PARISH

Barlborough

APPLICATION

Residential development (19 dwellings) with flood alleviation works (outline application with all matters reserved)

LOCATION

Field House Farm Emmett Carr Lane Renishaw South Yorkshire

APPLICANT

Mr Steve Lunn Field House Farm Emmett Carr Lane Renishaw Sheffield S21 3UL

APPLICATION NO.

09/00607/OUTMAJ

FILE NO.

PP-00873573

CASE OFFICER

Mr Steve Phillipson

DATE RECEIVED

19th November 2009

The following report relating to application 08/00704/OUTMAJ was presented to Planning Committee on 24th June 2009. That application was for outline permission for residential development (23 dwellings) with flood alleviation works.

SITE

Land to the south side of Sheffield Road and to the east side of Emmett Carr Lane, Renishaw in the district of Bolsover but adjacent to North East Derbyshire. It is within the Green Belt and is countryside beyond the eastern edge of the settlement of Renishaw. There is a farm house used as a dwelling on the site with associated gardens and outbuildings and four small fields which are bordered by mature hedgerows and hedgerow trees. The site is approximately 2ha in area and slopes generally from east down to west and south down to north but there is also a drop of about 3-4m from Sheffield Road down to the site. Ground levels also vary quite notably in other places. A stream passes along the western edge of the site which flows northwards into a culvert under the highway to the northwest corner of the site and then beneath the industrial estate to the north of the site. There is a public footpath (No 8) which borders the eastern side of the site and the land then rises to the east beyond which is arable farmland. There is also countryside to the south. To the southwest boundary is further land associated with Field House Farm which is covered in trees and beyond that is housing. Beyond the northern part of the west boundary are dwellings on Emmett Carr Lane. There is quite a variety of types and styles of exiting dwelling and a mix of materials such that there is not a clearly defined vernacular in the vicinity of the site. Several (about 7) of the existing dwellings to the west of the site were subject to flooding in the heavy rain storms of 2007 and part of the site is also within flood zones 1, 2 and 3.

PROPOSAL

Application for outline planning permission for residential development (23 dwellings) with details of access and layout submitted for approval. The submitted layout shows the provision of 22 detached four bed dwellings and 1 five bed dwelling. 16 of these would be two storey and 7 would have three storeys as viewed from the downhill side but would appear to be two storey from the up hill side. Access would be from a new junction from Sheffield Road and a new estate road cul-de-sac with turning head. The existing access from Emmett Carr Lane which serves Field House Farm would be stopped up and that property would then be served from the new estate road.

The applicant is aware that this site is in the countryside and in the Green Belt but proposes to provide flood alleviation works including a balancing pond with 1.6m flood wall on the site to provide flood protection for existing dwellings on Emmett Carr Lane. A new culvert grid at less risk of blockage is also proposed. The applicant states that it is
accepted that the site is located within the Green Belt and as such the proposal would constitute inappropriate development. However, it is argued that this application would meet the exceptional circumstances referred to in Government guidance as it is the only realistic way of delivering flood alleviation measures for the properties of Emmett Carr Lane. The current capacity of the existing drainage along Sheffield Road is insufficient and the Smithy Brook Watercourse and culvert also have insufficient capacity. It is for this reason that Emmett Carr Lane flooded during June 2007 causing flood damage to some of the existing properties along this road. The proposed mitigation is designed to alleviate this flooding for up to a 100 year storm event plus 20% climate change allowance. The applicant has subsequently said that it may also give protection up to a 1 in 150 year flood event. It is argued that the flood alleviation measures should be a material consideration which would outweigh the harm this development may cause to the Green Belt.

The application is accompanied by the following reports:

**Flood Risk Assessment**
The sequential test has been undertaken, the residential development is restricted to an area of the site that falls within Flood Zone 1 and 2, and it is claimed that the proposals should be deemed as acceptable in light of guidance within PPS25. No increased flood risk is predicted down stream and 1 in 100 year level of flood protection for existing and proposed dwellings is expected from the proposed flood mitigation scheme.

(PPS25 defines the flood zones as:-
Zone 1 – little or no risk with an annual probability of flooding from rivers and the sea of less than 0.1%
Zone 2 – low to medium risk with an annual probability of flooding of 0.1-1.0% from rivers and 0.1-0.5% from the sea.
Zone 3 – high risk with an annual probability of flooding of 1.0% or greater from rivers, and 0.5% or greater from the sea.)

A CCTV Survey of the Condition of the Culvert has also been undertaken. (This is because the calculations for the size of balancing pond needed to reduce the risk of flooding to the required standard are based on the assumption that the flow of water through the culvert is unrestricted). The survey found that water was free flowing through the culvert although there are several fractures and deformations and areas of debris. The outlet headwall is in need of repair due to missing bricks. A further investigation is recommended to assess the remedial works required for the defects identified and cleaning and regular maintenance are recommended.

**Highway Statement**
Does not identify any concerns re Highway safety. Concludes that the site is accessible on foot, by cycle and by bus and that schools, shops, services and employment opportunities can all be reached by sustainable transport methods.

**Phase 1 Environmental Site Assessment**
Notes a former mineral railway line ran through the site but was removed over 100 years ago. There are other potential off site sources of contamination and a further phase 2 contamination survey is recommended.

**Landscape Assessment**
Concludes that:-
• Many of the existing trees and hedges will be retained which will help to integrate the development into the adjacent countryside.
• From the north the development will appear as a small extension to Renishaw, the upper parts of two storey houses will be visible amongst the trees and housing on the frontage to Sheffield Road will be prominent from some locations due to the limited screening effect of existing vegetation but the difference in levels between the site and the road will help reduce the visibility of the buildings.
• From the east views are limited by the higher ground level of the adjacent field. Views through the hedge on the eastern boundary especially where it is to be removed will be possible from the adjacent public footpath.
• From the south the development will be visible from the valley sides but not the valley bottom due to the existing woodland.
• From the west the development will be highly visible from some parts of Renishaw. As replacement tree and hedge planting matures visibility is likely to be reduced. Residents of Emmett Carr Lane will also have close up views of the flood wall.
• Overall the visual impacts of the proposal are predicted to be low with some localized moderate to high impacts where existing residents and public rights of way users and passing motorists overlook the site.
• Mitigation measures recommended to mitigate landscape and visual impacts include: retention of as many hedgerows and trees as possible; protective fencing for retained trees/hedges during construction; provision of a permanent fence between residential gardens and the retained hedge on the eastern boundary; additional tree and hedge planting and replacement planting for dead and dying trees; a management plan to be followed for retained trees and hedges; the housing should be to a maximum of two stories high to avoid increasing the visual impact and to reflect the type of housing in the locality; use of darker coloured roof tiles; rendering and painting in light colours should be avoided; materials for the frontage should be carefully selected using muted colours; the flood alleviation wall should be constructed to appear as a locally sourced stone wall.

Ecological Impact Assessment
The summary of the report is that the majority of habitat that will be affected by the development is of limited ecological value although some potential for negative impacts on habitats and species including intact native hedgerows and semi-improved neutral grassland have been identified. However implementation of appropriate mitigations as detailed in the report will ensure that no significant negative residual impacts remain.

Tree Survey
Most trees on the site are part of the overgrown hedgerows bounding the fields. The site has a limited tree species diversity dominated by Ash and Hawthorn. There is dense woodland to the south west and mature fruit trees in an overgrown orchard near to the house. The majority of trees are in moderate to good condition however there are several trees in a poor condition. The proposal includes the retention of the majority of the healthy trees on site although some tree and hedge removal is proposed to provide the new access and road into the site.

Draft section 106 Obligation
A draft Section 106 obligation has been provided requiring the provision of the flood alleviation scheme proposed in the application before construction commences on the proposed dwellings. The maintenance of the flood scheme for a period of 80 years by a private company is proposed. A commuted sum of £67,967 for the improvement of
education facilities at Eckington School is included in the draft S106. A contribution for recreation has not been agreed and the applicant prefers to deal with public art by condition rather than by S106 obligation (ie the precise value of the works is not agreed).

The applicant has provided revised drafts for the Section 106 obligation and has agreed on 22.06.09. an obligation that the S106 scheme shall be maintained indefinitely, as opposed to a set period of time; and that clause 3.16.2 is removed as requested by the Council’s Solicitor.

**Design and Access Statement**

**Residual Land Valuation**

Residual land value (resulting from the expected sales value of the proposed dwellings less the various development costs) for the site is predicted to be approximately £771,000. This excludes the cost of the proposed flood alleviation scheme which is expected to cost in the region of £400,000 and an estimated £68,000 for the ongoing maintenance of the flood alleviation scheme.

The applicant has also provided an alternative layout on a reduced site area for 17 dwellings together with a valuation which concludes that such a development would have a negative value and so could not pay for the flood works proposed.

