

Application No. 19/00118/MOUT

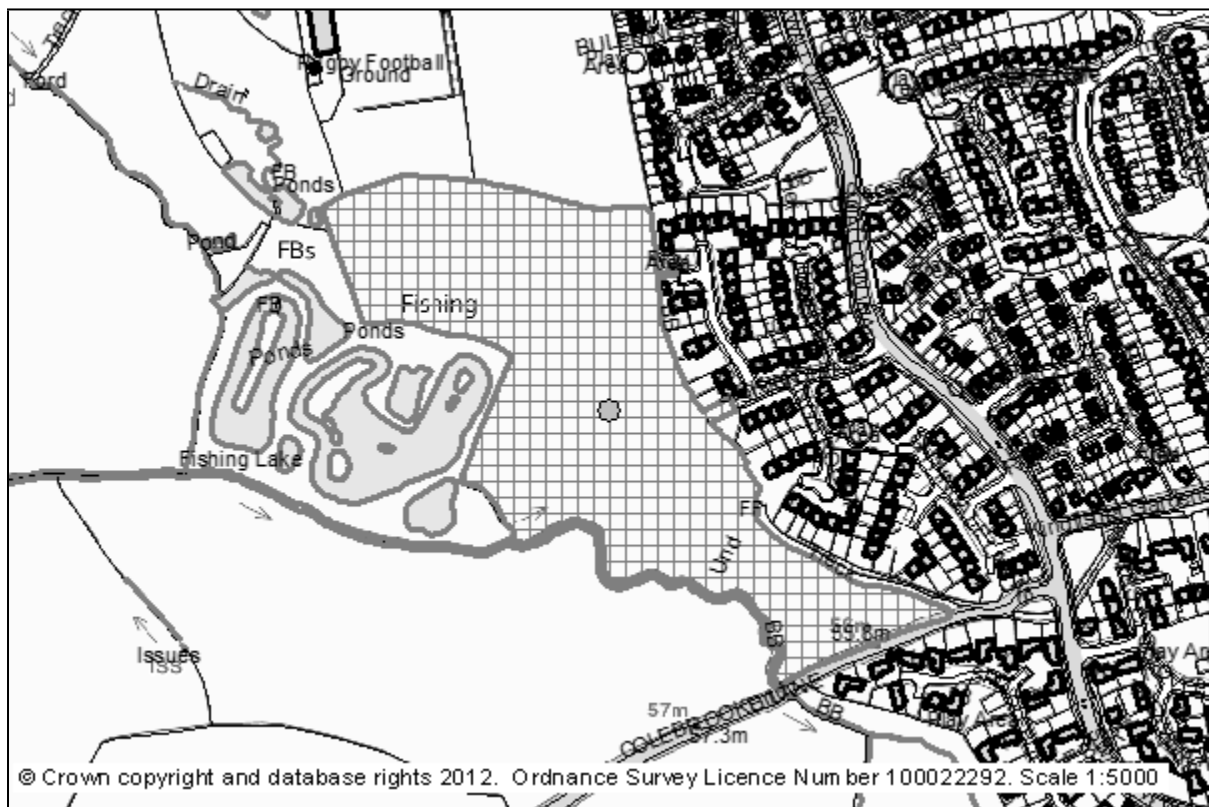
Grid Ref: 301216 : 106714

Applicant: Taylor Wimpey UK Ltd

Location: Land at NGR 301216 106714 (West of Siskin Chase)
Colebrooke Lane
Cullompton
Devon

Proposal: Outline for the erection of up to 105 dwellings, associated landscaping, public open space and allotments together with vehicle and pedestrian access from Siskin Chase and pedestrian access from Colebrooke Lane

Date Valid: 23rd January 2019



PLANNING COMMITTEE

25TH SEPTEMBER 2019

Outline for the erection of up to 105 dwellings, associated landscaping, public open space and allotments together with vehicle and pedestrian access from Siskin Chase and pedestrian access from Colebrooke Lane

Reason for Report: At their meeting on 5th June 2019, the Planning Committee resolved that the application be deferred for further discussions between Officers and the Agent/applicant to consider the possibility of a permanent vehicular access route from Colebrook Lane into the site.

