

Appendix

1. Details of the application

- 1.1 This application seeks planning permission for the variation of condition 3 of outline planning permission reference number 20/00056/OUT. This condition restricts the occupation of any of the dwellings prior to the provision of the access roads located off Shilo Way and Newtons Lane being made available for use. The variation seeks to allow the occupation of up to 20 dwellings prior to the access arrangements off Shilo Way being provided.

2. Site and surroundings

- 2.1 The site lies to the west of the main built up area of Awsworth and infills the gap between the residential properties on Park Hill, Barlow Drive North, The Glebe and Newtons Lane and the Awsworth bypass (A6096, Shilo Way). The site is largely within the Parish of Awsworth, with approximately 1.5 hectares of the south and south eastern part of the site falling within Cossall Parish. The bypass is separated from the application site by a strip of woodland planting, which partially screens the site from the west. The eastern boundary of the site is largely made up of various residential boundary treatments of 2m or less in height. The southern boundary of the site is made up of hedgerow and trees.
- 2.2 The site extends to a little over 10 hectares in area and includes 5 field parcels which are divided by hedgerows and other vegetation. A dwelling lies in the middle of the site (The View) but this is not included in the application site and is not in the applicant's ownership. The site has been historically used as both a clay pit and for open cast mining with these uses finishing in the early 1980s. Since then it has been in agricultural use and is classified as Grade 4 'Poor' agricultural land (Natural England Agricultural Land Classification Map).
- 2.3 The site is in Flood Zone 1. A ditch runs adjacent to the site boundary along Newtons Lane. The topography of the site slopes upwards in an easterly direction, with a level difference of approximately 18 metres from the southern section of the western boundary (adjacent the A6096) to the northern part of the eastern boundary.
- 2.4 The Grade II* Listed Bennerley Viaduct is located approximately 175m to the west and some limited views of this are gained from within the site through the screen of trees. Cossall Conservation Area is located 1.1km to the south-east of the site and the Listed Awsworth Infant School, walls, railings and playground and the village War Memorial lie to the north east and east.
- 2.5 Shilo Recreation Ground is located approximately 70m to the north of the site and there are various other 'Green Infrastructure' assets identified in the Council's 'Green Infrastructure Strategy' within the vicinity of the site including

the disused Northern Railway line to the north, and Nottingham Canal to the west.

- 2.6 Ilkeston Railway Station is located 900 metres to the south and there are bus stops along Awsworth Lane/The Lane which access the number 27 service to Ilkeston, the station and Kimberley.

3. Relevant Planning History

- 3.1 Outline Planning Permission with only access being considered was granted under reference number 20/00056/OUT in April 2022. A S106 Agreement was also signed as part of the application.

- 3.2 Reserved Matters were granted under reference number 22/00346/REM to construct 250 dwellings (reserved matters in relation to reference 20/00056/OUT – Appearance, Landscaping, Layout and Scale).

- 3.3 A Non-Material Amendment to Reserved Matters permission 22/00346/REM was granted under reference number 23/00648/NMA in November 2023 relating to the update of the accommodation schedule, removal of the previously approved pump station, drainage easement update, amendment to the parking associated with plot 83, addition of parking to plot 73, visitor parking changed for plot 145, indication of tree/vegetation removal/retention, boundary fences added to the rear of plots 157 – 160 and an updated materials layout.

4. Relevant Policies and Guidance

4.1 **Greater Nottingham Aligned Core Strategy Part 1 Local Plan 2014:**

4.1.1 The Council adopted the Core Strategy on 17 September 2024

- Policy A: Presumption in Favour of Sustainable Development
- Policy 1: Climate Change
- Policy 2: The Spatial Strategy
- Policy 8: Housing Size, Mix and Choice
- Policy 10: Design and Enhancing Local Identity
- Policy 11: The Historic Environment
- Policy 14: Managing Travel Demand
- Policy 16: Green Infrastructure, Parks and Open Spaces
- Policy 17: Biodiversity
- Policy 18: Infrastructure
- Policy 19: Developer Contributions