**AMENDMENTS**

Amendments made to the layout to reduce the number of dwellings from 25 as originally proposed to 23 on 19.2.09. Amendments and revisions to various reports received during the course of the application. Revised access general arrangement drawing has also been provided (Drawing ref 5003/014 Rev A).

**HISTORY (if relevant)**

None in terms of planning applications. However in 2007 it is believed that 6 to 7 existing dwellings on Emmett Carr Lane suffered flooding from what as been estimated to be a 1 in 150 year storm event (ie only likely to occur every 150 years).

**CONSULTATIONS**

Y.W: requests conditions re separate systems of drainage for foul and surface water, scheme for disposal of surface water and foul to be agreed, surface water from hard standings to pass through an interceptor. The submitted Flood Risk Assessment is generally satisfactory. 17.12.08. Reconsulted on additional information – No objections confirmed 26.2.09.

Engineering Services: The proposed provision of major flood risk alleviation measures for Emmett Carr Lane would certainly be welcomed at this location (particularly by the local residents) which has a history of severe flooding. Originally had various concerns 28.11.08. However these have subsequently been largely addressed by the additional information provided by the applicants Engineering Consultant. “However, if planning permission where to be granted then in my opinion it should be essential that the decision notice includes conditions that clearly define responsibility for ownership (or the adopting Authority) and maintenance liability for all components of the entire scheme. Local residents and any other interested parties must also have access to this information and be made fully aware that any flood alleviation scheme is just that and will not provide an absolute guarantee against any / all future flooding.” 7.01.09. “Having now studied the CCTV report on the culvert(s) I would particularly emphasize the importance of riparian ownership rights and responsibilities and maintenance liabilities for all sections of the
downstream watercourse / culvert affected by the proposed flood alleviation works as any proposals will have some potential impact on both the structural and hydraulic properties of the existing culvert.” 4.3.09.

EHO: Requests a condition requiring the submission of a phase 2 contaminated land survey. 28.11.08.

POL: The ward suffers from relatively high levels of crime, recommends that: Car parking areas in front of garages must be capable of being observed by residents; blank gables should be avoided wherever possible to increase natural surveillance over the entire site; access to rear gardens should be restricted by using high fencing between adjacent homes as close to the front building line as possible; rear boundaries onto open land should be at least 1.8m close boarded fence topped with 300mm trellis; inter garden fencing should be to a maximum height of 1.5m (outside of privacy zone) to provide a balance between privacy and security and to allow inter neighbour social cohesion; the footpath along the eastern side of the development is particularly vulnerable as it allows offenders to walk along it with a degree of anonymity; consideration should be given by the developers to installing windows to BS7950 and doors to PAS24. 02.12.08. Now the highest criminal damage rate amongst 25 wards in NEDDC. 3.3.09.

DCC (Maintenance Manager): “Having reviewed the CCTV survey of the culvert I would comment that the condition of the culverted watercourse would give me grave concern were it my responsibility. I remain concerned that the lack of maintenance and corresponding condition of this watercourse contributes heavily to the flooding of Emmett Carr Lane, as the damage and chokes in the pipe will inevitably slow down flows and dispersal of water. Whilst I understand the proposals to provide additional balancing ponds/storage areas as part of the proposed development, it must be realised that as soon as these are full, we are back where we started and the water has to go somewhere, which will be down the damaged, collapsing, badly maintained culverted watercourse.” 11.3.09.

DCC (Education): Eckington School is currently over capacity; therefore Derbyshire County Council would seek a S106 Education Contribution of £67,967 this will be utilised to address issues of accommodation and equates to 4 secondary phase pupils using a 2008/2009 DCSF cost multiplier of £16,991.48 per pupil. 8.12.08.

DCC (Arch’): Does not affect any known archaeological interest. 8.12.08.

EA: Requests conditions re: foul drainage to the public sewer, provision of the approved flood mitigation measures, approval of a surface water drainage/management scheme. Note that the site is within 250m of two former landfill sites that have accepted industrial, mine, quarry and farm waste, hence there is the potential for landfill gas to be generated. 16.12.08. Reconsulted on the CCTV culvert survey: The culvert inspection report by Aquajet has confirmed that the culvert is not impeded in terms of hydraulic capacity. Some defects have been identified that are likely to require remedial works in the future. It is recommended that the relevant land drainage authority (North East Derbyshire District Council) informs the relevant riparian owners of the observed condition of the culvert they have responsibility for (this advice has been passed on to NEDDC). The trash screen at the inlet of the culvert does appear to have prevented debris causing blockage within the culvert, however this is a poor design and itself likely to suffer blockage and be a cause for flooding. The proposed scheme includes a proposal for a much improved screen that will be less prone to blockage, this with an established maintenance regime should
significantly reduce flood risk. We advise the details for surface water drainage for the development should be subject to the condition recommended in our previous letter. 9.3.09.

NEDDC: The Authority objects to the proposed development on grounds that the proposed flood alleviation works do not provide the very special circumstances for a development of this scale on a green belt site that would result in a severe detriment to the open character of the green belt in this location. In addition it does not appear that other opportunities for alleviating the flooding problem have been fully explored. 11.12.08. Consulted on amended plans and information: “Whilst the Authority supports the provision of the flood alleviation works, I would still retain concern at the residential development in the green belt and I would ask your Authority to ensure if permission is granted you are satisfied that the development proposed is the minimum necessary to fund the flood alleviation works and that the housing is tied to the provision and future maintenance of the flood alleviation works.” 18.3.09.

NEDDC (Engineer): “Further to your e-mail, I confirm that I shall notify the relevant riparian owners in connection with the reported defects arising from the EA comments on the CCTV inspection of the downstream culvert. With regard to the proposed balancing pond; due to reduced staffing levels the Council’s workforce is fully committed elsewhere, and I am not in a position to enter into a section 106 agreement with the applicant to carry out inspection / maintenance works. I have notified the applicant of the situation and I understand that alternative arrangements have been made for the necessary works to be undertaken by a private contractor. I have no objection to this proposal.” 27.4.09.

DWT: With regard to ecology and the submitted report concerns re: No mention made of the Local Biodiversity Action Plan, queries the methodology used to survey hedges and requests further clarification is provided, also requests a full vascular plant species list be provided, further clarification on the potential of trees on site to provide bats roots, seeks clarification on whether an infiltration basin is still proposed, root protection condition is needed, the trust supports the use of natives species for planting and the inclusion of bird nesting and bat roosting features into the new dwellings, ground clearance should be undertaken out of bird nesting season (ie only between September and February), supports the production and implementation of a habitat management plan, supports the provision of a fence on the eastern boundary to protect the existing hedge, ownership and management responsibilities of hedgerows needs to be established. In summary several inconsistencies have been identified within the ecological report which need to be addressed and the Trust hold the view that the proposed mitigation measures in relation to the total loss of 1.4ha of semi-natural grassland are not sufficient to prevent a net loss of biodiversity. 17.12.08. Reconsulted on revised information. Advises that tree T16 is should be surveyed to assess the potential for bats prior to felling, welcomes the mitigation proposals recommended in section 6 of the Ecological Report, and supports the translocation of Marsh Valerian and Valeriana Diocia to a suitable alternative habitat within the site prior to commencement. 24.2.09.

DCC (Highways): Initially raised several concerns 7.1.09. Following reconsultation on revised plans and information: DCC accepts that access from Emmett Carr Lane is not viable, the Highway Authority would only be willing to discharge surface water from the highway into a publicly maintained balancing pond – the Highway Authorities liabilities should end at the outfall into the pond. Many of the previous comments have been addressed in the revised plans but the following remain outstanding: further info’ on the embankments which should be no steeper than 1in 3, the eastern footway at the junction
needs extending 5m, localised widening is required on the bend, a street lighting margin is
required, amendments to the design of the turning head, turning space for Field House
Farm should be demonstrated. Also requests conditions re: site compound detail, the
prevention of mud etc reaching the highway, provision of the new access with 2.4m x
120m (west) and 160m (east) sightlines unless otherwise agreed, provision of the new
estate street, dwellings to have vehicular access with 2.4m x 43m splays, stopping up of
the existing access to Emmett Carr Lane and reinstatement of the verge and provision of
the replacement access with turning space, dwellings to have 2m x 2m pedestrian splays,
 provision of off-street parking spaces, the pond to remain available for use and be
bounded to prevent unauthorised access, removal of pd rights for the conversion of
garages and parking spaces, no gates within 5m of the highway and gates to open
inwards. Also several advisory notes are recommended. 2.4.09. Access visibility is
acceptable although I believe the developer was seeking to get the speed limit reduced.
Drainage - the highway authority has a right to discharge onto lower level land - ie the
existing field. Diverting this water into the pond is likely to be acceptable subject to future
maintenance being with a public body.9.6.09.