RECOMMENDATION:

Grant permission subject to conditions and the prior signing of a S106 agreement to secure the following:

- 1) 35% affordable housing in accordance with a scheme to be agreed by the Local Planning Authority
- 2) Financial contribution of £7,500 per dwelling towards the provision of the Town Centre Relief Road
- 3) A financial contribution towards delivery of the new primary school of £4004.75 per dwelling, (equating to £420,498.00 for 105 dwellings).
- 4) A financial contribution towards secondary education facilities of £345,255.00 (based on 105 dwellings and the DfE extension rate of £21,921 per pupil).
- 5) A financial contribution towards Early Years provision for 2, 3 and 4 year olds of £26,250 (based on 105 dwellings at £250 per dwelling).
- 6) A financial contribution of £135,000.00 towards the maintenance/provision/improvement of the bus service
- 7) A financial contribution of £1457.32 per dwelling to the Royal Devon and Exeter NHS Foundation Trust towards maintaining service delivery during the first year of occupation of each unit of the accommodation in the development.
- 8) Implementation and monitoring of a Travel plan
- 9) Provision of public open space, allotments and play areas on site.
- 10) The transfer of an area of land to the north of the site to DCC or MDDC to ensure that unencumbered access may be provided in future to the land to the north, if required.

Should there be any changes to the s106 requirements listed above prior to the signing of the s106, these shall be referred back to planning committee for consideration

Financial Implications: An appeal may require the appointment of planning consultants to assist in the defence of the reasons for refusal. The applicant may make an application for costs on any appeal against the Council and such costs claims are made by demonstrating that there has been unreasonable behaviour. That being the case, Members must be able to clearly justify each and every reason for refusal in line with the development plan and all other material considerations. In the event of a public inquiry, the Council would also need to appoint Counsel to assist with the defence of the case, and if the Inspector found that the Council had behaved unreasonably in refusing the application, the Council would also be required to pay the applicants appeal costs.

Legal Implications: The report identifies the views of the highway authority as statutory consultee in the planning process. If members resolve to refuse the application on highway (or other) grounds they must be able to clearly justify each reason for refusal. There would be no support at the appeal from the Highway Authority. In the event of an appeal, the Council will need to prepare draft planning conditions for the appeal and negotiate and complete a section 106 agreement. External legal representation may be required if the appeal proceeds to a public inquiry.

Risk Assessment: If Committee decide to refuse the application for reasons that cannot be sustained at appeal there is a risk of a successful appeal costs claim against the Council for reasons of unreasonable behaviour. Those costs could be significant in the event of the appeal being heard by public inquiry.

Equality Impact Assessment: Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between different people when carrying out their activities. This is called the Public Sector Equality Duty or "PSED". No persons with protected characteristics have been identified in the determination of this application.

Relationship to Corporate Plan:

Homes

- Facilitating the housing growth that Mid Devon needs, including affordable housing
- Planning and enhancing the built environment

Environment

- Protect the natural environment

Impact on Climate Change: Section 70 (2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that in determining a planning application, the determination must be made in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework represents up-to-date government planning policy and is a material consideration that must be taken into account where it is relevant to a planning application or appeal. This includes the presumption in favour of development found at paragraph 14 of the Framework. The climate emergency shall be considered through existing planning policies and any subsequent development plans.

1.0 Introduction/Background

- 1.1 At their meeting on 5th June, Members considered this proposal in detail following a site visit the previous day to view the site from Siskin Chase and Colebrooke Lane. A representative from the Highway Authority was also present at the meeting. Members were advised that the land was allocated for development in both the Allocations and Infrastructure Development Plan Document (Local plan part 2) and the emerging Local Plan Review. In both instances the policy sets out the requirement for 2 points of access from Siskin Chase. It does not state that any access from Colebrooke Lane is required.
- 1.2 The outline application has all matters except access reserved for future consideration and therefore access falls to be determined under this application.
- 1.3 The application is accompanied by a Transport Assessment which includes a stage 1 road safety audit. No concerns have been raised either in the road safety audit, or by the Highway Authority as statutory consultee with regards to the proposed use of Siskin Chase for access into the development.

