3. UPDATED INFORMATION NOTES

Item 6 (p.4) of the Agenda Papers includes information notes regarding the operation of this committee. These have been updated to reflect up to date officer delegation and Planning Committee arrangements. These are reproduced in full below:

Availability of Background Papers

Background papers may be inspected up to five working days before the date of the Committee meeting and for four years thereafter. Requests to inspect the background papers, most of which will be on the application file, should be made to the case officer named in the report or to the Development Manager. Although there is no legal provision for inspection of the application file before the report is placed on the agenda for the meeting, an earlier inspection may be agreed on application to the Head of Planning and Building.

Reasons for Committee Consideration

The majority of applications are determined by the Head of Planning and Building in accordance with the Council's Scheme of Delegation which is set out in the Council's Constitution. However, some applications are determined at the Area Planning Committees and this will happen if any of the following reasons apply:

- Applications which are contrary to the provisions of an approved or draft development plan or other statement of approved planning policy where adverse representations have been received and which is recommended for approval.
- Applications (excluding notifications) where a Member requests in writing, with reasons and within the stipulated time span, that they be submitted to Committee.
 A Member can withdraw this request at any time prior to the determination of the application to enable its determination under delegated powers
- Applications submitted by or on behalf of the Council, or any company in which the Council holds an interest, for its own developments except for the approval of minor developments.
- To determine applications (excluding applications for advertisement consent, listed building consent, and applications resulting from the withdrawal by condition of domestic permitted development rights; Schedule 2, Part 1, Classes B, C, D, E, F, G, and H of the Town and Country Planning (General Permitted Development) (England) Order 2015 or as amended) on which a material planning objection(s) has been received in the stipulated time span and which cannot be resolved by negotiation or through the imposition of conditions and where the officer's recommendation is for approval, following consultation with the Ward Members, the latter having the right to request that the application be reported to Committee for decision.

Public Speaking at the Meeting

The Council has a public participation scheme, which invites members of the public, Parish Council representatives and applicants to address the Committee on applications. Full details of the scheme are available from Planning and Building Services or from the Committee Administrator at the Council Offices, Beech Hurst, Weyhill Road, Andover. Copies are usually sent to all those who have made representations. Anyone wishing to speak must book with the Committee Administrator within the stipulated time period otherwise they will not be allowed to address the Committee.

Speakers are limited to a total of three minutes per item for Councillors on the Area Committee who have personal interests or where a Member has pre-determined his/her position on the relevant application, three minutes for the Parish Council, three minutes for all objectors, three minutes for all supporters and three minutes for the applicant/agent Where there are multiple supporters or multiple objectors wishing to speak the Chairman may limit individual speakers to less than three minutes with a view to accommodating multiple speakers within the three minute time limit. Speakers may be asked questions by the Members of the Committee, but are not permitted to ask questions of others or to join in the debate. Speakers are not permitted to circulate or display plans, photographs, illustrations or textual material during the Committee meeting as any such material should be sent to the Members and officers in advance of the meeting to allow them time to consider the content.

Content of Officer's Report

It should be noted that the Officer's report will endeavour to include a summary of the relevant site characteristics, site history, policy issues, consultations carried out with both internal and external consultees and the public and then seek to make a professional judgement as to whether permission should be granted. However, the officer's report will usually summarise many of the issues, particularly consultations received from consultees and the public, and anyone wishing to see the full response must ask to consult the application file.

Status of Officer's Recommendations and Committee's Decisions

The recommendations contained in this report are made by the officers at the time the report was prepared. A different recommendation may be made at the meeting should circumstances change and the officer's recommendations may not be accepted by the Committee.

In order to facilitate debate in relation to an application, the Chairman will move the officer's recommendations in the report, which will be seconded by the Vice Chairman. Motions are debated by the Committee in accordance with the Council's Rules of Procedure. A binding decision is made only when the Committee has formally considered and voted in favour of a motion in relation to the application and, pursuant to that resolution, the decision notice has subsequently been issued by the Council.

Conditions and Reasons for Refusal

Suggested reasons for refusal and any conditions are set out in full in the officer's recommendation.

Officers or the Committee may add further reasons for refusal or conditions during the Committee meeting and Members may choose to refuse an application recommended for permission by the Officers or to permit an application recommended for refusal. In all cases, clear reasons will be given, by whoever is promoting the new condition or reason for refusal, to explain why the change is being made.