Further representation from DCC (Highways) raising concerns about: a private
maintenance company for the flood alleviation scheme should that company cease
trading; future maintenance should be secured forever; DCC would not wish to see a
situation where the onus is left on the Highway Authority to undertake work and chase the
company for reimbursement; the draft S106 is not the preferred solution (DCC would
prefer a public body to be responsible for maintenance). A representative of DCC has said
verbally that, in the event that planning permission is granted, DCC are likely to allow
surface water from Sheffield Road to flow into the proposed flood alleviation pond and are
likely to allow the installation of drainage kerbs at the edge of the carriageway. Hence it is
likely that the proposed flood alleviation scheme could be implemented in full. 10.06.09.

Strategic Housing Officer: Have spoken to NEDDC regarding this site and they do not
need it for affordable housing in Renishaw. 22.1.09. However the SHO notes that
Barlborough has a low proportion of affordable housing and so seeks provision for
affordable housing and seeks 100% provision of affordable housing on site justified under
the Rural Exceptions policy HOU7. 26.1.09.

Senior Valuer: (consulted on the three versions of the developers valuation/viability
appraisal) In the second response the Senior Valuer estimated that the 23 dwelling
proposal would give a residual value of £1,363,877 and a residual value for a 17 dwelling
alternative scheme of £165,218 however he noted that these estimates did not account for
increased foundation costs and any extra costs of dealing with the ground level changes at
the access to the site.20.4.09. However, following the submission of additional information
the Senior Valuer confirms that the valuation supplied by Wilkins Hammond is reasonable.
8.6.09.

DCC (Landscape Architect): “Unfortunately I am unable to visit the site to assess whether
their overall judgements are, in my opinion accurate, so I have concentrated on the
process and how they have arrived at their conclusions.” “The Landscape and Visual
Impact Assessment has been undertaken in accordance with good practice guidance.” “My
overall take on this proposal is that the site seems to be quite sensitive to development in
both landscape and visual terms and this needs to be balanced against the overall benefits
that the scheme will deliver. It obviously introduces the flood alleviation scheme and you
could argue that a well designed development might enhance the approach to Renishaw
at this particular location however this is a judgement you will have to make.” 17.3.09.
Natural England: Does not wish to comment. 27.2.09.

Solicitor: Raises some concerns regarding the draft S106 obligation. i.e. although all the owners of the development site will be subject to the requirement to maintain the pond, effectively the only person who can comply with the notice will be the owner of the pond itself. This could be an issue in the future if the owner can not be identified. Transferring the ownership of the pond to a management company run by the residents of the development would resolve any enforcement issues. I suggest that the obligation to maintain is for an indefinite period rather than 99 years. Finally the agreement does not provide for the Council to reject the Flood Alleviation Works Scheme without proposing amendments. Paragraph 2.3 to the First Schedule provides for the Council to approve or propose amendments to a scheme within 20 days. We should also have the ability to simply refuse the scheme without making proposed amendments. 9.6.09.

The Solicitor advised on 23.06.09. that “I am satisfied that the owners of the dwellings will be sufficiently bound by the obligation and they will have the ability to perform the obligations.

PUBLICITY
Advertised in the press and on site and 73 properties consulted. Letters of support received from 7 residents (although some of these residents have written 2 or three letters each during the course of the application). Letters of support on grounds that: the development will alleviate the flooding problem, will develop the village as a whole, no local authority or public body has done anything to alleviate the flooding problem, if something doesn’t happen soon we will have no option to go to the media with our story in the hope that it will aid us with our plight, the devastation the floods caused our family and neighbours and the length of time it took afterwards to live ‘normal’ lives again cannot be imagined, raw sewage floating round inside the house, the house is adapted for a disabled person and so can not be easily re-housed in temporary accommodation, birds can fly away from the floods, and woodland and hedge on site will remain, the land is an eye-sore, the proposed flood alleviation scheme does amount to “very special circumstances”, we live in fear of a reoccurrence of the flood every time it rains – one resident who is disabled is fearful of being trapped by the floods, if it floods again we will struggle to get insurance, if nothing is done regarding flood alleviation the resident believes that the Insurers will be seeking compensation from the offending councils and one resident says they will seek legal advice, have been promised by the Prime Minister and MP who visited them that the Government and Local Councils would do all in their power to prevent the floods happening again, one owner of a business says that he will have to cease trading in Renishaw because his property was not given the protection promised – insurance has risen from 6 thousand pounds to 23 thousand pounds.

One letter received which highlights inconsistencies in the submitted documents about the number of dwellings proposed.

One letter of objection received on grounds that the new houses will not fit in with the surroundings, noise and overlooking and loss of privacy for existing residents.

POLICY
Regional Plan
Policy 1(j) Requires all strategies plans and programmes to…reduce the risk of damage to life and property from flooding… Similarly Policy 2 aims to promote better design by…management of flood water…
Bolsover District Local Plan (BDLP)
GEN 5 – Land Drainage
GEN 9 – Development in the Green Belt
GEN 11- Development Adjoining the settlement Framework
HOU 9 – Essential new dwellings in the countryside
ENV 3 – Development in the Countryside
ENV8 - Development Affecting Trees and Hedges
GEN1, 2,4,8,17, HOU5,6,7, TRA1,15, ENV5 also relevant

Other (specify)
PPG2 – Development in the Green Belt states that:-

1.5 “There are five purposes of including land in Green Belts:
- to check the unrestricted sprawl of large built-up areas;
- to prevent neighboring towns from merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”

3.1 “The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved, except in very special circumstances.”

3.2 “Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development.”

Circular 11/2005 and the Direction Annexed to it requires local planning authorities to refer to the Secretary of State applications for planning for development which they do not intend to refuse which involve inappropriate development in the green belt where more than 1000sqm of building or buildings floor space is created (3300sqm proposed in this case) or where there would be a significant impact on the openness of the green belt (as is also the case for this proposal).

PPS25
PPS9
PPS3

ASSESSMENT
Government Guidance in PPG2 makes it clear that the development now proposed is defined as “inappropriate development” in that guidance. Inappropriate development is, by definition, harmful to the Green Belt. Very special circumstances to justify inappropriate
development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

The applicant states that it is accepted that the site is located within the Green Belt and as such the proposal would constitute inappropriate development. However, it is argued that this application would meet the very special circumstances referred to in Government guidance as it is the only realistic way of delivering flood alleviation measures at this time for the properties of Emmett Carr Lane.

The flood alleviation scheme proposed should certainly result in a very significant reduction in flood risk for the properties concerned (6-7 dwellings were affected during 2007 floods), although implementation of the flood alleviation scheme is not a guarantee that flooding will not occur in the future again, only that the likelihood of it is reduced. It is also clear that the affects of flooding and the fear of flooding for the residents concerned are very significant. However, the number of properties affected was not particularly high for the estimated 1 in 150 year storm event that occurred in 2007. None of the public bodies such as the Environment Agency or the County Council have any plans or funding in place to deal with the existing problem. NEDDC have undertaken to notify the owners of the various sections of the culvert of its condition (as revealed by the CCTV survey) and the owners responsibilities for maintenance of the culvert section which they own, however there is no guarantee that the relevant owners will undertake the maintenance work needed (even though they are obliged to carry it out). Neither however would the full repair of the culvert prevent future flood events (since it is still largely free flowing now), it would however reduce the likelihood of flooding. As such it is considered that the provision of the flood alleviation scheme could, in principle, reasonably be viewed as being the “very special circumstances” referred to in PPG2 which might outweigh the harm to the green belt. However this is a judgement to be made. It is noteworthy that NEDDC are doubtful that the flood works are the very special circumstances needed and the flooding occurs in that Councils district.

If the flood alleviation scheme is viewed by this Council as being the “very special circumstances” needed then the Council must also be convinced that the development proposed is the minimum necessary within the greenbelt to fund the flood alleviation works (thought to cost in the region of £400,000) and that the housing is tied to the provision and future maintenance of the flood alleviation works, and that the development is acceptable in all other respects.

DCC Highway raise concerns about the creation of a highway drain at the new site frontage which would intercept road water into the pond which currently would not be adopted by any public body and therefore be a private facility. They are concerned that liability may arise to them by virtue of the fact that the highway surface water is draining to a private system. This raises doubt as to whether the intercept scheme would get approval from the Highway Authority under their highway powers. If that were to be the case that would seriously undermine the potential effectiveness of the scheme; and also bring into question the capacity needed and other issues such as the impact of the flood wall on flows and consequently the need for the amount of enabling development proposed. It is considered that the alleviation solution is adequate for planning purposes provided that it could be implemented in full as currently proposed. There is the possibility that the Highway Authority has the power under the highway acts to potentially prevent aspects of the drainage scheme, which if that were to be the case would have implications for the planning case. This could be addressed by use of a pre-condition (Grampian style condition) that requires no development to start until such time as the requisite approvals
from the Highway Authority for the detailed scheme as shown in this application have been obtained to allow highway surface water to discharge into the site and the pond.