2.0 Local Plan Review Update:

- 2.1 Since the application was last considered by Planning Committee, the Council has been able to assess the Inspectors post hearing advice note and has published the draft Housing Land Supply Update. Within that document, it advises that the site was previously included in the Local Plan review on the basis of being a contingency site. Devon County Council has advised that the site is not dependent upon

significant additional highways infrastructure. A main modification has been proposed to remove the contingency status of this site and instead include this in the LPR as a standard housing allocation. As such this site is now included as part of the housing trajectory. This change follows the Inspectors suggestion in his advice note of bringing forward contingency sites and those currently restricted in terms of timing with no good reason. However, Members are advised that this document is in draft, has not been ratified by members and therefore is not the formal position of the council. As a result, no significant weight can be attributed to the document as a material consideration in the determination of this application.

3.0 Reasons for deferral:

3.1 At their meeting on 5th June 2019, the Planning Committee resolved that the application be deferred for further discussions between Officers and the Agent/applicant to consider the possibility of a permanent vehicular access route from Colebrook Lane into the site.

3.2 Following the meeting on 5th June, your officers have approached the applicant with regards to the possibility of vehicular access from Colebrooke Lane. The applicant has advised as follows:

'As you are aware, we gave an undertaking through the application process to secure a temporary construction access from Colebrooke Lane in order to remove the need for construction access to use Siskin Chase.

However, during the Planning Committee's consideration of the planning application, certain Members sought this temporary construction access as a permanent means of secondary access for the development.

A secondary vehicular access is not required by the site-specific policy in the Local Plan (which specifically requires access from Siskin Chase). Moreover, the need for such an access has not been identified in the submitted Transport Assessment, Road Safety Audit or in relation to the consultation response received from County Highways. Quite rightly, officers made it clear to Members that a secondary point of vehicle access is not required and nor is it necessary.

Nevertheless, Members resolved to defer a decision on the application in order to ask Taylor Wimpey to review their position.

That review has been undertaken and Taylor Wimpey would not raise an objection in principle should the Council resolve to require the temporary access for construction traffic shown on Plan 173040_G_09 to become a permanent means of secondary access/egress.

However, and for the avoidance of doubt, this position is subject to the following caveats:

- a) *In so far as there is no policy and/or highway safety basis to require provision of this additional means of access, any off-site highway works for the provision of footpaths, street lighting and/or junction enhancements to Colebrooke Lane or Swallow Way will not be funded by Taylor Wimpey. We have discussed the latter with the County Council and they have confirmed that they would not be willing to pay for these works. Accordingly, if the secondary point of access was something the Council wanted to explore they would need to fund the off-site works (i.e. anything beyond the new access point from Colebrooke Lane and the application site). These works would then need to be carried out by County Highways (or an appointed contractor)*

under s278 works. Taylor Wimpey would take no liability for failure to complete such works in terms of highway safety or under CDM guidelines

- b) *Finally, the land referenced in your email dated 20 June 2019 has a restriction on its title in favour of third parties. Accordingly, their agreement will be needed in order to facilitate improvements to the Colebrook Lane / Swallow Way junction. That is not a matter for Taylor Wimpey. It is for the Council and County Highways to resolve. However, it should not and must not further delay the determination of the application; not least because of the satisfactory means of access already proposed via Siskin Chase. On the basis of the foregoing, providing a secondary means of access from Colebrooke Lane is not required by Council policy and nor is it required for highway safety reasons. County Highways have not raised an objection to the proposed access arrangement from Siskin Chase, the provision of which accords with the Council's policy for development of the site.*

As such, it is not practicable to expect Taylor Wimpey to fund a secondary means of access on this basis'

- 3.3 Officers have also discussed the proposal with DCC Highways. The Highway Authority have advised that they would welcome a secondary access onto Colebrooke Lane, in addition to one from Siskin Chase, not instead of it. They advise that in order to achieve access from Colebrooke Lane it would need to be widened to a width of 5.5m to allow two vehicles to pass.