Decisions subject to Completion of a Planning Obligation

For some applications, a resolution is passed to grant planning permission subject to the completion of an appropriate planning obligation (often referred to as a Section 106 agreement). The obligation can restrict development or the use of the land, require operations or activities to be carried out, require the land to be used in a specified way or require payments to be made to the authority.

New developments will usually be required to contribute towards the infrastructure required to serve a site and to cater for additional demand created by any new development and its future occupants. Typically, such requirements include contributions to community facilities, village halls, parks and play areas, playing fields and improvements to roads, footpaths, cycleways and public transport.

Upon completion of the obligation, the Head of Planning and Building is delegated to grant permission subject to the listed conditions. However, it should be noted that the obligation usually has to be completed sufficiently in advance of the planning application determination date to allow the application to be issued. If this does not happen, the application may be refused for not resolving the issues required within the timescale set to deal with the application.

Deferred Applications

Applications may not be decided at the meeting for a number of reasons as follows:

- * The applicant may choose to withdraw the application. No further action would be taken on that proposal and the file is closed.
- * Officers may recommend deferral because the information requested or amended plans have not been approved or there is insufficient time for consultation on amendments.
- * The Committee may resolve to seek additional information or amendments.
- * The Committee may resolve to visit the site to assess the effect of the proposal on matters that are not clear from the plans or from the report. These site visits are not public meetings.

Visual Display of Plans and Photographs

Plans are included in the officers' reports in order to identify the site and its surroundings. The location plan will normally be the most up-to-date available from Ordnance Survey and to scale. The other plans are not a complete copy of the application plans and may not be to scale, particularly when they have been reduced from large size paper plans. If further information is needed or these plans are unclear please refer to the submitted application in the reception areas in Beech Hurst, Andover or the Former Magistrates Court office, Romsey. Plans displayed at the meeting to assist the Members may include material additional to the written reports.

Photographs are used to illustrate particular points on most of the items and the officers usually take these. Photographs submitted in advance by applicants or objectors may be used at the discretion of the officers.

Human Rights

The European Convention on Human Rights" ("ECHR") was brought into English Law, via the Human Rights Act 1998 ("HRA"), as from October 2000.

The HRA introduces an obligation on the Council to act consistently with the ECHR.

There are 2 Convention Rights likely to be most relevant to Planning Decisions:

- * Article 1 of the 1st Protocol The Right to the Enjoyment of Property.
- * Article 8 Right for Respect for Home, Privacy and Family Life.

It is important to note that these types of right are not unlimited - although in accordance with the EU concept of "proportionality", any interference with these rights must be sanctioned by Law (e.g. by the Town & Country Planning Acts) and must go no further than necessary.

Essentially, private interests must be weighed against the wider public interest and against competing private interests. Such a balancing exercise is already implicit in the decision making processes of the Committee. However, Members must specifically bear Human Rights issues in mind when reaching decisions on all planning applications and enforcement action.

Natural Environment and Rural Communities Act 2006 (NERC)

The Council has a duty under the Natural Environment and Rural Communities Act 2006 as follows: "every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity".

It is considered that this duty has been properly addressed within the process leading up to the formulation of the policies in the Revised Local Plan. Further regard is had in relation to specific planning applications through completion of the biodiversity checklists for validation, scoping and/or submission of Environmental Statements and any statutory

consultations with relevant conservation bodies on biodiversity aspects of the proposals. Provided any recommendations arising from these processes are conditioned as part of any grant of planning permission (or included in reasons for refusal of any planning application) then the duty to ensure that biodiversity interest has been conserved, as far as practically possible, will be considered to have been met.

Other Legislation

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that determination of applications be made in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for the Borough comprises the Test Valley Borough Revised Local Plan (2016), and 'made' Neighbourhood Plans. Material considerations are defined by Case Law and includes, amongst other things, draft Development Plan Documents (DPD), Supplementary Planning Documents (SPD) and other relevant guidance including Development Briefs, Government advice, amenity considerations, crime and community safety, traffic generation and safety. On the 19th February 2019 the Government published a revised National Planning Policy Framework (NPPF). The revised NPPF replaced and superseded the previous NPPF published in 2018. The revised NPPF is a material consideration in planning decisions. So that sustainable development is pursued in a positive way, at the heart of the revised NPPF is a presumption in favour of sustainable development. Decisions should apply a presumption in favour of sustainable development. This does not change the statutory status of the development plan as a starting point for decision making. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Where a planning application conflicts with an up to date development plan, permission should not usually be granted. Local planning authorities may take decisions which depart from an up to date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

For decision-taking, applying the presumption in favour of sustainable development means:

- Approving development proposals that accord with an up to date development plan without delay; or
- Where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless:
 - The application of policies in the revised NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - Any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the revised NPPF when taken as a whole.