The Amount of Development Proposed
In order to demonstrate that the development proposed is the minimum necessary within the Green Belt to fund the flood alleviation works, the applicant has provided residual land valuations to demonstrate the viability of the scheme (and an alternative scheme with 17 smaller properties which was shown in that valuation not to be viable). Whilst it may, on the face of it, seem that 23 large detached properties is an excessive amount of development to fund a £400,000 flood alleviation scheme, the valuations have been assessed by the Councils’ Senior Land Valuer who has confirmed that the valuations are reasonable. It is predicted that the development would net some £771,000 for the landowner, £400,000 of which would be spent on the flood alleviation scheme and perhaps another £68,000 for the long term maintenance of the works. This would leave some £303,000 for the landowner. Relative to the value of the site with agricultural value as at present (2 ha of agricultural land might be worth about £25,000) the landowner would get an uplift in land value as a result of planning permission for the proposal of approximately £278,000. This is not considered to be unreasonable or excessive. However, the costs listed in the valuations submitted do include both a Developer Margin at 26% or £1,458,639 (15% net) and also the normal profit for the builder within the build cost. Hence there will be three sets of profit to extract from the scheme (developer, builder and the residual to the landowner). Whilst this is a normal way for the construction industry to operate it is possible that a developer who is also a builder (e.g., one of the larger house builders) could have developed the site with less properties whilst still funding the flood alleviation scheme. It is also likely that less properties than proposed would fund the scheme in the event that the housing market improves and house prices increase. However it is normally accepted that planning decisions should be made in the light of the viability of the proposal at the time the application is made rather than what might have been achieved in a more favourable economic climate. In summary whilst there are concerns about the number of dwellings proposed to fund the flood alleviation works the valuations submitted are considered reasonable by the Senior land Valuer as such it would be difficult to justify a refusal of planning permission on these grounds.

Maintenance of the Flood Alleviation Scheme
The applicant proposes to deal with this by means of a Section 106 obligation. This would require the provision of the flood alleviation works before construction commences on any of the dwellings and long term maintenance by a private company run by the owners of the dwellings. The Council’s Solicitor has confirmed that he is satisfied that the owners of the dwellings will be sufficiently bound by the obligation and they will have the ability to perform the obligations.

Other Policy Considerations
With regard to other policy considerations the site should be considered under policy HOU 9 - Essential new dwellings in the countryside. This policy states that new dwellings will only be permitted if they are essential to the operation of agriculture and forestry. It is clear from the amount of dwellings and from the submission that this application is not related to the operation of a countryside based use. The development is therefore contrary to HOU9. Neither does the proposal comply with the criteria in policy ENV 3 – Development in the Countryside. Policies HOU9 and ENV3 are not used as reasons for refusal in this case because the Green Belt policy is a stronger policy and it follows that if the Council accepts that there is a reason to override green belt policy it would also override HOU9 and ENV3. The proposal does not satisfy any of the criteria in policy GEN
9 – Development in the Green Belt. Only if the Council are satisfied that there are “very special circumstances” in this case to grant planning permission which outweigh the policy conflicts and any other harm should planning permission be granted.

However it should be noted that, following the issue of the East Midlands Regional Plan in March 2009, the Council does not have a 5 year supply of housing as sought in PPS3. The proposal would contribute to achieving a five year supply. PPS3 states that where there is less than a five year supply of deliverable housing LPA's should look favourably on applications for housing providing the scheme:

- Achieves high quality housing (outline application)
- Achieves a good mix of housing (the proposal is not for a mix of types being all large detached properties)
- The suitability of the site for housing including its environmental sustainability
  - The site is within 820 metres of a primary school.
  - There is a bus route within 400 metres.
  - The site is outside a settlement framework
  - The site is within 2160 metres of a town centre.
  - The site is within 2280 metres of an employment growth zone.
  - The site is within 7850 metres of a railway station.
  - The site is within 3080 metres of a secondary school.
- Uses land effectively and efficiently (given the Green Belt location and existing vegetation on site that should be retained this criteria is not considered to be the most relevant)
- Ensuring that 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. (The Spatial vision for the area does not include the expansion of settlements that adjoin the district’s boundary in neighbouring districts).

In summary whilst the contribution to the 5 year supply of housing would be beneficial this consideration would not in itself outweigh the harm caused to the openness of the green belt.

**Layout Issues**

However, there are outstanding concerns relating to the layout proposed. Although the number of dwellings proposed has been reduced from 25 to 23, and the density proposed is not high relative to the Governments target of 30ha (the scheme is about 19/ha once the flood works area is removed from the calculation) it is considered that the layout proposed will have an unacceptable impact on the mature trees and hedgerows on site. It seems that the opportunity to provide a well designed low density development largely hidden amongst the trees has not been taken. Despite the tree constraints plan submitted, it is considered that many of the proposed dwellings are too close to retained trees and hedgerows which is a situation which will lead to a desire for their removal once the dwellings are occupied. Although the separation distance to trees may comply with BS5837 which is the minimum industry standard, this is a Green Belt site within the countryside, and if permission is granted, the development would be likely to form the long term settlement boundary such that policy GEN11 of the local plan applies. This policy requires the retention (or creation) of a substantial landscaped area adjoining the settlement framework to reduce the visual intrusion of the development on the countryside (the subtext of this policy states that the extent of this landscaping may be 20m in width). Given the green belt, countryside edge location compliance with BS5837 alone is not considered to be satisfactory. Policy ENV8 of the local plan requires a distance of half the
mature height of the tree to be left between the trunk and any development; not the existing height of the tree as is marked on the submitted tree constraints plan. For example, plots 5, 6, 7, and 8 are all close to Ash trees. Ash trees can grow in excess of 30m high hence the stand off distance should be 15m not 7m as proposed. The situation is compounded by the higher ground level at the eastern boundary relative to ground level on site (4m for plot 5) which will mean that these trees and the hedge will have more impact on light received and perceived safety than they otherwise might (Ash trees have a reputation for dropping even healthy branches without warning). There is also a significant depth of hedge to be removed to accommodate plot 5. Although there are other areas of concern, plots 8, 9, and 10 have particularly short rear gardens (only 5m deep for large detached dwellings) leading to a desire for future residents to remove the hedgerow at this point to improve garden size and light received. This would increase the prominence of the development within the green belt and the countryside adjacent to a public footpath and is considered to be contrary to policy GEN11 of the local plan.

It is noted that at para’ 6.1.12. of the revised Landscape Assessment submitted that it is recommended that housing should be a maximum of two storeys high to avoid increasing the visual impact and to reflect the type of housing in the locality. If this recommendation were followed it would help minimise the visual impact of the development on the green belt and the countryside. However, seven plots are proposed to be 3 storey on the down hill side. Whilst this has been done to achieve the most floor space by making the most of ground level changes on site, this solution fails to take the opportunities presented by the lower ground levels on site (relative to the highway and the land to the east) to minimise the visual impact of the proposal on the landscape and the openness of the green belt. This appears to be counter to the design justifications given in the Design and Access Statement.

The applicant has been advised to amend the proposal to address these issues but has not agreed to do so. The applicant is unwilling to reduce the amount of development any further because it is argued that the scheme would fall below a level at which it remains viable and so the proposed flood mitigation would not happen either. However, the layout proposed at present has a greater visual impact on the green belt and on trees and hedgerows than is considered to be acceptable in this location. Furthermore the use of tree preservation orders and conditions in an attempt to retain trees and hedges in the knowledge that they are too close to property is not considered to be an adequate solution. Case law has shown that the permission of the Council for removal may not be necessary in such circumstances.

Section 106 Issues and Planning Gain
In addition to the provision and maintenance of the proposed flood alleviation scheme a commuted sum of £67,967 for the improvement of education facilities at Eckington School is included in the draft S106.

A contribution for recreation has been requested but not agreed. Commuted sums for formal and informal leisure provision can be required under policy HOU5 of the local plan for schemes of 20 or more dwellings unless adequate provision already exists. However any provision for leisure would have to fairly and reasonably relate to the development. As such it would need to be spent in Renishaw rather than Barlborough. NEDDC have not yet requested provision for leisure be sought. Neither has the Head of Leisure for BDC. As such it is not considered to be reasonable to insist on provision for recreation in this instance.
The applicant prefers to deal with public art by condition rather than by S106 obligation (ie the precise value of the works is not agreed). This is considered to be acceptable under policy GEN17.

The number of dwellings proposed is less than 25 and so does not trigger a requirement for affordable housing in accordance with policy HOU6. The Rural exceptions policy HOU7 does not apply to this site and the applicant does not seek to rely on it. Accordingly no provision for affordable housing is offered. It should be noted that providing affordable housing would be likely to change the viability of the scheme and could possibly result in the need for more dwellings.

Other Matters
With regard to the risk of flooding the proposed dwellings will be subject to, they will be at a higher ground level than Emmett Carr Lane and so will be much less likely to be affected by flooding. A flood risk assessment has been carried out and shows that the proposed residential development is essentially contained within risk Zone 1, which is in accordance with PPS25 and policy GEN5.