4.2 **Part 2 Local Plan 2019**

4.2.1 The Council adopted the Part 2 Local Plan on 16 October 2019

- Policy 1: Flood Risk
- Policy 2: Site Allocations
- Policy 4: Awsworth Site Allocations
- Policy 4.1: Land west of Awsworth (inside the bypass)
- Policy 15: Housing Size, Mix and Choice
- Policy 17: Place-making, Design and Amenity

- Policy 19: Pollution, Hazardous Substances and Ground Conditions
- Policy 20: Air Quality
- Policy 21: Unstable Land
- Policy 22: Minerals
- Policy 23: Proposals Affecting Designated and Non-Designated Heritage Assets
- Policy 24: The Health and Wellbeing Impacts of Development
- Policy 26: Travel Plans
- Policy 30: Landscape
- Policy 31: Biodiversity Assets
- Policy 32: Developer Contributions

4.3 **National Planning Policy Framework (NPPF) 2023:**

4.3.1 The National Planning Policy Framework (NPPF) 2023, outlines a presumption in favour of sustainable development, that planning should be plan-led, decisions should be approached in a positive and creative way and high quality design should be sought.

- Section 2 – Achieving Sustainable Development
- Section 4 – Decision-making
- Section 5 – Delivering a sufficient supply of homes
- Section 8 – Promoting healthy and safe communities
- Section 11 – Making effective use of land
- Section 12 – Achieving well-designed places.
- Section 14 - Meeting the challenge of climate change, flooding and coastal change
- Section 15 – Conserving and enhancing the natural environment
- Section 16 - Conserving and enhancing the historic environment

4.4 **Awsworth Neighbourhood Plan:**

4.4.1 The Awsworth Neighbourhood Plan was adopted on the 21 July 2021.

- Policy H1 - New Homes on 'Land West of Awsworth' (inside the bypass)

5. Consultations

5.1 **Nottinghamshire County Council Highways** – The total number of dwellings being made available for purchase prior to both site access points being available will likely generate in the region of 35 two-way trips in the peak hour, which equates to 1 vehicle every 102 seconds during the busiest period. Although it is our preference for both access points to be made available prior to occupation, there is no pattern of recorded collisions along Newtons Lane to suggest development traffic will exacerbate an existing road safety problem. It would therefore be unreasonable for us to raise an objection to the proposal but do not want to stagger the number of units beyond the prescribed value. We should point out this proposal may affect the amenity of local residents, particularly as Newtons Lane is being used by construction traffic.

- 5.2 **Cossall Parish Council** – opposes the application for variation to condition 3 because the residents of Newtons Lane have already experienced untold misery caused by access to the building site from this narrow residential road. Prolonging this unreasonable disruption, that would be caused by delaying the access road to Shilo Way to be built, is in our opinion completely unacceptable. The number of huge construction lorries using this narrow road has been a massive problem for residents, the lorries have had to regularly mount pavements due to the narrow road, which is very dangerous. Lorries have often parked outside homes and have blocked driveways, even causing residents to be late for work, as they could not leave their own driveways. The dirt and rocks on the road from construction traffic and water from the road cleaner, which has struggled badly to keep the road reasonable, has been a real burden for the residents.
- 5.3 Neighbouring properties were consulted on the application along with the posting of site notice, with 8 letters having been received objecting to the continued use of Newtons Lane by construction vehicles, noise, dust and highway safety.
6. Assessment
- 6.1 The main issues relate to the principle of development, whether there will be any impacts upon residential amenity and whether there would be any detrimental impact on highway safety. These are discussed in turn as follows:
7. Principle
- 7.1 The principle of development on the site and the two access points off Shilo Way and Newtons Lane has been established through the granting of outline planning permission under reference number 20/00056/OUT. Furthermore, construction works are ongoing on site under reserved matters application reference 22/00346/REM to create the internal roads and construction of the approved dwellings.
8. Residential Amenity
- 8.1 Objections have been received from residents living on Newtons Lane and also Cossall Parish Council in respect of construction vehicles accessing via Newtons Lane, noise, dust and highway safety.
- 8.2 Condition 3 of the outline planning permission required the access point off Shilo Way to be provided prior to occupation of any of the dwellings, unfortunately this has not been secured due to issues between the developer and Nottinghamshire Council agreeing to the technical approval for the Shilo Way access and a legal agreement following technical approval being delayed. Supporting information supporting with the planning application advises that works will begin on the access road in September this year and finish December 2024/early January 2025.