Existing Local Plan policies should not be considered out of date because they were adopted prior to the publication of the revised NPPF. Due weight should be given to them, according to their degree of consistency with the revised NPPF (the closer the policies in the Local Plan to the policies in the revised NPPF, the greater the weight that may be given).

4. <u>APPLICATIONS</u>

7 .	18/01695/FULLN (PERMISSION) 04.07.2018	10 – 19
	SITE: 1A Mylen Road and 61C Charlton Road,	
	ANDOVER TOWN (HARROWAY)	

CASE OFFICER: Mrs Samantha Owen

8. 18/02362/FULLN (PERMISSION) 06.09.2018 SITE: Rosebourne Garden Centre, Amesbury Road, Weyhill, SP11 8ED, AMPORT

CASE OFFICER: Miss Emma Jones

APPLICATION NO. 18/01695/FULLN

SITE 1A Mylen Road And 61C Charlton Road, Andover,

Hampshire, SP10 3HJ, ANDOVER TOWN

(HARROWAY)

COMMITTEE DATE 16 May 2019

ITEM NO. 7 **PAGE NO.** 10-19

1.0 REPRESENTATIONS

1.1 9 x letter of representation from 2 (2), 4, 5, 6, 8, 12, 19 Mylen Road, 100 Charlton Road.

- Object to statements in the Officers Report regarding the flats above the Co-op.
- The highest source of the odour will be the external exhaust cowl of the extraction system which is closer to the 1st floor flats above the Co-op than number 1 Mylen Road, the change to the two stage filter occurred after the development of the flats.
- Assessment of odours and noise should be carried out.
- Highest noise may be the condenser units and these have been relocated since the Pizza Hut opened, the condensers are closer to the flats than 1 Mylen Road. The flats have the Co-op condensers within 2 metres of their windows which were there before the Pizza Hut so they receive a combination. The layout of the odour control fans and filters have changed and it is not known what effect that has had on noise levels.
- Concern about enforceability of conditions under 15/01745/FULLN
- Conditions from 15/01745/FULLN should be carried forward onto this application, in particular trading times and deliveries and waste.

2.0 PLANNING CONSIDERATIONS

- 2.1 Third party concern has been expressed regarding the first floor flats above the Co-op. These flats were the subject of a Prior Notification procedure under Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015. Class O of the GPDO 2015 allowed for the change of use of a building from Class B1(a) to Class C3 (dwelling houses). Conditions are attached by the Order including the requirement for the developer to apply to the local planning authority for a determination as to whether the prior approval of the authority would under the 2015 Order be required as to:
 - a) Transport and highway impacts of the development;
 - b) Contamination risks on the site; and
 - c) Flooding risks on the site
- 2.2 When determining the Class O application the Case Officer can only consider the above issues. Consideration in this case of odour and noise from existing commercial premises was not possible.
- 2.3 Notwithstanding the above with regard to noise under the original planning

application 15/01745/FULLN a Condition was attached that stated:

Noise from the external plant, hereby approved, shall not exceed 29dB(a) at the boundary of Mylen Road and 25 dB at the boundary of Charlton Road. Reason: In the interests of the amenity of the occupiers of nearby properties and in accordance with policy E8 of the Test Valley Borough Revised Local Plan 2016.

Environmental Protection have advised that this Condition would also cover the occupiers of the flats above the Co-op and would ensure that they would not be subject to detrimental levels of noise for the plant attached to the Pizza Hut.