It is considered that there are no significant highway, land contamination, or specific ecology issues which cannot be dealt with by appropriate planning conditions (See suggested conditions below in précis).

It should be noted that there are concerns raised by a resident regarding noise and overlooking and loss of privacy for existing residents as a result of the proposed development. However it is considered that the impacts on residential amenity which would arise from the development are not unlikely to be so significant as to represent a reason for refusal under policy GEN2 of the local plan. There will be an impact on the street scene as viewed from Emmett Carr Lane, however such impact would be outweighed by the improvement to amenity enjoyed at dwellings facing the site as a result of the reduction in flood risk.

Listed Building: N/A
Conservation Area: N/A
Crime and Disorder: Covered in the report
Equalities: No significant issues
Access for Disabled: There are level changes on site which might render the site less suitable for the less mobile
Trees (Preservation and Planting): See report
SSSI Impacts: N/A
Biodiversity: See report
Human Rights: No significant issues

Conclusions
The harm which would be caused to the openness of the Green Belt by the current proposal is not outweighed by the proposed flood alleviation scheme and the proposal is considered to be unacceptable. A more sensitively designed development with a greater separation distance to retained trees and hedgerows, with buildings restricted to no more than two storeys, and improved opportunities for new planting would not be likely to have such a significant impact on the openness of the Green Belt and would retain/provide a better settlement edge treatment to the countryside. It is more likely that the benefits of the flood alleviation scheme proposed would outweigh the harm caused to the openness
of the greenbelt under such circumstances.

If however the Committee is not minded to refuse planning permission for this proposal which is a departure to the development plan and inappropriate development in the Green Belt it will be necessary to refer the application to Full Council and subsequently to the Secretary of State if Full Council hold the same view.

If minded to approve the application conditions including the following given in précis form will be necessary:-

Approval of reserved matters
Submission of reserved matters within 3 yrs
Pre condition re highway approval for highway drainage scheme
Pre condition re start and completion of flood alleviation measures before work commences on any dwelling, and only limited length of road to create access to flood alleviation works
Removal of Permitted Development rights to protect future character of green belt
Appropriate Highway Authority conditions
Contaminated land survey (Phase 2)
Retention of Trees and Hedges
Provision of protective fencing for trees and hedges
Housing a maximum of two storeys high
Biodiversity mitigation scheme
Bat survey for Tree 16
Drainage detail to be approved
Scheme of works for public art
Ground levels as per plans
Boundary treatments

In addition the Section 106 obligation would need to be completed before planning permission is granted.

If permission is granted for this proposal it should be noted that the large garden area with numerous trees and shrubs to the south side of Field house Farm would effectively be brought within the settlement framework and so will be subject to development pressures. In order to ensure that this group of trees, which are considered to be important for their amenity value, are retained it is considered necessary to serve a tree preservation order on this area of land which is within the applicants control.

RECOMMENDATION

A. REFUSE PLANNING PERMISSION

Reasons
1. The harm which would be caused to the openness of the Green Belt by the proposal is not outweighed by the proposed flood alleviation scheme such that approval would be contrary to policy GEN9 of the Bolsover District Local Plan and Government advice in Planning Policy Guidance Note 2.

The opportunity to provide a well designed unobtrusive development largely hidden amongst the trees has not been taken. The layout proposed will have an unacceptable impact on the mature trees and hedgerows on site as a result of the short separation
distances between the two. Despite the tree constraints plan submitted, it is considered that many of the proposed dwellings are too close to retained trees and hedgerows which is a situation which will lead to their removal once the dwellings are occupied. Although the separation distance to trees may comply with BS5837 which is the minimum industry standard, this is a Green Belt site within the countryside, and the development would be likely to form the long term settlement boundary such that policy GEN11 of the local plan applies. This policy requires the retention (or creation) of a substantial landscaped area adjoining the settlement framework to reduce the visual intrusion of the development on the countryside. Given the Green Belt, countryside edge location compliance with BS5837 alone is not satisfactory. Policy ENV8 of the local plan requires a distance of half the mature height of the tree to be left between the trunk and any development; not the existing height of the tree as is proposed. The situation is compounded by the higher ground level at the eastern boundary relative to ground level on site (4m in places) which will mean that these trees and the hedge will stand above the level of the dwellings and will have more impact on light received and perceived safety at the dwellings (due to the risk of falling branches/trees) than they otherwise might. There is also a significant depth of hedge to be removed to accommodate plot 5. Plots 8, 9, and 10 have particularly short rear gardens (only 5m deep) with a retained hedge at a higher ground level leading to a desire for future residents to remove the hedgerow to improve garden size and light received. This would increase the prominence of the development within the Green Belt and the countryside adjacent to a public footpath and is contrary to policy GEN11 of the Bolsover District Local Plan. Furthermore the use of tree preservation orders and planning conditions in an attempt to retain trees and hedges in the knowledge that they are too close to property is not considered to be an adequate solution.

B. Refer the application to Full Council if the Committee approve the following note

Advise the applicant that a more sensitively designed development with a greater separation distance to retained trees and hedgerows, with buildings restricted to no more than two stories, improved opportunities for new planting and a better settlement edge treatment to the countryside would not have such a significant impact on the openness of the Green Belt. It is more likely that the benefits of the flood alleviation scheme proposed would outweigh the harm caused to the openness of the greenbelt under such circumstances.
Planning Committee agreed recommendation A and resolved to refuse the application for the reasons given in the report but did not agree recommendation B that a more sensitively designed development with less impact on the green belt might be accepted. Committee suggested a meeting be arranged with all the relevant authorities (the Environment Agency, Council Engineers of BDC and NED, County Highway Engineers and Emergency Planning Officers) to explore what could be done to reduce the risk of flooding without having to allow inappropriate development in the green belt.

The application was refused on 24.6.09.

The meeting between relevant authorities was undertaken on 30.7.09. It was also attended by the Applicant’s Drainage Engineer. Issues considered were:-

- The causes of the flooding. Number of events
- Who has responsibility for resolving the shortcomings of the existing infrastructure
- What plans do the relevant Authorities have to resolve the problems
- What are the range of possible solutions and how effective would each be
- What are likely costs of different solutions
- What funding/Grants are available
- Other barriers to implementation e.g. legal, ownership planning etc

Noteworthy issues arising from the meeting:-

- BDC have records of flooding events since 1991. Since then there was flooding on the road only in 2003, and there was the 2007 incident when about 7 properties were flooded. No one was able to confirm whether or not the culvert entrance had become blocked up with debris at that time, but the grid was cleared by the owner after the 2007 event. Blockage could have contributed significantly to the amount of flooding.
- The Environment Agency said that the brook is not designated as a main river so they are not responsible for maintenance. The EA thought that the proposed flood water storage scheme would improve things as well as a new culvert grid of a design less prone to blockage
- The Highway Authority are responsible for maintaining the road gullies, they traditionally take on responsibility for culverts where they are under the highway and inspection of the entrance where it causes flooding but there is not necessarily a duty to do so. No significant money is available. The Highway Authority would be likely to agree to repair the section of the culvert under the highway but there is little point unless the other owners agree to repair their sections.
- There is no maintenance/improvement duty on the District Councils
- Riparian owners have responsibility
- The question was raised as to whether the proposed flood wall would obstruct flood water from the road getting back into the culvert. The applicants engineer thought that the amount of water flooding on the road would be reduced having passed by the proposed gully drains although there still might be some flooding occurring on the road. It should be noted that the applicants’ proposed scheme is to provide new gullies diverting surface water into the balancing pond but these new gullies would only be on the south side of the road. Water running down the north side of the road would not be intercepted.
• Protecting the properties instead was an option but may not be as effective and the effectiveness is reduced if water is standing for long periods
• The most promising suggestion was to divert surface water run off from Sheffield Road to its north side into Smithy Brook before it gets to Emmett Carr Lane. This possibility has been examined further by the applicant’s engineer who says that: the main source of flooding on Emmett Carr Lane is the watercourse and peak discharge at a 1 in 100 year event is 3.6 cubic m/s (and the culvert does not have capacity to take this amount of flow from this source alone). Peak run-off along Sheffield Road by comparison is predicted to be in the region of 44 litres/s (some 82 times less). If the Sheffield Road water were diverted this would allow the proposed flood wall height to be reduce by only 10cm, with only a small saving in construction cost for the wall needed to protect against flooding. Hence there would be no material difference to the number of dwellings needed to pay for the proposed flood works. Also diverting surface water further down stream may increase the risk of flooding down stream and so there would be a requirement to provide flood compensation works of the equivalent amount of water being diverted (circa 300 cubic meters). The Engineer queries whether the County Council own enough land to the north side of Sheffield Road to accommodate these works. The applicants Engineers comments have largely been accepted by consultees.