They have clarified that Colebrook Lane (leading to the site from Swallow Way) needs to be wider than Siskin Chase due to the conflict between residential traffic and the HGVs which regularly visit the grain store to the west. 'Manual for Streets' requires a minimum width of 5.5m to allow an HGV to pass another HGV at slow speed and to comfortably pass a private car. Therefore given the increased likelihood of a private vehicle coming into conflict with an HGV on Colebrook Lane, the wider road is preferred.

The existing narrowing in Siskin Chase is a standard speed reducing feature utilised on residential estates and is a standard detail in the Devon design guide. The retention of this feature is seen as a safety benefit rather than a safety concern.

The issue of parked cars on the existing highway at Siskin Chase is an enforcement issue under the Highways Act. Under the Act, there are no rights for anyone to park on the public highway and to do so and cause an obstruction to the primary definition of a highway (to allow all road users to pass and repass) can be prosecuted by the police, if no specific restrictions are in place or through civil enforcement, if a traffic regulation order (TRO) is in force. There are no TRO's in Siskin close at this time nor do the Highway Authority wish to see any, but through the section 38 agreement when the site is developed their introduction is an option. However it is written in the Highways Act that a land owner has the right to access the public highway provided it is safe to do so. Therefore the developer has demonstrated that a safe access can be achieved and the course of action open to the Highway Authority if the parking does present an issue is to introduce a TRO. Therefore parking on the highway is for the Highways Act and not the Town and Country Planning Act.

- 3.4 The Environment Agency were asked by Officers to provide their views of a vehicular access being provided through land which is designated as flood zone 3.

The Environment Agency have advised that removal of the hedgebank that separates the development sites from Colebrook Lane for the purpose of creating a highway link would have the potential to increase the risk of floodwater flowing onto Colebrooke Lane and nearby residential property. In addition the main highway link into the development

would be at risk of flooding meaning that access/egress to vehicles/cyclists and pedestrians would be problematic and potentially dangerous in certain circumstances.

On this basis, members are advised that it would not be appropriate to require a permanent vehicular access into the site on flood risk grounds.

- 3.5 Officers have looked into the land ownership arrangements in terms of the provision of an access at Colebrook Lane. The land required for the widening of Colebrooke Lane is not within the control of the applicant or the Highway Authority. Evidence collated by officers suggests that land ownership would not be an insurmountable barrier to the widening of Colebrooke Lane.

In a recent appeal at Exeter Hill, Tiverton (ref: 17/00942/MOUT) the Authority drew the Inspectors attention to the fact that a 'triangle' of land which was required to mitigate the highway safety harm identified at a junction did not form part of the public highway nor was it in the control of the appellants. With regards to this point, the Inspector stated, *'I am mindful that the Planning Practice Guidance (PPG) advises that such conditions (negatively worded condition to secure those works prior to development commencing) should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the condition. That is a very high bar. Whilst I note that concerns of the Council, Local Highway Authority and local residents about the status of the land, I find no substantive evidence that the land could not become available for the required works. The very high bar set for not imposing a condition in the PPG is therefore not met and I find that one could be used to prevent any development commencing until the junction improvements had been provided. I therefore, find that a condition could mitigate the identified harm.'*

- 3.6 Three further letters of objection have been received since the previous planning committee, reiterating concerns about highway safety in relation to both Siskin Chase and Colebrooke Lane, the wider impact on traffic in the town centre and that a policy document is a live document which must be reviewed as circumstances arise. It is considered that the planning issues raised are covered in this and the previous report.