- With regard to the issue of odour, third party concern is with the exhaust cowl which they conclude would be where the highest source of the odour would occur. They state that this exhaust cowl would be closer to the flats above the Co-op than number 1 Mylen Road. The exhaust flue for the Pizza Hut is located immediately adjacent to the boxed in flue that serves the Excelsior Chinese take away located at 61C Charlton Road. The Pizza Hut flue is actually closer to 1 Mylen Road than the flats above the Co-op. The separation distance between the Pizza Hut premises and the Co-op are at their closest 6 metres, whilst the Pizza Hut shares a boundary with 1 Mylen Road. The third party concern refers to the fact that the installed two stage odour control system would have been fitted after the creation of the flats. Environmental Protection confirmed that the two stage odour control system would also protect the amenities of the occupiers of the flats above the Co-op to an acceptable level.
- 2.5 Third party concern has also been raised about the enforceability of the conditions attached to 15/01745/FULLN. The current application is a stand alone application specifically dealing with the extraction system. Planning permission 15/01745/FULLN is considered to have been implemented and the conditions on this permission remain enforceable.
- 2.6 The NPPF states that "Planning condition should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other aspects." Third party concern has been expressed that the conditions as imposed under 15/01745/FULLN should be attached to this decision. This application only seeks changes to the extraction system and is a stand alone application. The previous Conditions under 15/01745/FULLN are still enforceable. Re attaching the Conditions from 15/01745/FULLN is unnecessary and therefore fails the tests as set out in the NPPF.
- 2.7 In paragraph 8.9 of the NAPC report reference is made to the conditioning of delivery and trading times under the previous application 15/01745/FULLN. The relevant conditions still apply and required the following:
 - Deliveries of supplies to the site shall only take place between 0730 and 1800 Monday to Friday and between 0800 and 1300 on Saturdays.
 - Trade shall not take place outside the hours of 1100 and 2300 on any day.
- 2.8 Paragraph 8.16 of the NAPC Report considers the possibility of a maintenance

condition for the odour control system. The Environmental Protection Act 1990 (as amended) defines smell as a potential statutory nuisance and gives powers to Local Authorities to allow them to serve abatement notices to deal with such matters. These powers are exercised through the Council's Housing and Environmental Health function.

The National Planning Practice Guidance repeats the 6 tests that conditions are required to meet. One of these is whether the proposed condition is relevant to planning. As part of an accompanying "Key Questions" guide to conditions it explains that:

"Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways' consent)."

In the circumstances of this case there are clearly powers available for the Council outside of the Planning realm to deal with smell nuisance that may arise from the commercial cooking of hot food.

2.9 The standard approved plans condition has been attached for clarity and is listed below as Condition 2.

3.0 **RECOMMENDATION**

PERMISSION subject to conditions 1 and 2 and note 1.

- 1. The Odour Control System as shown on the layout plan 14.0164 REV E and the System Specification Sheet from Canopy UK received 25.10.2018 shall be retained whilst the permitted Class A5 use occupies the premises. No frying shall take place on the premises.
 - Reason: In the interests of the amenity of the occupiers of nearby properties and in accordance with policy E8 of the Test Valley Borough Revised Local Plan 2016.
- 2. The development hereby permitted shall not be carried except in complete accordance with details shown on the submitted plan; 14.0164 REV E.

Notes to applicant:

1. In reaching this decision Test Valley Borough Council (TVBC) has had regard to paragraphs 186 and 187 of the National Planning Policy Framework and takes a positive and proactive approach to development proposals focused on solutions. TVBC work with applicants and their agents in a positive and proactive manner offering a pre-application advice service and updating applicants/agents of issues that may arise in dealing with the application and where possible suggesting solutions.

APPLICATION NO. 18/02362/FULLN

SITE Rosebourne Garden Centre, Amesbury Road,

Weyhill, SP11 8ED, AMPORT

COMMITTEE DATE 16 May 2019

ITEM NO. 8. **PAGE NO.** 20-37.