In summary none of the relevant authorities had any ideas or plans of any significance or any allocated funding to deal with the existing risk of flooding. There does not appear to be any prospect of alternative works being undertaken which would significantly reduce the risk of flooding without the release of green belt land to pay for the applicants proposed flood mitigation works. The applicant’s scheme is currently the only realistic one on the table which could significantly reduce the risk of flooding especially from the main cause – the watercourse, but it would only deal with some of the road surface water. There is no reason why the replacement of the old culvert grid for a new grid at less risk of blockage (relatively low cost works subject to land owners agreement and a source of funding) could not be undertaken now. This would reduce the risk of flooding but would not deal with 1 in 100 year flooding events because the culvert simply does not have capacity to deal with that rate of flow even when totally clear of debris.

THE CURRENT PROPOSAL

SITE
See previous report.

PROPOSAL
As initially submitted (but see Amendments below):
Similar application to the previous one (See above) but significant changes are the number of dwellings proposed has now been reduced to 19 and the layout has been amended to allow the retention of the mature hedge on the eastern boundary. The area to be developed, excluding the flood alleviation area is approximately 1.4 ha. and proposed density is approximately 14 dwellings/ha. The flood mitigation scheme now also includes a swale in the grass verge on Emmett Carr Lane.

Again the applicant is seeking permission for residential development in the green belt in return for a flood alleviation works which will reduce the risk of flooding to existing properties on Emmett Carr Lane.
The applicant states that the resubmission seeks to address the reasons for refusal on the previous decision notice as well as matters arising from further negotiations and discussions and pre-application advice.

Again this is an outline application with details of access and siting submitted for approval at this stage. The main changes are:-

- A reduction in the number of dwellings proposed to 19, and the omission of dwellings from the east side of the proposed estate road to reduce the threat to the existing hedgerow and trees on the east boundary.
- The height of the proposed dwellings is to be limited to 2 storey (previously 7 were to be 3 storey as viewed from the front). However the applicant states that there may be some opportunity for use roof space.
- The access from Sheffield Road has been moved further east to retain more of the existing trees and hedgerow to the west side of the access.
- Some tree and hedgerow removal and hedgerow management internal to the site is still proposed as well as the removal of most of what remains of the Sheffield Road frontage hedgerow.
- Provision of additional gullies in the south side of Sheffield Road fronting the site instead of beany blocks as previously proposed. This is to address County Highway Authority concerns that beany block kerbs are prone to blocking up and to divert some of the surface water from the road into the proposed balancing pond.
- The predicted residual land value of the scheme that the land owner would receive, at the time of submission of this application, was predicted to be £705,925 (or £305,925 including the estimated costs of implementing the flood alleviation scheme) which is said to be less than 6% of Gross Development Value (GDV). Also this does not include the cost of maintenance of the flood alleviation works. The applicant argues that this compares with a norm for residential development of land prices being 30-50% of GDV or 17.5% - 20% in the HCA Economic Appraisal Toolkit. It is argued that a 6% return for the landowner is a reasonable return for the landowner for the financing of the application and marketing of the land. However County Education is no longer seeking a commuted sum for schools expansion (as they had done previously) which has released a further £68,000. Hence the return to the landowner is now predicted to be in the region of £374,000 or 7.3% of the value of the scheme. The applicant says that this is not an excessive amount of profit.

The Council has sought to challenge whether the predicted level of return to the landowner is reasonable or excessive. In response to this the Applicant’s Agent has argues that there are various methods of calculating values of developments and that the method undertaken is reasonable and agreed by the Council’s Senior Valuer. To support his case the Agent has undertaken a Residual Land Valuation using a different model - the HCA Economic Appraisal Tool (This is a widely used model which is often used by the District Valuer). Despite inputting the cost of the Flood alleviation scheme at £300,000 rather than £400,000 the answer given using the HCA Model was a residual land value of approximately £50,000. i.e some £320,000 less than was predicted in the applicants initial Residual Land Valuation undertaken by Wilkins Hammond.

As for the previous application this application is accompanied by reports including:-

- Flood Risk Assessment with CCTV culvert survey
- Ecology Report
- Design and Access Statement
• Planning Statement
• Landscape Assessment
• Highway Statement
• Tree Survey

AMENDMENTS
Revised certificate of ownership received regarding part of the site being in NEDDC ownership 8.1.10.
Various amendments received largely to deal with Highway Authority comments 3.2.10.

On 29.11.10. the Applicant’s Agent amended the application from an outline application with details of layout and access submitted to simply an outline application for 19 dwellings with all matters reserved. The Agent considers that the level of detailed work done is sufficient to prove that the scheme can be accommodated and that it will be possible once approval is gained in principle to achieve a less engineered road layout.

HISTORY (if relevant)
See above

CONSULTATIONS

Engineering Services:
The proposed flood alleviation scheme will only be acceptable if responsibility for ownership, adoption and maintenance liability for all components of the flood alleviation scheme is clearly established and agreed between all parties. 27.11.09.

Environment Agency:
Has confirmed that the scheme will reduce the risk of flooding.
Requests planning conditions on any planning permission: The development shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) dated November 2008 by Sanderson Associates and the mitigation measures detailed within Section 7 of the FRA. Development shall not begin until a surface water drainage scheme for the site, has been approved by the local planning authority. The scheme to include details of how the scheme shall be maintained and managed after completion.
Note: Erection or alteration of flow control structures requires the prior written approval of the Environment Agency under s.23 of the Land Drainage Act 1991.
Advice to LPA:
The flood mitigation works will require regular and long term maintenance. The LPA should ensure that the maintenance of these facilities is secured, by a responsible organisation, for example, the local Highways or Drainage Authority. The proposed development lies within 250 metres from two former landfill sites that accepted industrial, construction, mine, quarry and farm wastes material and there may be potential for landfill gas to be generated. Developers may be required to carry out a comprehensive risk assessment due to the risks the former landfill site poses. 7.12.09. No additional comments on amended plans. 6.4.10.

North East Derbyshire DC (Principal Engineer):
The flood alleviation measures attached to this application will reduce the risk of flooding to existing properties on Emmett Carr Lane. 17.12.09.
**North East Derbyshire DC (Planning):**
The Authority supports the provision of the flood alleviation works. But the Authority retains concern at the residential development in the green belt and asks BDC to ensure that if permission is granted the development proposed is the minimum necessary to fund the flood alleviation works and that the housing is tied to the provision and future maintenance of the flood alleviation works. 14.1.10.

**Yorkshire Water:**
No objections in principle. The flood risk assessment is satisfactory from YW point of view. Notes that surface water run-off is proposed to drain to the adjacent watercourse via storage with restricted discharge and flood alleviation pond. Requests conditions re separate systems of foul and surface water; details of foul and surface water to be agreed; surface water from hard standings to pass through an oil interceptor. Note that the local public sewer does not have the capacity to accept surface water from the development. 16.12.09. No objections to amended plans 13.4.10.

**County Emergency Planning Officer:**
The consistent view of the relevant authorities is that the flooding is the product of several contributory factors at times of extreme rainfall conditions including:-
- High Flow into Emmett Carr Brook
- Possible overtopping of the Brook
- Poor culvert grid design and blockage due to debris/vegetation
- Poor condition of the culvert down stream mostly in riparian ownership
- Highway surface water exceeding the capacity of the local drainage system and the drains being restricted due to silt/leaves etc
- The properties being at a low point in a basin

The proposed flood water storage capacity needs to take account of the extra surface water run-off generated by the development itself.
This type of scheme will need to be assessed in future by the County Council as the “Lead Local Flood Authority” designated by the Flood and Water Management Act 2010. However this role is not to be carried out in full until funded as a new burden by Central Government. Therefore County is not yet in a position to give a formal response regarding the likely effectiveness or otherwise of the proposed scheme; only a view in principle. In principle a scheme that provided flood storage capacity in excess of that needed for the development itself could reduce the likelihood of flooding to Emmett Carr Lane which could be seen as a viable reason to approve the development on Green Belt land. Maximum benefit to existing properties would only be achieved if sufficient water is diverted from Sheffield Road in addition to offering additional containment for headwater forming at the culvert and improvements to the design and maintenance of the culvert inlet and screen. The scheme as proposed will not address the possible adverse effects from downstream culvert restrictions.
Ongoing maintenance needs to be addressed. The Flood Water Management Act requires such schemes to be adopted and maintained by the Lead Local Flood Authority (DCC). However this situation could change through secondary legislation/regulations/guidance. The LPA may wish to make provision for S106 funding for future maintenance to a SuDs Maintenance Authority when formed. 11.6.10.

**Senior Valuer:**
Has no real comments to make regarding the valuations as generally the figures seem reasonable.
As far as the housing market is concerned whilst there were increases in the early part of 2010 the last quarter has seen reductions probably due to the financial institutions unwillingness to lend and therefore prices are probably back to the level they were earlier in the year.

In addition it is noted that no formal ground investigation has taken place and there may be increased costs once this has been carried out which would reduce the residual.

