

REPORT OF THE HEAD OF PLANNING SERVICES

SECTION 1: Planning Applications

SECTION 2: Appeals

In accordance with the provisions of Section 100D of the Local Government Act 1972, BACKGROUND PAPERS are the contents of the files whose registration numbers are quoted at the head of each report, but this does not include material which is confidential or exempt (as defined in Sections 100A and D of that Act, respectively).

1. PLANNING APPLICATIONS

This section includes reports on applications for: approvals of reserved matters, listed building consent, work to trees in tree preservation orders and conservation areas, conservation area consent, hedgerows work, advertisement consent, notices for permitted development under the General Permitted Development Order 1995 (as amended) and responses to County Matters.

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When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

1. The issues of fact raised by the Head of Planning Services' report or offered in explanation at the Committee meeting require further clarification by a demonstration of condition of site.
2. Further issues of principle, other than those specified in the report of the Head of Planning Services, arise from a Member's personal knowledge of circumstances on the ground that lead to the need for clarification that may be achieved by a site visit.
3. Implications that may be demonstrated on site arise for consistency of decision making in other similar cases.

06/06/2006

Item 1.1**Reg. No.** 9/2005/1390/U**Applicant:**
Martin Smith
C/O Agent**Agent:**
Philip Brown Associates
74 Park Road
Rugby
CV21 2QX**Proposal:** Change of use to gypsy caravan site for three families
of Land At Cauldwell Road Linton Swadlincote**Ward:** Linton**Valid Date:** 29/11/2005**Site Description**

The application site comprises vacant land in open countryside outside the settlement of Linton. It is enclosed by fences and hedges. The site is in a very untidy condition having been the subject of tipping.

Proposal

Land within the applicant's ownership comprises a plot some 115m deep that has around 19m of road frontage. This application relates to the first 40m of the site and is for its use as a gypsy caravan site. It is proposed that there would be a maximum of three caravans for occupation by the applicant and his family. It is also proposed that there would be two toilets and two showers within an amenity block the details for which have yet to be submitted. Vehicular access would be at the western side of the frontage.

Applicants' supporting information

In support of the application the applicant's agent has submitted additional information that is summarised as follows:

The application site was the subject of an appeal in April 2003. The sole issue at that time was whether occupants of caravans on this site would be at risk from landfill gas emissions, underground combustion and/or the presence of asbestos waste. The inspector was not satisfied at that time that the effects of potential contamination were adequately dealt with and he dismissed the appeal solely for that reason. Further investigations have been carried out and the findings support the earlier survey reports. This identified that the southern part of the site (i.e. that closest to the road) can safely be developed with a caravan site.



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SCALE 1:1250

This application confines caravans to the southern part of the site and includes details of the method for dealing with contamination. Landscaping is proposed along the front and side boundaries.

Planning History

There is much history to this site. In 2001 an application for the siting of five caravans was refused under reference 9/2001/0814/U. The subsequent appeal was dismissed solely on the grounds that the issue of contamination had not been satisfactorily dealt with. A further application for use as a gypsy caravan site was refused in 2004 under reference 9/2004/0980/U again because the issue of contamination has not been adequately resolved. In addition to these applications for planning permission the site has also been the subject of enforcement action in respect of its untidy condition and unauthorised occupation.

Responses to Consultations

The County Highways Authority has reiterated comments made in respect of earlier applications, as there is no change in circumstances insofar as highway matters are concerned and it raises no objections subject to conditions.

Severn Trent Water and the Environment Agency have no objection subject to conditions requiring agreement of the means of disposal of both surface water and foul water and methods to deal with contamination.

The Pollution Control Officer (contaminated land) is now satisfied that the remedial works for dealing with the contamination on this land are acceptable.