- 8.3 When used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls. Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:
1. necessary;
 2. relevant to planning;
 3. relevant to the development to be permitted;
 4. enforceable;
 5. precise; and
 6. reasonable in all other respects.
- 8.4 The reason for imposing the condition on the outline planning permission was based on Highway Safety reasons and it should be noted that this condition was recommended by the Highway Authority at the time and was considered to meet the above mentioned 6 tests. Whilst it is acknowledged that the continued use of Newtons Lane for the access of construction traffic is not ideal, due to the current situation with the technical approval being agreed between the developer and Nottinghamshire County Council there is no alternative access point. The developer has provided a timeline for the works to commence/finish and it is in the developer's best interests to work to these in the interest of existing local residents and also future occupiers of the approved dwellings.
- 8.5 In respect of the protection of the residential amenity of existing residents living on Newtons Lane, a Construction Employment Management Plan (CEMP) is in place which was approved under condition 7 of the original outline planning permission 20/00056/OUT. This includes restrictions on the hours of construction lorries accessing the site from Newtons Lane, road sweeping, dust control, parking of construction vehicles etc.
- 8.6 To conclude, whilst it is acknowledged that the continued use of Newtons Lane for construction vehicles would not be ideal, by allowing the variation of condition 3 for the occupation of up to 20 dwellings this would allow the developers to carry on the building out of the site. By continuing restricting the occupation to no dwellings prior to the Shilo Way access arrangements being made available, this would put a financial burden on the developers by restricting the sale and occupation of dwellings. This would place an unjustifiable and disproportionate financial burden on the developer which would fail the test of reasonableness as previously mentioned in paragraph 8.3. The presence of the approved CEMP is considered appropriate to protect the residential amenity of the existing residents living on Newtons Lane.

9 Highway Safety

9.1 The Highway Authority advise although it is their preference for both access points to be made available prior to occupation, there is no pattern of recorded collisions along Newtons Lane to suggest development traffic arising from construction traffic or existing occupiers of dwellings located on Newtons Lane will exacerbate an existing road safety problem. It would therefore be unreasonable for us to raise an objection to the proposal but do not want to stagger the number of units beyond the prescribed value of up to the occupation of 20 dwellings.

10 Conclusion

10.1 On balance, it is considered that any potential concerns would be outweighed by the benefits of the scheme, which is considered to be in accordance with the policies contained within the development plan. This is given significant weight.

10.2 It is recommended that the variation of condition 3 of outline planning permission be granted subject to the below conditions.

<u>Recommendation</u>	
The Committee is asked to RESOLVE that planning permission be granted subject to the following conditions.	
1.	<p>The development hereby approved shall be carried out in accordance with drawing numbers ADC1044/005 revision D and drawing ADC1044/007 revision A received by the Local Planning Authority on 7 October and 29 January 2020 respectively. No more than 20 occupations of the proposed development shall take place until site access arrangements shown on drawing ADC1044/005 revision D have been provided.</p> <p><i>Reason: For the avoidance of doubt and in the interest of highway safety.</i></p>
2.	<p>Following the written approval of the Local Planning Authority dated 31 May 2023 of the Site Investigation findings, the remedial works identified, shall be implemented for each dwelling in full accordance with the approved details prior to the occupation of each dwelling.</p> <p><i>Reason: The undertaking of intrusive site investigations, prior to the commencement of development, is considered to be necessary to ensure that adequate information pertaining to ground conditions and coal mining legacy is available to enable appropriate remedial and mitigation measures to be identified and carried out before building works commence on site. This is in order to ensure the safety and stability of the development and</i></p>