4 Conclusion

- 4.1 The Environment Agency have identified concerns with regards to the impact on flood risk from a permanent vehicular access being provided onto Colebrook Lane
- 4.2 The developers have already taken on board the concerns of the residents about construction traffic and have proposed that all construction traffic is brought to site via Colebrooke Lane
- 4.3 The Highway Authority are satisfied that Siskin Chase can provide vehicular access to the application site to the required standard and do not have any highway safety concerns regarding its provision
- 4.4 The adopted AIDPD policy and that within the LPR require access from Siskin Chase, not Colebrooke Lane
- 4.5 The tilted balance in paragraph 11 of the NPPF applies to the determination of this application. The application should be approved unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF, taken as a whole. (officers underlining for emphasis)

The Officer recommendation remains one of approval, subject to the prior signing of a s106 (as set out at the top of this report) and the conditions and reasons set out below which have been reviewed since the previous committee to delete condition 18 which was found to be unnecessary:

CONDITIONS

1. Before any part of the development hereby permitted is begun, detailed drawings of layout, scale and appearance of the buildings, and the landscaping of the site (hereinafter called the Reserved Matters) shall be submitted to and approved in writing by the Local Planning Authority.
2. Application(s) for approval of all the Reserved Matters shall be made to the Local Planning Authority before the expiration of two years from the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of two years from the date of this permission, or before the expiration of two years from the date of approval of the last of the Reserved Matters which have been approved, whichever is the later.
4. The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule on the decision notice.
5. The detailed drawings required to be submitted by Condition 1 shall include the following information: boundary treatments, existing and proposed site levels, finished floor levels and materials, details of all areas of public open space and green infrastructure, arboricultural method statement and tree protection plan, to include engineering details for any areas of no-dig construction and cabling for electric vehicle charging points at a rate of one per residential property
6. No part of the development hereby permitted shall be commenced until the detailed design of the proposed permanent surface water drainage management system has been submitted to, and approved in writing by, the Local Planning Authority, in consultation with Devon County Council as the Lead Local Flood Authority. The design of this permanent surface water drainage management system will be in accordance with the principles of sustainable drainage systems, and those set out in the Flood Risk Assessment and Drainage Strategy (Ref. 173040; dated December 2018) and the additional information contained within the letter RE: West of Siskin Chase, Cullompton (dated 13th March 2019).
7. No part of the development hereby permitted shall be commenced until the full details of the adoption and maintenance arrangements for the proposed permanent surface water drainage management system have been submitted to, and approved in writing by, the Local Planning Authority, in consultation with Devon County Council as the Lead Local Flood Authority.
8. No part of the development hereby permitted shall be commenced until the detailed design of the proposed surface water drainage management system which will serve the development site for the full period of its construction has been submitted to, and approved in writing by, the Local Planning Authority, in consultation with Devon County Council as the Lead Local Flood Authority. This temporary surface water drainage management system must satisfactorily address both the rates and volumes, and quality, of the surface water runoff from the construction site.
9. Details of an inspection regime in respect of the installation of the surface water drainage management system, including any attenuation ponds and outflows, shall be submitted to and approved in writing by the Local Planning Authority before its installation begins. The inspection regime shall include details of key stages of the installation to be signed off by a drainage engineer or other qualified professional and confirmation provided in writing to the Local Planning Authority that each stage of the

installation has been provided in accordance with the details approved under Condition 6.