Responses to Publicity

One individual letter of objection has been received together with petitions of 129 signatories. The following objections have been raised:

- There has been no change in circumstances since the previous applications were refused
- Development is not permitted outside the village confines where the countryside should be protected
- The site is green belt, in the National Forest, in an unsustainable settlement and these policies should apply equally to all parts of the community including gypsies
- The site has been declared unfit for human habitation and there is therefore a question about occupation of this land from a health and the safety point of view
- Although the application is for three caravans past experience is that this number of caravans will in all likelihood be exceeded along with associated problems
- Unfair to have a further gypsy site in Linton and the last itinerants caused damage and speeding vehicles caused danger

RSS/Structure/Local Plan policies

The relevant policies are:

RSS8: N/A

Derby and Derbyshire Joint Structure Plan: General development Strategy Policy 4, Housing Policy 8, Transport Policy 4

Adopted Local Plan: Environment Policy 1, Housing Policy 8, Housing Policy 15, Transport Policy 6.

National Guidance/Policy

Circular 1/06 - Planning for Gypsy and Traveller Sites – states that the Government's key objective for housing is to ensure that everyone has the opportunity of living in a decent home and it promotes the encouragement of Gypsies to provide their own sites. In summary, its intentions are:-

- To create and support sustainable, respectful and inclusive communities where gypsies and travellers have fair access to suitable accommodation, education, health and welfare provision, and where there is mutual respect between all communities for the rights and responsibilities of each community and individual;
- To reduce the number of unauthorised encampments and developments and the conflict and controversy they cause and to make enforcement more effective where local authorities have complied with the guidance in this Circular;
- To increase significantly the number of Gypsy and Traveller sites in appropriate locations with planning permission in order to address under-provision;
- To recognise, protect and facilitate the traditional lifestyle of Gypsies and Travellers whilst respecting the interests of the settled community;
- To underline the importance of assessing needs at regional and sub-regional level and for local authorities to develop strategies to ensure that needs are dealt with fairly and effectively;
- To develop strategies to ensure that needs are dealt with fairly and to make provision for the resultant land and accommodation requirements;
- To ensure that DPD's include fair, realistic and inclusive policies to ensure identified need is dealt with fairly and effectively;
- To promote more private Gypsy and Traveller site provision in appropriate locations through the planning system, while recognising that there will always be those who cannot provide their own sites; and
- To help or avoid Gypsies and Travellers becoming unintentionally homeless;

Other guidance is available in:

- The Good Practice guide entitled "Managing Unauthorised Camping", issued jointly by the Home Office and DETR, that advised local authorities to build planning aspects into their overall Traveller strategy and avoid setting criteria that, in practice, might prove too difficult to meet. The Housing Research concluded that site provision is an essential corollary to tackling unauthorised encampments.

- Guidance on homelessness from the DETR advises that homeless Travellers should be treated equally with homeless members of the settled population, without removing their freedom to live outside conventional housing if they should so wish. It reminds local authorities that they have statutory duties to travelling people under homelessness and other legislation.
- The Housing Act 2004 requires local authorities to take account of the accommodation needs of Gypsies and Travellers and to create strategies for meeting those needs in the same way as they do for the settled community.

Planning Considerations

The main issues central to the determination of this application are:

- Government advice for the provision of gypsy sites
- Conformity with the Development Plan
- The need for additional gypsy caravan pitches in the area
- The impact of the development on the character and appearance of the area
- Access and highway safety

Planning Assessment

The application site lies in the countryside within which Planning Policy Statement 7 and Development Plan policies seek to strictly control new building away from settlements. However, Circular 1/06 specifically seeks to increase the supply in the provision of sites for Gypsies and Travellers to address a national shortfall - including in rural areas.

Under the revised guidance, local authorities are required to rigorously assess the accommodation needs of Gypsies and Travellers and make site specific allocations for new public and private sites in development plans.

In dealing with planning applications in the meantime, local planning authorities will necessarily have to rely upon existing criteria-based policies and estimate "need" on the basis of existing data that the Circular sets out as a checklist of information necessary to draw a conclusion. The list includes incidents of unauthorised encampments, the status of existing authorised private sites, the number and outcomes of planning applications, the levels of occupancy on private and public sites and the twice yearly caravan counts undertaken on behalf of ODPM. The Circular states that local planning authorities will be expected to demonstrate that they have considered this information, where relevant, before any decision to refuse a planning application for a gypsy and traveller site and to provide it as part of any appeal documentation.