	<i>in accordance with the aims of Policy 19 of the Broxtowe Part 2 Local Plan (2019).</i>
3.	<p>The hereby approved development shall be carried out in accordance with the approved Construction Method Statement (February 2023 REV B) unless otherwise agreed in writing by the Local Planning Authority.</p> <p><i>Reason: In the interest of highway safety.</i></p>
4.	<p>The hereby approved detailed Surface Water Drainage Scheme shall be carried out in accordance with the following approved details dated 01 August 2023 unless otherwise agreed in writing by the Local Planning Authority.</p> <p><i>Reason: A detailed surface water management plan is required to ensure that the development prevents an increase in flood risk, improves and protects water quality and sufficient surface water management in accordance with the aims of the NPPF and Policy 1 of the Broxtowe Part 2 Local Plan 2019.</i></p>
5.	<p>The hereby approved development shall be carried out in accordance with the approved details of appropriate gas prevention measures. No building to be erected pursuant to this permission shall be occupied or brought into use until:</p> <p>(i) all necessary remedial measures have been completed in accordance with details approved in writing by the local planning authority; and</p> <p>(ii) it has been certified to the satisfaction of the local planning authority that necessary remedial measures have been implemented in full and that they have rendered the site free from risk to human health from the contaminants identified.</p> <p><i>Reason: The application was submitted in outline only so no such details were provided. The development cannot proceed safely without such details being provided before development commences to ensure that the details are satisfactory, in the interests of public health and safety and in accordance with the aims of Policy 19 of the Broxtowe Part 2 Local Plan (2019).</i></p>
6.	<p>The hereby approved development shall be carried out in accordance with the approved Environmental Noise Assessment (210879, February 2022), unless otherwise agreed in writing.</p> <p>b) All noise mitigation measures shall be designed and installed in accordance with the approved mitigation scheme and completed under the supervision of an acoustic engineer. All</p>