Once the costs of the flood alleviation scheme have been taken into account with a quote from a contractor (obtained by the Council), this gives a residual of £482,491.36. Based on a total site area of approximately 2 hectares (4.94 acres) this gives a value of approximately £241,246 per hectare (approx £97,670 per acre). This is a very low value for residential land even in the current market. 28.9.10.

District Valuer: (verbal advice). Confirms that rural exception site land values are in the region of £10,000 - £12,000 per plot. In terms of area he suggests that for green belt land in these circumstances an agricultural land owner might expect between £50,000 to £100,000 per acre (£123,000 to £247,000 per ha) depending on the site. He notes that the applicant’s property would also benefit from a reduction in flood risk as a result of the proposed flood alleviation scheme which will add value to the existing house on site. This would need to be taken into account because less financial incentive to persuade the owner to sell his land would then be needed. Hence the return should not be at the top of the range. 4.10.10.

Archaeologist: No objections 1.12.09.

Derbyshire Wildlife Trust: 
Notes the reduction in the number of dwellings proposed. Notes the scrub areas provide nesting habitat for a range of birds including BAP priority species. None of the hedges are “important” as defined in the regulations but several are species rich which are BAP priority habitats, they also provide a valuable network and wildlife corridors to areas of woodland scrub and stream. The proposal still involves the removal of vegetation of significant local biodiversity value including sections of hedgerow fragmenting the biodiversity resource. Grassland areas to be lost are of limited ecological value but Marsh valerian is of considerable local significance and should be translocated to marshy areas of the site. Dead trees that do not pose a safety risk should be retained as habitat. Clarification is required to establish exactly which trees have features suitable for roosting bats. All trees to be removed should be subject to detailed inspection for bat roosts prior to felling. There are unlikely to be any other protected species issues arising. Notes dwellings have been moved away from the east boundary to protect the boundary hedge but this has not included plot 5 and suggests that plot 5 be left as open space. Would also like further clarification of the treatment of the land adjacent to the hedge along the north and east boundaries. Protective fencing is needed around retained trees and hedges. Bird nesting season should be avoided for site clearance or the site inspected by an ecologist. A habitat management and monitoring plan should be produced for the retained and created habitats; suggests this be funded by an annual charge to residents. 15.10.09.

Natural England: 
Have considered the ecology and landscape assessments submitted; both are generally comprehensive and conform to best practice. A scheme for the eradication of Himalayan Balsam should be required by condition. Clarification is needed as to which trees have bat roosting potential. A re-check for the presence of badgers should be done before development commences. Details of the proposed bat and bird nesting boxes should be conditioned. Clearance works should avoid bird nesting season (March to September

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inclusive). A method statement should be required detailing how the watercourse will be protected from pollution. A longer term management plan to cover all habitats should be required. Supports the mitigation measures recommended in the Landscape and Visual assessment which should be conditioned. Notes that the development is within the Green Belt and that the proposal appears to be contrary to Green Belt policy in PPG 2. Natural England expect the Council to subject the application to the most rigorous scrutiny and that any claims that the exceptional test should be applied be similarly closely examined. 21.12.09.

**Environmental Health Officers:**
The applicant has not considered noise from Sheffield Road or the Industrial Estate. Requests a condition requiring a noise survey before development commences. 22.12.09. Confirms that construction methods could ensure adequate internal noise levels and the external levels are unlikely to be so high as to warrant refusal. 23.12.09.

Requests a condition requiring a contaminated land survey. 11.1.10.

**County Highway Authority:**
The applicant has now demonstrated an internal layout and access that are generally acceptable. With regard to the drainage issue, remains concerned that without a sufficiently robust maintenance regime e.g. a public body, the solution is unsustainable. The V ditch on the plans is not apparent on the sections, the gradient of it has safety implications, and the ditch appears to encompass a lighting column. Requests further information on the embankments at the junction and discrepancies between plans. Plots 7 and 8 have excessive man carry distances (60m) so some on site turning space will be needed. Also requests conditions re: site compound details, wheel wash facilities, provision of the new junction with 2.4m x 120m and 160m (critical), no occupation until provision of the new estate street, 2.4m x 43m splay to private drives and pedestrian splays, no gates within 5m, the exiting access to Field House farm to be stopped up, provision and maintenance of domestic parking spaces, the pond to remain available for its intended use and securely bounded to prevent unauthorised access. Note re public footpath no 8 to remain unobstructed. 16.12.09. Re amended plans: notes the swale has been located out of the highway; the access junction/road embankments are somewhat excessive and their adoption may be resisted; it would be feasible for the road gradient to be increased to reduce the embankments and follow existing levels more closely; plots 7 and 8 still appear to have excessive man carry distances. 9.6.10. *(In response to these comments the applicant says that the final gradients and earthworks can be determined by way of a planning condition at a later stage).*

**Education Authority:**
No longer seek a contribution for education. 12.1.10.

**Urban Design Officer:** *(the response of the Applicant to the Urban Design Officers comments is in italics)*

While it is recognised that the proposals have been through several design changes, the proposed layout remains a cause for concern in terms of the resulting design. Given the exceptional circumstances being advanced as justification for this development and the fact that the scheme would be a departure to established Green Belt restraint policy, it is considered that the finished design and layout should also be of a high standard and provide a suitable transition between town and country. Although the current proposals go some way to achieving this the largely suburban forms and standardised road layout are
considered to be inappropriate. 30.6.10.

(The applicant says that the standardised road layout is a requirement of the Highway Authority and the Urban Designer has failed to suggest an alternative that would be acceptable to the Highway Authority. The applicant also says that it is unreasonable to make Urban Design comments so late in the process when they should have been made at pre-application stage).

PUBLICITY
Advertised in the press and on site. 69 properties consulted. Letters from 5 properties in support received. Grounds are:-

We and our neighbours on Emmett Carr Lane are in desperate need of some form of flood alleviation scheme to protect our homes to avoid a repeat of the 2007 floods. As none of the Councils have any schemes or suggestions to avoid flooding the applicants scheme should be approved. Says that residents have been clearing debris from the culvert grid since before the flooding took place and had this not been done more flooding would probably have occurred. None of the Councils come to clear the grid. The stream is extremely overgrown both sides. Continually live in fear during heavy rain. Insurance companies will be looking to the Councils for compensation if nothing is done. Businesses across the road were affected in 2007, two went out of business. Infirm occupier had to be stretchered out through nearly 4 feet of flood water. The development is necessary not sprawl. There was another near miss in January 2010, due to the culvert being overtopped by melting snow. The threat of flooding was petrifying for some of the elderly residents. Live in fear of history repeating itself. The proposal should be allowed to ensure that the flooding never occurs again. Local economic benefits resulting from new housing developments and spending in local businesses.

POLICY
See previous report above for full list of policies relevant (which again includes the re-instatement of the policies of the approved Regional Plan following a legal challenge to the revocation by the SoS). Of particular note is:

GEN 9 – Development in the Green Belt of the Bolsover District Local Plan; and

PPG2 – Development in the Green Belt states that:-

3.1 “The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved, except in very special circumstances.”

3.2 “Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development.”

The requirement to refer to the Secretary of State (applications for planning for development which they do not intend to refuse which involve inappropriate development
in the green belt where more than 1000sqm of building or buildings floor space is created) is now a requirement of Circular 02/2009 which has replaced circ‘ 11/2005.

PPS3 (Housing) has been amended to remove the minimum density target of 30 dwellings/ha

**ASSESSMENT**

**Issues of Principle**
The proposal seeks outline planning permission for residential development as an exception to established Green Belt policy on the basis that by allowing the development of residential properties this will facilitate the formation of a flood mitigation scheme that would reduce the risk of flooding at a number of properties on Emmett Carr Lane that experienced flooding during the floods of 2007. The applicant’s scheme is currently the only realistic one on the table which could significantly reduce the risk of flooding. None of the public authorities have any proposals or funding to deal with the existing problem.

It should also be noted that the Council does not have a five year supply of housing based on the last published assessment of housing requirements. This is a material planning consideration which must be weighed in conjunction with all other considerations.

The previous similar application (08/00704/OUTMAJ - See above report) was for 23 dwellings and was refused on the 24th June 2009, on the basis of harm to Green Belt. In summary the harm which would be caused to the openness of the Green Belt by the proposal was not outweighed by the proposed flood alleviation scheme, the opportunity to provide a well designed unobtrusive development largely hidden amongst the trees had not been taken, and the layout would have an unacceptable impact on the mature trees and hedgerows on site. The Proposal was considered contrary to policy GEN 9 of the Local Plan and Government advice in PPG 2. The refusal of the previous application by the Council is a material consideration to the determination of the current proposal.

It was reasoned by the Planning Officer in the previous report to committee that the provision of the flood alleviation scheme, in association with the right development, might, in principle, be viewed as being the “very special circumstances” referred to in PPG2 which might outweigh the harm to the green belt (Although Committee did not resolve to give an opinion on that view). However for this conclusion to be reached the scheme would need to meet two criteria:

- Firstly the proposed development would have to be minimum amount of development necessary to pay for the flood mitigation scheme, which the applicant says will cost about £400,000.