To summarise, therefore, the development or extension of gypsy sites in the countryside such as the current application is inappropriate unless, firstly, available data demonstrates that a need for such accommodation exists which cannot be met on any existing sites, and secondly the proposal is acceptable in other planning respects. Notwithstanding the fact that the Inspector accepted all issues relating to this site except for the question of whether the site is fit for human habitation, these considerations are examined in detail below to assess whether there has been any change in circumstances.

Need

It is accepted that the Smith family are gypsies and it is understood that they are engaged in upvc fitting and that they have travelled between Cheshire and Bedfordshire for at least the past eight years. Whilst planning authorities are advised not to refuse applications solely because a family has no links with an area, it is understood that the Smiths have relatives in Hinckley and Blaby.

In common with many other parts of the country, there has been no comprehensive needs assessment undertaken in South Derbyshire although initial work to undertake such a study on a county-wide basis is underway. However, this Council already maintains reasonable records on much of the information specified in the Circular as follows:

A report was commissioned from KGS in 2004 that sought to establish the welfare needs of Gypsies and Travellers who are already based in South Derbyshire. It identified that the travelling community was generally satisfied with the sites where interviews took place but it also established that the site at Park Road, Overseal is not available to the travelling community because the site owner had chosen to no longer let pitches to travellers. It also showed that the turnover at the well-established sites was very small because, once based in the area, its attractiveness, low crime rates and other factors make staying in South Derbyshire a priority. The respondents generally had no conflict with the resident community and the majority had been in their existing site in excess of one year, 35% having been in residence for over 5 years.

Caravan counts undertaken by this Council on behalf of ODPM show that unauthorised encampments in South Derbyshire are skewed towards the northern part of the District – particularly the Hilton and Hatton areas. At the time of writing the available data relates to the period March 2004 – 05 and during this period two incidents of unauthorised encampments occurred involving a total of 2 caravans in the Linton area.

Existing public sites at Church Broughton and Lullington continue to be generally fully occupied with turnover of plots being relatively rare. Although some refurbishment work is being undertaken to both the public sites, on 17 May this year the position at the Lullington site, which offers short stay accommodation and which is relatively close to the application site, is that of the eight plots two were vacant and unable to be filled at the present time because of works at the site. There is a further caravan site at Park Road, Overseal that was originally allowed as a gypsy caravan site but was unrestricted in terms of occupants and over the years it has become occupied by non-travellers. In planning terms there appears to be no reason that gypsies would be restricted from occupying the site if they wished to do so but it is currently the owner's choice to restrict gypsy occupation.

In terms of planning applications over the past five years, this Council has granted permission for small private sites at Walton on Trent and Overseal and extensions were granted at both existing public sites at Church Broughton and Lullington.

In conclusion on the issue of need, whilst there is no overwhelming pressure, there appears to be some degree of unmet demand in this part of the District evidenced by the two unauthorised encampments and the uptake of pitches at Lullington.

Other Planning Considerations

Adopted Local Plan Housing Policy H15 reflects Structure Plan guidance and forms the main basis for assessing the application. It contains six criteria that require:

- I. New gypsy sites be in an area already frequented by gypsies
- II. A satisfactory location in relation to other development
- III. That the site is acceptable in environmental terms
- IV. That the site is reasonably accessible to community services and facilities
- V. Sympathetic assimilation into the landscape
- VI. An acceptable vehicular and pedestrian access can be provided

In assessing the above criteria, it is clear that this is an area already frequented by gypsies most directly evidenced by the gypsy site at Lullington Crossroads.

As to neighbouring land uses, in environmental and landscape terms, the site lies within open countryside and is located some 400m from the edge of the village. In these respects there has been no change in circumstances since the inspector considered that if all other matters could be satisfied this site would be appropriate as a gypsy site. As to the wider locality, the topography is such that appropriate landscaping to the site boundaries could mitigate any visual intrusion.

In terms of sustainability, the site lies around 600m from the closest shop. The Post Office and primary school are further away at the opposite side of the village whilst medical and secondary school provision are yet further afield in Overseal and Swadlincote. The Circular advises that rural settings for gypsy sites are acceptable in principle where they are not subject to special planning constraints. It goes on to advise local authorities to be realistic about the availability of alternatives to the car in accessing local services in rural areas and that in some cases of untidy or derelict sites a well-planned traveller site can be seen as positively enhancing the environment. Given the overall scale of the proposal and the presence of some local facilities, it is considered that it would be difficult to sustain a refusal on the basis of accessibility to services.