1.0 AMENDMENTS AND CONSIDERATIONS

- 1.1 It has been confirmed by the applicant's agent that for security purposes it is proposed to fence between the proposed plant sales area and the car park. A plan showing the proposed fencing has been submitted, and is included in this update paper. Recommended condition 2 in the main agenda report has also been amended to reflect this, as set out within the recommendation below. The proposed fencing would be the same as that which currently encloses the existing open plant sales area, and would be appropriate in this location in combination with the proposed hedge planting, and would maintain the character of the area in accordance with policies E1 and E2 of the Test Valley Borough Revised Local Plan 2016.
- 1.2 In consultation with the Hampshire County Council Archaeologist, recommended condition 3 in the main agenda report has been amended to be more specific in respect of which elements of the proposal are required to form part of the Written Scheme of Investigation in respect of potential archaeological remains at the site. This is reflected in the recommendation below.
- 1.3 As set out within the main agenda report (paragraphs 8.10-8.12), the proposed car park extension is justified on the basis that it would provide the required parking provision in association with the proposed extended plant sales area. Recommended condition 7 in the main agenda report has therefore been amended to ensure that both elements of the proposal are implemented together. This is reflected in the recommendation below.
- 1.4 In consultation with the applicant's agent, recommended condition 8 in the main agenda report has been amended for clarity, as set out within the recommendation below.
- 1.5 As a result of the publication of the Town and Country Planning (Precommencement Conditions) Regulations 2018 on the 1st October 2018, notice is required to be given to an applicant of the Local Planning Authority's intention to impose pre-commencement conditions, should planning permission be granted for a proposed development. This was carried out in relation to this application, and in particular in respect of recommended condition 3 in the main agenda report. The applicant has confirmed that this condition is acceptable.

2.0 **RECOMMENDATION**

PERMISSION subject to conditions and notes:

1. The development hereby permitted shall be begun within three years from the date of this permission.

Reason: To comply with the provision of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers: 2911-10-P08 C; 2911-20-50 Rev A. Reason: For the avoidance of doubt and in the interests of proper planning.
- 3. No development shall take place until a Written Scheme of Investigation (WSI) that sets out the methodology for an archaeological watching brief of the ground works associated with the construction of the proposed development, and in particular the proposed plant sales area, the car park extension and the access road to the car park extension, so that any archaeological remains encountered are recognised, characterised and recorded, has been submitted to and approved in writing by the Local Planning Authority. The WSI should also make provision for the public dissemination of any results. Development shall be carried out in accordance with the approved details.

Reason: Archaeological work is required prior to construction of the development in order to assess the extent, nature and date of any archaeological deposits that might be present, to assess the impact of the development upon these heritage assets, to mitigate the effect of the works associated with the development upon any heritage assets, and to ensure that information regarding these heritage assets is preserved by record for future generations in accordance with Test Valley Borough Revised Local Plan 2016 policy E9.

4. Notwithstanding the details submitted, the development hereby permitted shall not be occupied or brought into use until full details of the soft landscape works within the site have been submitted to and approved in writing by the Local Planning Authority. The details of the soft landscape works shall include: planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities. Details shall also include a landscape implementation programme and a management plan for a minimum period of 5 years. The soft landscape works shall be implemented and managed in accordance with the approved details.

Reason: To ensure that landscaping and landscape features enable the development to positively integrate into the landscape character of the area and to ensure that arrangements for the long term management and maintenance of proposed landscaping have been made in accordance with Test Valley Borough Revised Local Plan (2016) Policy E2.

5. No external lighting shall be installed at the site until full details of such lighting have been submitted to and approved in writing by the Local Planning Authority. The lighting shall be installed in accordance with the approved details and shall be switched off within one hour of the premises closing to the public, and shall not be switched on any earlier that one hour prior to the premises

opening to the public. No further lighting shall be installed at the site.

Reason: In the interest of the amenities in the local area in accordance with Test Valley Borough Revised Local Plan 2016 Policies E2 and E8.

- 6. The development hereby permitted shall be carried out in accordance with the measures set out in sections; "Precautionary Methods of Working With Respect to Reptiles"; "Ecological Enhancement"; and "Long Term Management Strategy for Biodiversity" of the submitted SLR Update Ecological Walkover (2018) document.
 - Reason: To conserve, restore and enhance biodiversity in accordance with Test Valley Borough Revised Local Plan 2016 Policy E5.
- 7. The car park extension hereby permitted shall be brought into use at the same time as the plant sales area hereby permitted, and neither element shall be implemented separately from the other. The car parking spaces shall be laid out in accordance with the approved plans and following their first use shall thereafter be reserved for such purposes at all times.
 - Reason: To ensure that there is an essential need for the development in this countryside location and in the interests of highway safety in accordance with Test Valley Borough Revised Local Plan (2016) Policies COM2 and T1.
- 8. The extended plant sales area hereby permitted shall only be used for the sale of plants or non-plant goods limited to those listed on the submitted "Proposed Expansion of Merchandising in the Open Sales Area" document (received 29.10.2018).