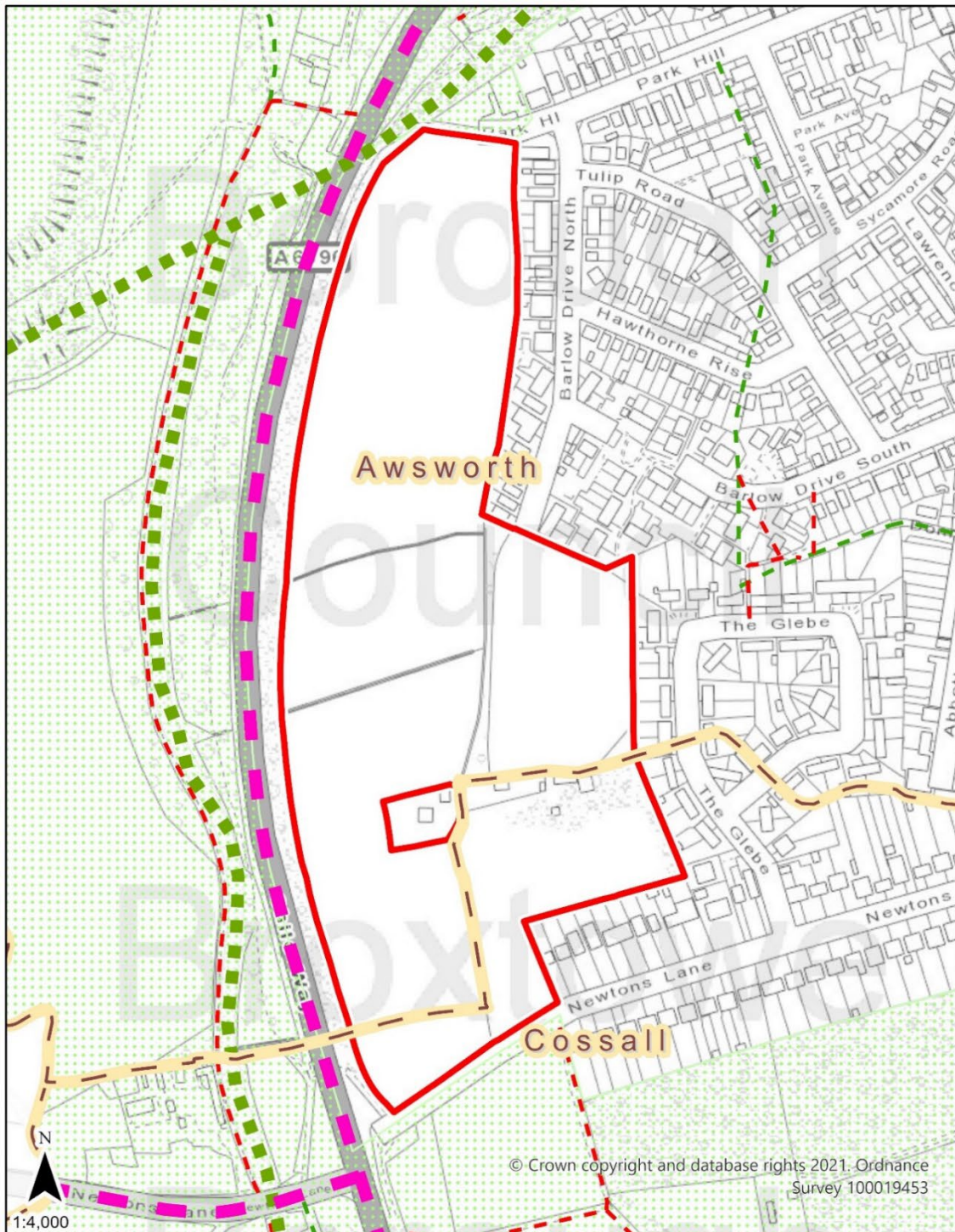
	<p>works shall be completed before any permitted dwelling is occupied.</p> <p><i>Reason: The application was submitted in outline only so no such details were provided. The development cannot proceed satisfactorily without such details being provided. In the interests of public health and safety and in accordance with the aims of Policy 19 of the Broxtowe Part 2 Local Plan (2019).</i></p>
7.	<p>Details of any necessary piling or other penetrative foundation design shall be submitted to and approved in writing by the Local Planning Authority including details of any mitigation measures to minimise the effects of noise and vibration on surrounding occupiers. The development shall be constructed in accordance with the approved details.</p> <p><i>Reason: The application was submitted in outline only so no such details were provided. The development cannot proceed satisfactorily without such details being provided before development commences in the interests of public health and safety so as to protect occupants from excessive construction noise and vibration and in accordance with the aims of Policy 19 of the Broxtowe Part 2 Local Plan (2019).</i></p>
8.	<p>The hereby approved development shall be carried out in accordance with the submitted Construction Environmental Management Plan dated October 2022, unless otherwise agreed in writing by the Local Planning Authority.</p> <p><i>Reason: To ensure the impact on ecology is minimised during construction and in accordance with the aims of Policy 31 of the Broxtowe Part 2 Local Plan (2019) and the NPPF.</i></p>
9.	<p>The hereby approved development shall be carried out in accordance with the submitted Biodiversity Enhancement and Management Plan dated October 2022, unless otherwise agreed in writing by the Local Planning Authority.</p> <p><i>Reason; To ensure the impact on ecology is minimised during construction and in accordance with the aims of Policy 31 of the Broxtowe Part 2 Local Plan (2019) and the NPPF.</i></p>
10.	<p>Any historic or archaeological features which are revealed when carrying out the development hereby permitted shall be retained in-situ and reported to the Local Planning Authority in writing within 5 working days. Works shall be halted in the area affected until provision has been made for the retention and/or recording and any associated reporting, publication and archiving commensurate to the archaeological work undertaken in</p>

