorities should take into consideration the policies set out in Regional Spatial Strategies and Development Plan Documents, as the Development Plan, as well as other material considerations. When making planning decisions for housing developments after 1st April 2007, Local Planning Authorities should have regard to the policies in this statement as material considerations which may supersede the policies in existing Development Plans.

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In general, in deciding planning applications, Local Planning Authorities should have regard to:

- *Achieving high quality housing.*
- *Ensuring developments achieve a good mix of housing reflecting the accommodation requirements of specific groups, in particular, families and older people.*
- *The suitability of a site for housing, including its environmental sustainability.*
- *Using land effectively and efficiently.*
- *Ensuring the proposed development is in line with planning for housing objectives, reflecting the need and demand for housing in, and the spatial vision for, the area and does not undermine wider policy objectives e.g. addressing housing market renewal issues*

Where Local Planning Authorities cannot demonstrate an up-to-date five year supply of deliverable sites, for example, where Local Development Documents have not been reviewed to take into account policies in this PPS or there is less than five years supply of deliverable sites, they should consider favourably planning applications for housing, having regard to the policies in this PPS including the considerations in paragraph 69.

Local Planning Authorities should not refuse applications solely on the grounds of prematurity.'

- 7.7 We also know that the housing requirement in the RSS should be treated as “*minimum targets to be achieved, rather than ceilings which should not be exceeded*” (Policy H1, RSS).
- 7.8 So, we now have a situation where, despite the Councils Local Plan being adopted in April 2007, there have been subsequent developments in the policy base that must be taken into account. In November 2006, PPS3 was issued (whilst prior to the Local Plan adoption, it could not have been taken into account in the formulation of that document). This advises that the LPA should take into account the RSS and, where the LPAs policies have not been reviewed subsequent to the release of the RSS or where there is less than a 5 year supply of sites for development, then applications for housing on suitable sites should be considered favourably.
- 7.9 In May 2008 the RSS was released. Not only has this established that greater housing provision is required, it sets out that any provision set out in its policies is to be considered as a minimum. Additional housing development is acceptable. In East Herts then the situation is that this LPA has not reviewed its planning policies subsequent to the release of the

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RSS. Although that review is underway, through the production of the Core Strategy DPD, it is not yet finalised.

- 7.10 In addition, as set out above, the Annual Monitoring Report (AMR) indicates that there is exactly a 5 year supply of housing land available. However, this assumes that all the sites identified will come forward for development by 2014. Furthermore, guidance from the Local Government Association's IDeA Planning Advisory Service points out that "ideally, authorities should be able to show a supply of deliverable sites sufficient to meet more than five years' requirements, perhaps a six to seven year supply".
- 7.11 Given this situation we have parts of the Development Plan that point in different directions. The Councils Local Plan establishes a policy presumption against the development of this site. The RSS and PPS3 include policies which are inclined in favour of additional development (in general – not this site in particular). Given that both PPS3 and the RSS post date the work undertaken in the preparation of the Local Plan I consider that more weight must be attached to their policy approach and therefore I feel that, in principle, the development of this site can be supported. If Members do support this conclusion I recommend that, because of the clear differences in applicable policies, these proposals must be considered to be contrary to them in at least part. Therefore referral of the matter to the Secretary of State would be required.

Detailed Considerations - Traffic Implications

- 7.12 The application was accompanied by a Transport Assessment which concluded that there would be a low level of vehicular traffic generation from the development and the proposal could therefore be accommodated by the existing road network without detriment to existing highway users. Furthermore, it establishes that the site is well located in terms of access to local facilities and that there is adequate public transport links.
- 7.13 County Highways has advised that, in highways terms, the principle of residential development is acceptable however there will be a requirement for off site improvements to the pedestrian linkages to the site and bus stop improvements. In addition a financial contribution is sought toward sustainable transport initiatives. In line with these comments I consider that the amount of traffic being generated from the development would not adversely impact on the surrounding highway network and in this respect the proposal is acceptable.