- Secondly, the impact on the greenbelt resulting from that minimum amount of development must be capable of being clearly outweighed by the benefits offered in terms of reducing the risk of flooding at existing dwellings. If the impact is not outweighed by the benefits then permission should be refused.

It is also worth reminding Planning Committee that the proposed flood alleviation scheme does not guarantee that Emmett Carr Lane properties would never flood again, only that the risk of flooding is significantly reduced to a 1 in 120 – 150 year event. If the Culvert
were to suffer collapse or total blockage the flood storage pond would only give about one
hours protection when the brook is at peak flow rate before the flood wall is over topped.

Amount of Development and Viability

On the face of it the amount of development proposed which is said to be needed to pay
for the flood works seems high.

The applicant says that the development proposed is the minimum level needed to fund
the flood alleviation scheme and, as previously, has submitted a viability appraisal
undertaken by Wilkins Hammond (Chartered Surveyors). The Council’s Senior Valuer has
assessed this and has concluded that the assumptions and predictions within it are
reasonable, indeed that some of the costs are on the low side for residential schemes and
residential land. If the costs turn out to be higher than Wilkins Hammond predict then the
return to the land owner/his profit would be less than estimated.

The viability has also been tested by reference to the District Valuer and by testing the
costs of the flood alleviation works through an established contractor. In addition the
applicant has undertaken a second assessment using the HCA model to test the viability.
It has to be recognised that these assessments are only models of outcomes based on a
number of assumptions and therefore the actual outcome could be significantly different.
On balance it is considered that the results of the Wilkins Hammond viability assessment
submitted is within the acceptable range of outcomes (falling about mid-point in the District
Valuers’ outturns) and the viability argument submitted by the applicant is accepted.

It should also be noted that if house prices and the housing market recover in future years
it is possible that the proposed flood alleviation works could be financed by a significantly
smaller number of dwellings with less impact on the green belt; but that would not provide
an early resolution to the flooding problems.

If Committee Members would like further information on viability it can be made available
at the meeting.

Impact on the Green Belt and Design

The applicant has attempted to address the reasons for refusal regarding the impacts of
the development on the green belt. Following the amendments made to the nature of this
outline application the layout plans submitted are indicative only. The main changes are
that the current proposal is for 19 dwellings (detached 4 to 5 bed dwellings indicated). The
reduction in the number of dwellings from 23 to 19 has allowed the eastern boundary of
the site to be mostly clear of proposed dwellings (shown indicatively) and so the
established hedgerow with trees on that countryside boundary would be at less risk of
removal. One of the Sheffield Road frontage dwellings has been set back further into the
site. Also the access has been repositioned slightly to allow the potential retention of the
section of hedge and trees adjacent to the west side of the access point which were to be
removed under the previous scheme (Although the creation of the access embankment
right up to the base of the north side of this section of hedge and trees would still have an
adverse effect on their health). Dwelling height is limited to 2 storeys (although the
possibility of loft rooms is not excluded by the applicant). These changes are considered to
be positive and mean that the indicative scheme now shown would have a lesser impact
on the green belt than the scheme previously refused.
However whilst the indicative proposal has gone some way to reducing the impact on the openness of the green belt, it would nevertheless, still have a significant effect by urbanising the site.

The indicative scheme would still result in the removal of some significant sections of hedgerow internal to the site due to the proximity and density of proposed dwellings. Some other sections of hedge and trees would inevitably still be under threat of removal from future occupiers. Whilst potentially more hedgerow could be retained it would need to be severely cut back to fit the development proposed in. It would not be possible to retain the substantial hedgerows in the form that exist at present which are about 6m high and could contribute significantly to hiding the dwellings from view and minimising the urbanising impact on the green belt. Some limited tree removal would also be needed.

In addition Derbyshire Wildlife Trust are concerned about loss of hedgerow because the hedges are said to be of significant local biodiversity value and the removal of sections of it will fragment the habitat.

The indicative layout also remains a cause for concern in terms of the resulting character of the development. It is considered that the finished design and layout should provide a suitable transition between town and country. A lower density scheme better spaced out between the trees and hedges with a narrower access road could be designed with a more rural character to provide such a transition.

There will also be other visual impacts which are probably inevitable for any scheme on this site. These include the removal of what remains of the Sheffield Road frontage hedgerow to provide access visibility although this hedge could then be replanted set back from the road; the new access road would need to be supported by steep and significant engineered embankments to deal with the drop in levels from road to site; and the appearance of the flood wall as seen from Emmett Carr Lane.

It should be noted that if the layout and type of dwelling are not established now the Council would have no way of knowing what the full impacts of a viable scheme will be until reserved matters stage. By then the Council would be committed to some form of viable development, whatever that might prove to be at the time. Hence it is considered that withdrawing the detail of layout and access from this outline application is not an appropriate way forwards.

In summary the applicant needs to be able to demonstrate that a financially viable scheme that would pay for the flood works can also be designed that is acceptable in terms of green belt impact and in other respects. With regard to the indicative scheme now on the table whilst viability has been demonstrated it is considered that the level of harm to the green belt would still be too high and not outweighed by the flood mitigation benefits offered. Hence the applicant has still not demonstrated that a viable scheme can be designed which would have an acceptable level of impact on the green belt.

It is however considered that a well designed development of significantly less dwellings could be more loosely spaced about the site between retained trees and hedges, it could be served by a narrower more rural type lane and this would have less of an impact on the green belt. For such a development the benefits in terms of reduced flood risk might reasonably be considered to outweigh the harm to the green belt (The Committee may wish to express a view on this). However the applicant has not yet demonstrated how such a scheme could be laid out or that it would be viable in the current economic climate.
Unless it is shown that a smaller scheme could deliver the flood alleviation works there would be no over-riding justification to allow residential development in the green belt.

The applicants Agent has also suggested, as a way forwards, that if the Council think that a development of significantly less dwellings might be acceptable, that they would agree to an entirely outline permission with a condition limiting the number of dwellings on site to say 10; accepting that a development of that size would not be currently viable or deliverable. However the very special circumstances needed to grant permission in the green belt (the flood mitigation measures) would also not be delivered (because the scheme would not be viable) and so there would not be any special circumstances to justify granting permission. Also it is considered that such a condition would not pass the tests for planning conditions given in circ’ 11/95 in terms of being necessary and reasonable, and neither has it been demonstrated what the impacts of such a scheme would be on the green belt. Therefore this option is not recommended as a solution.

Other Matters
Largely as per previous report. Various issues would need to be dealt with by conditions if planning permission were to be granted. Maintenance of the flood works would be secured by legal agreement.

There is no affordable housing or other S106 requirements triggered in this case.

It is not considered appropriate to provide public access to the flood works area. The balancing pond would not be an attractive permanent water feature but rather an area which temporarily floods and then dries out. In the interests of safety and ease of maintenance it is considered preferable for the public to be excluded from this area. Access for maintenance would need to be provided.

Conclusion
The applicant’s scheme is currently the only realistic one on the table which could significantly reduce the risk of flooding on Emmett Carr Lane. None of the public authorities have any proposals or funding to deal with the existing problem. The development now proposed could be considered to be the minimum necessary at this time to fund the proposed flood alleviation works and the revised indicative layout has gone some way to address the previous reasons for refusal. Therefore the decision on this application is more finely balanced. The balanced judgement to be made is between green belt protection policy in GEN9 of the local plan and in PPG2 against the benefits offered in terms of reduced flood risk at existing properties on Emmett Carr Lane. i.e. is the harm to the green belt which would result from a viable development clearly outweighed by the benefit of reduced flood risk? The recommendation is to refuse because the applicant has not been able to demonstrate a design and layout of development which would achieve a satisfactory balance on this issue.

If however the Committee is minded to support the granting of planning permission for this proposal which is a departure to the development plan and defined as inappropriate development in the Green Belt it will be necessary to refer the application to Full Council and subsequently to the Secretary of State if Full Council hold the same view.

In addition the Section 106 obligation would need to be completed before planning permission is granted.

If permission is granted for this proposal it should be noted that the large garden area with
numerous trees and shrubs to the south side of Field house Farm would effectively be brought within the settlement framework and so will be subject to development pressures. In order to ensure that this group of trees, which might be considered to be important for their amenity value, are retained if appropriate, it is considered necessary to investigate further whether it is appropriate to serve a tree preservation order on this area of land which is within the applicant’s control.

RECOMMENDATION.

REFUSE

Reason

1. Approval of the application would result in inappropriate development in the Green Belt. It has not been demonstrated that the harm which would be caused to the openness of the Green Belt by the proposal is clearly outweighed by the proposed flood alleviation scheme such that approval would be contrary to policy GEN9 of the Bolsover District Local Plan and Government advice in Planning Policy Guidance Note 2.