10. No development approved by this permission shall commence until details of finished floor levels of property, and landscaping between the existing ponds and properties, have been submitted to, and agreed in writing by the local planning authority
11. No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.
12. Before the development hereby approved is commenced, a site investigation and risk assessment shall be carried out to determine the nature and extent of land contamination that may be present and the likely impact on all receptors that may result. A full report of the investigation and risk assessment shall be forwarded to the Local Planning Authority for approval in writing. No work shall proceed on site until either the Local Planning Authority grants written consent for the development to commence or the requirements of condition 13 below are met.
13. Where actual or probable significant pollutant linkages are found following the investigation and risk assessment required by condition 12 above, the applicant shall submit a remediation statement together with a timescale for completion of the required works for approval in writing by the Local Planning Authority.
14. Following completion of any works required by condition 13 above, a remediation validation report shall be submitted to the Local Planning Authority for approval in writing. Occupation on the site, or parts of the site affected by land contamination, shall not take place until approval of the validation report has been granted in writing by the Local Planning Authority.
15. No development shall begin until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include:
 - A. the timetable of the works and a phasing plan;
 - B. daily hours of construction;
 - C. any road closure;
 - D. hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays including 9.00am to 1.00pm Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the Planning Authority in advance;
 - E. the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
 - F. The proposed route of all construction traffic to include the temporary use of an access from Colebrook Lane;
 - G. the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
 - H. areas on site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;
 - I. hours during which no construction traffic will be present at the site;

J. the means of enclosure of the site during construction works;
K. details of wheel washing facilities and obligations, and measures to be employed to prevent the egress of mud, water and other detritus onto the public and any non-adopted highways;
L. photographic evidence of the condition of adjacent public highway prior to commencement of any work;
M. the steps and procedures to be implemented to minimise the creation and impact of noise, vibration, dust and waste disposal resulting from the site preparation, groundwork and construction phases of the development. Once approved in writing by the Local Planning Authority, the works on site shall be carried out in accordance with the approved CEMP unless a subsequent variation is agreed in writing by the Local Planning Authority.

16. The proposed estate road, cycleways, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections indicating, as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.
17. No development shall take place until details of the layout and construction of the construction access from Colebrook Lane have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented before the development is brought into use.

REASONS FOR CONDITIONS

1. The application was submitted as an outline application in accordance with the provisions of Articles 4 & 5 of The Town and Country Planning (Development Management Procedure) Order 2010.
2. In accordance with the provisions of Section 92(2) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 however the timescales have been reduced to reflect the fact that the site is a contingency site and is being brought forward to increase the supply of housing.
3. In accordance with the provisions of Section 92(2) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 however the timescales have been reduced to reflect the fact that the site is a contingency site and is being brought forward to increase the supply of housing.
4. For the avoidance of doubt and in the interests of proper planning
5. To enable the Local Planning Authority to consider whether adequate provision is being made for the matters referred to in the condition.
6. To ensure that surface water runoff from the development is managed in accordance with the principles of sustainable drainage systems.
7. To ensure that the development's permanent surface water drainage management systems will remain fully operational throughout the lifetime of the development.
8. To ensure that surface water runoff from the construction site is appropriately managed so as to not increase the flood risk, or pose water quality issues, to the surrounding area.

9. To ensure that the surface water drainage management system operates effectively to reduce the risk of flooding elsewhere in the Cullompton Critical Drainage Area. This is required prior to commencement of any works to demonstrate that the system manages surface water safely and does not increase flood risk downstream.

10. To safeguard property adjacent an existing ponds from the consequences of a scenario of water discharging from them. Several of the proposed properties would sit adjacent to several existing ponds. The ponds are higher in level than the proposed houses. As such measures should be put in place to safely manage any water that may discharge from the ponds.

11. To ensure, in accordance with Policy DM27 and paragraph 199 of the National Planning Policy Framework, that an appropriate record is made of archaeological evidence that may be affected by the development.

12. In the interests of public health and the protection of the environment

13. In the interests of public health and the protection of the environment

14. In the interests of public health and the protection of the environment

15. To minimise the impact on the highway network and on nearby residential properties during the construction period.

16. To ensure that adequate information is available for the proper consideration of the detailed proposals.

17. To ensure the layout and construction of the access is safe in accordance with the National Planning Policy Framework.

Contact for more Information: Mrs A Fish, Area Team Leader, ext. 4266
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Circulation of the Report: None

List of Background Papers: All documents submitted in relation to application 19/00118/MOUT and development plan documents