With the inclusion of conditions the County Highways Authority is satisfied with the arrangements for access and the Pollution Control Officer has advised that the site is now acceptable in environmental terms.

Conclusion

Support for this application is found in Circular 1/06 which, amongst other things, seeks to increase significantly the number of Gypsy and Traveller sites and to promote more private Gypsy and Traveller site provision in appropriate locations. As set out above, the proposed development now accords with the criteria for gypsy sites in the adopted Derby and Derbyshire Joint Structure Plan Housing Policy 8: Gypsies and Travellers and Housing Policy H15 in the adopted Local Plan. There is some unmet need in the locality, the visual impact of this site can be reduced by landscaping and access to the site is acceptable. Therefore the issues central to the consideration of this application that are set out in the planning considerations section of this report are all satisfied and subject to conditions the proposal is acceptable.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above.

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. This permission does not authorise use of the land as a caravan site by any persons other than gypsies as defined in Section 24(8) of the Caravan Sites and Control of Development Act 1960 as amended.
Reason: To safeguard the site for occupation by gypsies.
3. No more than three caravans shall be stationed on the land at any time.
Reason: For the avoidance of doubt.
4. No caravan shall be stationed on the site that is not capable of being towed legally on a public road.
Reason: To protect the visual amenity of the locality.
5. No commercial activity shall take place on the site.
Reason: To protect the visual amenity of the locality.
6. No vehicle shall be parked or stored on the site which exceeds 3.5 tonnes unladen weight.
Reason: To protect the visual amenity of the locality.
7. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.
Reason: In the interests of the appearance of the area.
8. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
Reason: In the interests of the appearance of the area.

9. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

Reason: In the interests of the appearance of the area.

10. No development shall take place until a site investigation to determine whether the land is contaminated and any associated remedial works have been carried out to the satisfaction of the Local Planning Authority. This will include:
- A. A desktop study of the area of the proposed development.
 - B. An intrusive site investigation, its scope to be confirmed with the Local Planning Authority, prior to its commencement. The report should contain recommendations for any remedial or further works at the site.
 - C. A remediation method statement, to be agreed with the Local Planning Authority, prior to its commencement at site.
 - D. A remediation validation report along with a signed copy of the attached certificate. This should be supplied prior to the occupation of any buildings at site.

Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it.

11. No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: In the interests of flood protecting and pollution control.

12. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through an oil interceptor, designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the interceptor.

Reason: In the interests of pollution control.

13. The access shall have a minimum width of 4m and shall be provided with 2m x maximum achievable visibility splays with no obstruction exceeding 1m in height relative to road level forward of the splay line.

Reason: In the interests of highway safety.

14. The access shall be surfaced in a solid bound material for a distance of 5m back from the highway boundary.

Reason: To avoid the deposit of deleterious material onto the highway in the interests of highway safety.

15. No gates or other barrier to the access shall be erected within 5m of the highway boundary and any gates elsewhere shall open inwards only.

Reason: In the interests of highway safety.

16. No development shall take place until full details of the design and external appearance of the amenity blocks that are to contain toilets and showers have been submitted to and approved by the local planning authority. The buildings shall be constructed in accordance with the approved details.

Reason: No details have been submitted and the Local Planning Authority has to ensure that the details are satisfactory.

Informatives:

For the discharge of the site investigation, as a minimum, the report should include:

- a) Details of an overview of the initial walkover survey to including the identification of contaminants from other sources e.g. gases emitted from natural organic deposits such as coal, or structures such as disused drains.
- b) Detailed on site sampling to identify any contamination.
- c) The locations of any contaminated zones within the site including details of more extensive and geographically wider investigation of these zones. This will provide a more reliable picture of the distribution of contamination on the site and reduce the risk of failing to discover a hot spot of contamination.
- d) An assessment of any off site impacts such as the effect on watercourses etc.
- e) A thorough explanation of the chosen remedial measures including depth, breadth of excavation and details of soil replacement.
- f) Plan of action if further contamination is identified during remediation.
- g) Details of the measures to verify that the contaminant has been removed to an acceptable level.
- h) The identification as to whether a long-term monitoring and maintenance programme is required, if so, details of the plans.
- i) Details of the long and short term risk to human health including the construction phase and post-development.
- j) Details of the British Standards or other guidelines used in both the assessment and remediation measures proposed.