	<p>accordance with details submitted to and approved in writing by the Local Planning Authority.</p> <p><i>Reason: To ensure appropriate investigation and recording/mitigation of any below ground archaeology in accordance with Paragraph 199 of the NPPF.</i></p>
	<p>NOTES TO APPLICANT</p>
1.	<p>The Council has acted positively and proactively in the determination of this application by working to determine it within the agreed determination timescale.</p>
2.	<p>This permission has been granted contemporaneously with an Agreement under Section 106 of the Town and Country Planning Act 1990, and reference should be made thereto.</p>
3.	<p>The submitted plans are for indicative purposes only in relation to access and this decision does not approve the layout, form or design of any of the dwellings, landscaping or any other matters.</p>
4.	<p>The developer will need to purchase first time bins. Notice will be served in due course. Properties will be allocated the following:</p> <ul style="list-style-type: none"> 1x 240l bin for residual waste 1x 240l bin for dry recycling 1x 37l bag for glass recycling.
5.	<p>The applicant should note that notwithstanding any planning permission that if any highway forming part of the development is to be adopted by the Highways Authority, the new roads and any highway drainage will be required to comply with the Nottinghamshire County Council’s current highway design guidance and specification for roadworks.</p> <ul style="list-style-type: none"> a) The Advanced Payments Code in the Highways Act 1980 applies and under section 219 of the Act payment will be required from the owner of the land fronting a private street on which a new building is to be erected. The developer should contact the Highway Authority with regard to compliance with the Code, or alternatively to the issue of a Section 38 Agreement and bond under the Highways Act 1980. A Section 38 Agreement can take some time to complete. Therefore, it is recommended that the developer contact the Highway Authority as early as possible. b) It is strongly recommended that the developer contact the Highway Authority at an early stage to clarify the codes etc. with which compliance will be required in the particular circumstance, and it is <u>essential</u> that design calculations and detailed construction drawings for the

	<p>proposed works are submitted to and approved by the County Council (or District Council) in writing before any work commences on site.</p>
6.	<p>The deposit of mud or other items on the public highway, and/or the discharge of water onto the public highway are offences under Sections 149 and 151 of the Highways Act 1980. The applicant, any contractors, and the owner / occupier of the land must therefore ensure that nothing is deposited on the highway, nor that any soil or refuse etc is washed onto the highway, from the site. Failure to prevent this may force the Highway Authority to take both practical and legal action (which may include prosecution) against the applicant / contractors / the owner or occupier of the land.</p>
7.	<p>Burning of commercial waste is a prosecutable offence. It also causes unnecessary nuisance to those in the locality. All waste should be removed by an appropriately licensed carrier.</p>
8.	<p>Many buildings still contain asbestos. In order to comply with the Control of Asbestos Regulations 2012, an assessment is required to determine whether the building has asbestos containing materials (ACMs). This must be carried out before any structural work on a building occurs. For properties or parts of properties that need upgrading, refurbishing or demolition, a 'Refurbishment/Demolition Survey is required. Copies of reports relating to asbestos identification and management should be sent to the Council's Environmental Health Team at health@broxtowe.gov.uk</p>
9.	<p>You will need to contact the Council's Environmental Health Team on 01159173714 to notify them of the arrival on site of any Mobile Crushing plant for them to carry out an inspection of the crushing equipment in line with the operational permit issued under the Pollution Prevention and Control Act 1999 Environmental Permitting (England and Wales) Regulations 2010 (as amended)</p>
10.	<p>Vegetation clearance should be avoided during the bird breeding season of March-August inclusive.</p>
11.	<p>Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. It is</p>

	<p>recommended that you check with us prior to commencing any works. Application forms for Coal Authority permission and further guidance can be obtained from The Coal Authority’s website at:</p> <p>https://www.gov.uk/get-a-permit-to-deal-with-a-coal-mine-on-your-property</p>
<p>12.</p>	<p>Severn Trent Water advises that there is a public sewer located within the application site. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals. Severn Trent Water will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development. If the applicant proposes to divert the sewer, the applicant will be required to make a formal application to the Company under Section 185 of the Water Industry Act 1991. They may obtain copies of our current guidance notes and application form from either our website (www.stwater.co.uk) or by contacting our Developer Services Team (Tel: 0800 707 6600).</p>
<p>13.</p>	<p>Searches have identified that there are gas apparatus within the vicinity of your site which may be affected by the proposals. Please contact Cadent Gas at plantprotection@cadentgas.com to discuss your proposals further. Further guidance can be found on both the Cadent Gas and National Grid websites and you are encouraged to investigate these matters prior to the commencement of development.</p>
<p>14.</p>	<p>As part of the detailed design of the scheme, consideration should be given to the potential for providing an indication of the former activity within the site and its links with the Bennerley Viaduct.</p>