 Reason: To protect the vitality and viability of the town centre in accordance with Policy LE11 of the Test Valley Borough Revised Local Plan 2016.
- 9. The development hereby permitted shall not open to customers except between the following times; 09:00 and 18:00 hours Monday to Saturday, and between 10:00 and 16:00 hours on Sundays and bank and public holidays.

 Reason: In the interest of the local amenities and the character of the area in accordance with Policies E8 and E2 of the Test Valley
- 10. No deliveries shall be taken to or dispatched from the site except between the hours of 08:00 to 18:00 hours Monday to Saturday, and between the hours of 09:00 to 16:00 hours on Sundays and bank and public holidays.

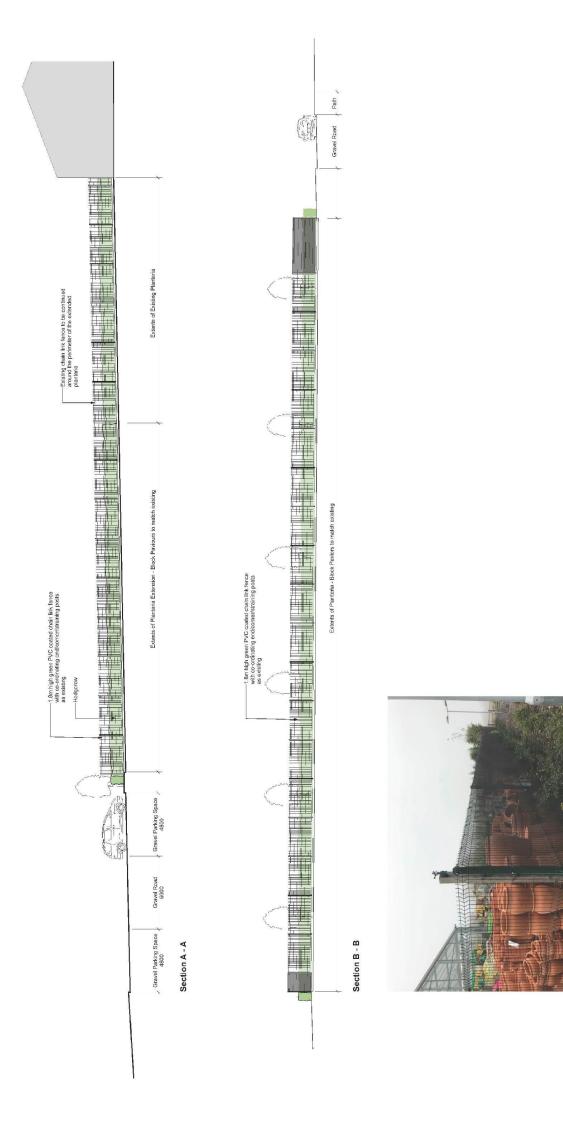
Borough Revised Local Plan 2016.

- Reason: To protect the amenities of residents in the vicinity in accordance with Policy E8 of the Test Valley Borough Revised Local Plan 2016.
- 11. No goods, plant or material shall be deposited or stored in the open (or displayed for sale in the open) on the site (other than within the areas expressly authorised by this permission).
 - Reason: In order to protect the amenities of the area in accordance with Policy E2 of the Test Valley Borough Revised Local Plan 2016.

Notes to applicant:

1. In reaching this decision Test Valley Borough Council (TVBC) has

had regard to the National Planning Policy Framework and takes a positive and proactive approach to development proposals focused on solutions. TVBC work with applicants and their agents in a positive and proactive manner offering a pre-application advice service and updating applicants/agents of issues that may arise in dealing with the application and where possible suggesting solutions.



CLIENT Rosebourne Ltd

DRAWING INFORMATION

Therebore to be received or an information displayed
universor to be received or an information displayed
universe state. This crawing and information displayed
the confidence of the confid

Existing planteria perimeter fencing

TITLE
Proposed Site Sections
PLANNING DRAWING

PROJECT
Car Park Extension
Weyhill Garden Centre
Amesbury Road, Weyhill, Andover

REV DWGNO 2911-20-50 Nov 2017 DRAWN KLH DATE Planning SCALE @ A1 1:100 SCALE @ A3 1: 200 STATUS

hpw Design

25 M

20

15

9