Further guidance can be obtained from the following:

- I. Model Procedures for the Management of Land Contamination CLR 11
- II. CLR Guidance notes on Soil Guideline Values, DEFRA and EA
- III. Sampling Strategies for Contaminated Land, CLR4 1994, DoE.
- IV. Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.
- V. Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.
- VI. Guidance for the Safe Development of Housing on Land Affected by Contamination' Environment Agency. ISBN 0113101775.

Soil contamination or the potential for it is a material planning consideration and must be taken into account by a local planning authority in the determination of a planning application. This site is suspected to be contaminated with chemicals associated with farming.

The responsibilities for providing information on whether and how a site is contaminated rests with the developer, as does the subsequent safe development and secure occupancy of the site. Under these circumstances, you should undertake a site investigation and submit the results and remediation proposals as part of the planning application.

If a reclamation strategy is submitted and agreed by the planning authority compliance with it will be condition of any subsequent approval.

The developer will also be required to sign a completion certificate confirming that the works of reclamation have been carried out in accordance with the agreed strategy.

To note and act upon as necessary the comments of the Environment Agency (see attached letter).

To contact the Area Engineer South, Trent Valley Area, Derbyshire County Council, Director of Environmental Services, County Hall, Matlock, Derbyshire (Tel. 01629 580000 ext 7595) at least six weeks before the commencement date of the proposed works in order to arrange the necessary supervision of works on the highway crossing.

Further to the above Informative, the responsibility and subsequent liability for safe development and secure occupancy of the site rests with the developer and/or landowner. This grant of planning permission does not give a warranty of ground support or stability, neither does it necessarily imply that the requirements of any other controlling authority would be satisfied.

06/06/2006

Item 1.2**Reg. No.** 9/2006/0411/F**Applicant:**

John Bowler (Agriculture) Ltd
 Ivy Court
 Willington Road
 Etwall
 Derby
 DE656JG

Agent:

Beckett Jackson Thompson Architects
 8 Eldon Chambers
 Nottingham
 NG12NS

Proposal: The siting of a temporary dwelling on land off Castle Way Willington Derby

Ward: Willington/Findern

Valid Date: 06/04/2006

This report relates to this and two other applications on this agenda 9/2006/0412 and 9/2006/0413. One overall report is produced to reflect the interrelated nature of the proposals. Individual recommendations are proposed in respect of each of the applications.