Landscape and Ecology

- 7.14 With regards to any impact the proposal will have on the existing landscaping on the site it is acknowledged that any development will impact upon its visual appearance and there will be a need to remove a number of both the protected and self seeded trees. The site however is separated from the wider countryside by the A10 road and I am satisfied that a layout can be achieved which ensures the retention of the majority of the protected trees which are classed as Grade B and the trees along the west and east boundaries. In addition I consider that replacement planting can be provided to adequately compensate any loss. It is also noted that the Local Plan Inspector shared this view and commented that *'the site is well contained and that its development would have no significant impact on the landscape, as it is both visually and physically separated from the wider countryside. Although there is a Tree Preservation Order on the site, the trees are mainly of group value and from the sketch masterplan submitted I consider the majority of trees worthy of retention could be retained.'*
- 7.15 Turning to any impact the development of the site will have on existing ecology; it is acknowledged that a site of this nature will invariably contain a number of different species, some of which have already been identified in the submitted Ecology Appraisal, and its development could impact on these. I note that Natural England have objected to the proposal on the grounds that the appraisal provided is insufficient to establish if there are any protected species present. The site has however not been allocated as a Wildlife Site in the Local Plan and I am satisfied that adequate mitigation measures can be put in place to ensure that existing ecology is not unduly affected. I have included conditions requiring the provision of a detailed ecology survey prior to the commencement of development as well as details of any necessary mitigation.

Other considerations

- 7.16 The application is located close to evidence of occupation of possible Late Iron age date, recorded during the construction of the Buntingford by-pass in 1988, and updated pits and ditches excavated during the archaeological evaluation of the former Sunnyside Nursery site. In line with advice from the Historic Environment Unit, I consider that a condition requiring the implementation of a programme of archaeological work is both reasonable and necessary to provide properly for the likely archaeological implications of the development proposed.

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- 7.17 With regards to affordable housing, in line with Policy HSG3 and HSG4 of the Local Plan it is considered appropriate and reasonable to require that 40% of the development be provided as affordable housing. I also consider it appropriate to require 15% of the new dwellings to be built to 'Lifetime Homes' standards as set out in Policy HSG6.
- 7.18 On the matters relating to financial contributions towards sustainable transport and those provisions requested from the County Planning Obligations Unit, I consider the suggested contributions are an appropriate request and do not go beyond the tests of what is fairly and reasonably related in scale and kind to the proposed development, which Circulars 11/1995 'Conditions' and 05/2005 'Planning Obligations' state is a material consideration.
- 7.19 In addition the Councils PPG17 Audit and Assessment has identified a shortfall in both parks and public gardens and provision for children and young people in Buntingford. I therefore also consider it appropriate for the Council to seek financial contributions towards these two types of open space to ensure that there is adequate provision to mitigate against the impact of the development.
- 7.20 Some comments have been made in relation to the noise impact of the adjacent A10 and the relationship between proposed new development and the existing on Greenways. The current illustrative layout shows the new development to be located on the east side of the site (furthest from the A10). This is illustrative of course but, despite this, it will be possible to design in appropriate measures, if required in due course to overcome any potential noise impacts. In relation to any inter-relationship issue the same current illustrative nature of the proposals does not allow a detailed consideration to be made of whether unacceptable problems will arise. My view, at this stage, is that scale and nature of the site allows for solutions to be found if any detailed development proposals are found to be unacceptable with regard to overlooking and privacy etc.

8.0 Conclusion

- 8.1 Having regard to the above considerations and progress that has been made in relation to housing planning policies since the adoption of this Councils Local Plan, it is considered that the principle of a residential development of 50 dwellings on this site is acceptable. It is therefore recommended that subject to the applicant entering into a Section 106 obligation with the Council, outline planning permission should be granted. Given that this application is contrary to adopted rural area policies in the Councils Local Plan it should be referred to the Secretary of State as a "departure" application.