Map



Legend

- | | |
|---|---|
|  Site Outline |  Bridleway |
|  Classified Road |  Footpath |
|  Green Infrastructure Corridor |  Green Belt |
|  Byway open to all traffic |  Boundaries - Parishes |

Photographs

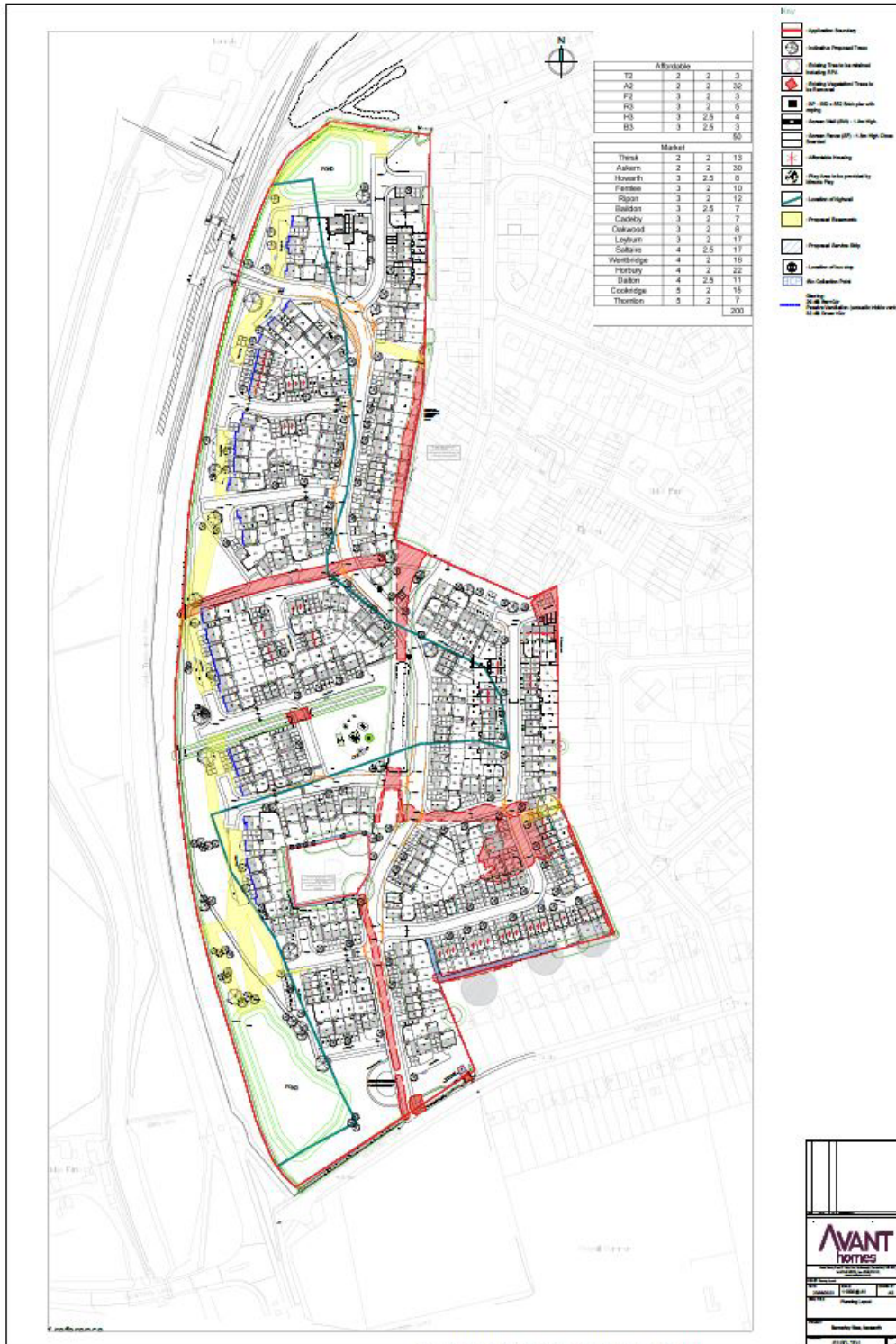




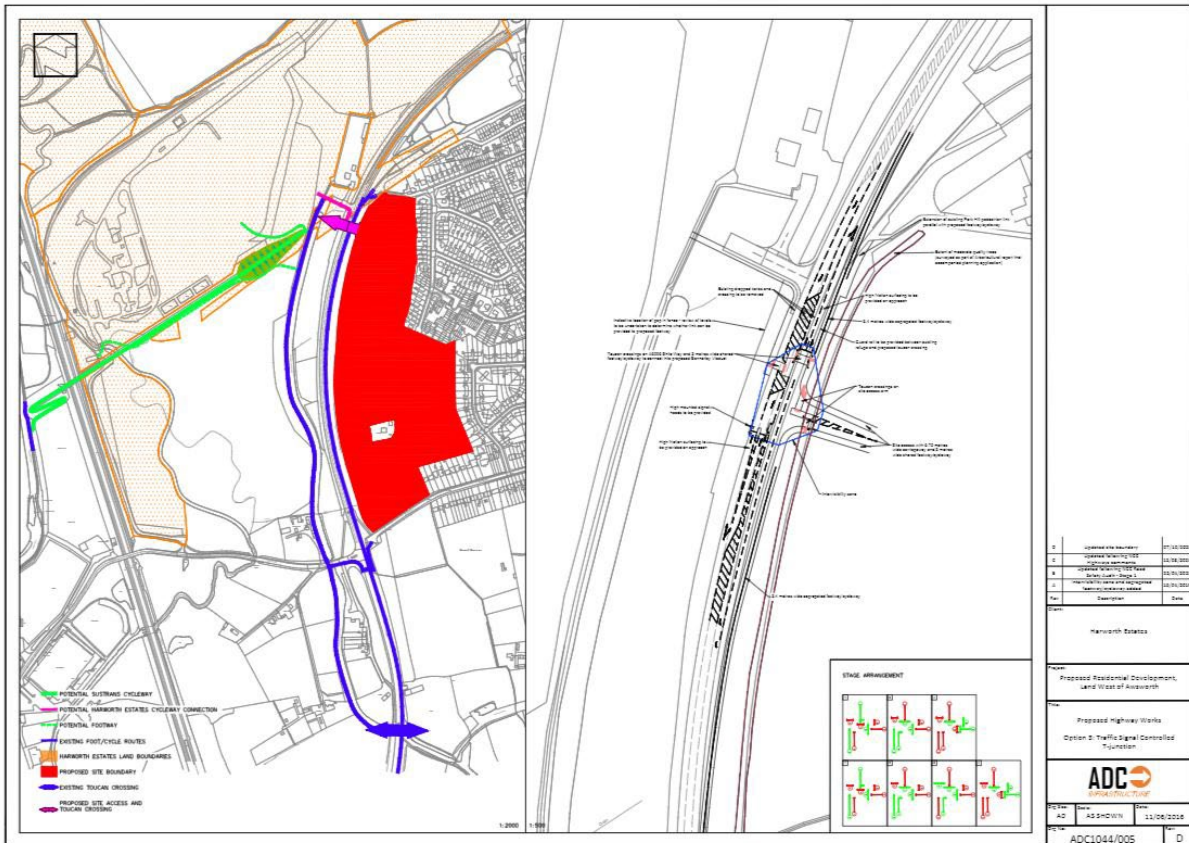


Plans (not to scale)

Approved Layout Plan



Approved Shilo Way Access



Approved Newtons Lane Access