Site Description

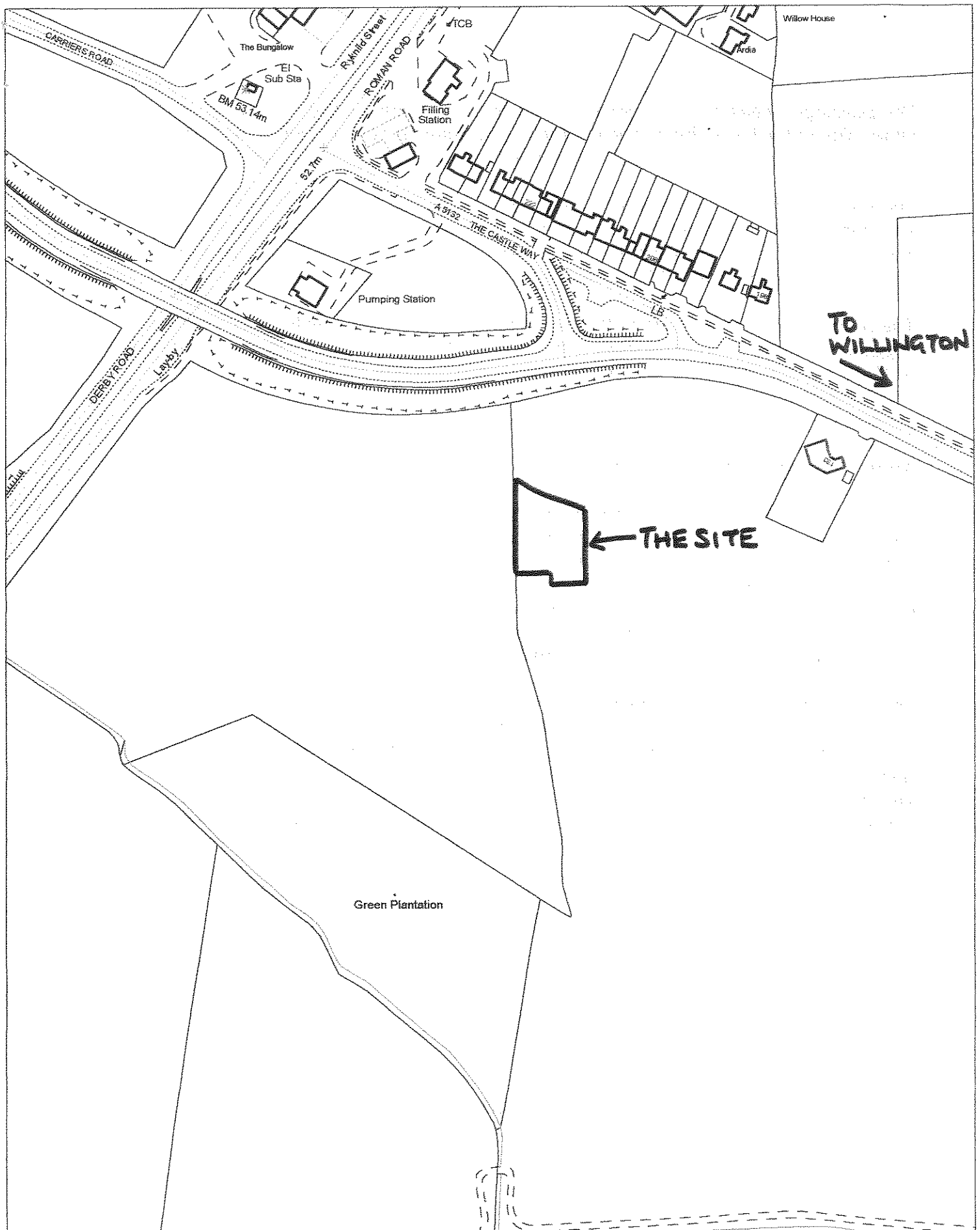
The site comprises an area of flat pastureland currently used for grazing. Hedges interspersed with trees enclose the site. There is another hedge within the site that runs through it. A tree is located between the two production units that would be felled if the development were permitted.

An area of woodland that lies outside the application area forms the southern most boundary of the site.

The nearest dwellings are some 180 metres from the proposed buildings chicken buildings but the mobile home and drive would be closer. There are other dwellings on the opposite side of The Castle Way and these are some 240 metres from the site of the chicken buildings

Proposal

The three applications relate to the establishment of a new farm enterprise comprising two free-range egg production units and a mobile home to supervise the operation of the holding. The submitted plan also indicates an agricultural building but this is not part of any of these applications.



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The buildings (measuring 67 metres x 18 metres x 5.36 metres high) would be sited either side of the line of the public footpath that passes through the site area. Four feed silos are proposed between the two buildings that would be some 7.55 metres high.

The proposed mobile home would be sited beside a hedge in the middle of the application sites. No details have been submitted but it is expected that the home would be of a similar size to others in the area that have been permitted. The mobile home would be sited some 120 metres from the nearest dwelling.

The access would be taken from the haul road to the mineral extraction site that has a direct access onto The Castle Way. The track would be 5.0 metres wide for a distance of 15 metres into the site; it would then narrow to 3.0 metres for the rest of its length. Loading and turning areas are proposed close to the chicken buildings and wider areas are shown in the vicinity of the dwelling.

Applicants' supporting information

Supporting information is submitted by the applicant and starts with an outline of the organic egg production system and the standards operators are required to meet to achieve and maintain their organic status. The size of the unit is limited to the area of land available. A 6000-bird unit must have at least 6 hectares associated with it. The emphasis is on the welfare of the birds at the unit and the operator is subject to regular inspections by the Organic Farmers and Growers Organisation that is responsible for the operation and maintenance of the certification system.

There then follows an assessment of the advice in Planning Policy Statement 7 that encourages the diversification of the farming industry and it is asserted that this proposal represents such diversification. The applicant offers opportunities to bona fide applicants to be part of a 1,000,000-bird flock using the system developed by the applicants to produce free-range eggs. The company operates a support system including a collection system using company owned vehicles. The methods employed by the company have been proved to be effective over a number of years.

It is argued that the buildings have to be arranged as proposed to ensure that adequate grazing is available to the chickens. Lightweight moveable fences to ensure that the birds can graze on different areas of their pasture without degrading the land would divide each 6-hectare grazing area. The supporting document contends that the use of the land in this way would improve the quality of the land that has been previously used for intensive arable uses. A further design statement attached to the document gives a further justification for the layout of the buildings. (As with all the documentation, the design statement is available for inspection on the file).

The statement then goes on to discuss the potential impact from smell, day to day and at clean out times, noise, dust, flies, rodents and feral activity.

Full details are in the statement but briefly, the applicant asserts that day-to-day smells are not detectable other than when in close proximity to the building. There is acknowledged to be a smell when the houses are cleaned out at the end of each 60-week cycle but this would represent two days out of that period. Much less than is the case with normal farming operations.

Noise is limited to a small fan outside the egg cooling area, the main part of the building being self-ventilating. There are no cockerels in the buildings. Dust emissions are minimised by the open nature of the buildings but operatives must be protected from a dust-laden atmosphere.

Flies are not normally a problem but if there is evidence of an infestation, it is dealt with by external contractors. There is equal if not greater concern about rodents as the production batch being rejected at the packing station. Contractors are again employed to minimise the risk of intrusion into the buildings. The buildings are secured at night to prevent the intrusion of foxes.

Details in annexe 2 of the statement deal with commercial traffic likely to visit the site. There are twice weekly egg collections and periodic feed deliveries. It is argued that there would be an average of 2.5 vehicles to the site each week during the 60-week cycle.

Waste management measures would include the disposal of dead birds by incineration, compliance with recognised disposal protocols. Measures to prevent the waste becoming wet by directing surface water away from the building to keep the areas around the buildings as dry as practicable are proposed, thus the potential for producing odours is reduced. The dry material that is taken from the buildings at the end of the 60-week cycle is taken away from the site for spreading elsewhere.

The mobile home/supervision of the site is essential, the system works and can support a full-time worker from day one. However, it is recognised that the Local Planning Authority has to be satisfied that the individual operator has the competence to run the enterprise. Thus, a mobile home is proposed for a temporary period of three-years to meet that requirement.

A list of essential tasks, the amount of work generated and a full financial appraisal of the operation of similar units is submitted in support of this element of the proposal. It suggests that an operation of a 6000-bird unit is likely to generate 2.7 full-time equivalent work but the level of automation introduced with the applicant's system, mean that the FTE is reduced to one full-time worker plus assistance necessary for egg collection.

The proposal would result in the introduction of a new, but well-proven use onto the land. The location is both environmentally and commercially suitable and is sustainable in the long-term. It is a new employment opportunity with relatively low impact on the area. It reflects the need to make a positive response to the changes in agriculture taking place in the countryside.

The applicants have also submitted three protocols developed by the company that cover waste management, internal and external and surface water disposal. Again these are available on the file for inspection but the main provisions are summarised above.

Planning History

There is no relevant planning history.

Responses to Consultations

Willington Parish Council has commented as follows on the proposals:

- a) The tree that is felled should be replaced.
- b) The buildings may be converted to a battery system in the future.
- c) The buildings should be properly maintained and if the business is unsuccessful, the land should be returned to its existing use.
- d) Noise and smell should be regulated.

The Environment Agency has no objection to the provision of the egg production units but requires details of foul water disposal before the building is commenced.

Severn Trent Water has no objection subject to the submission of details of the foul water disposal system.

The Environmental Health Manager, the County Highway Authority and the County Archaeologist have no objections.

Responses to Publicity

7 letters have been received that object to the applications for the following reasons: -

- a) Health – councillors should be aware of the health risks posed by poultry; only recently, 20000 birds were slaughtered following the outbreak of the H7 bird flu and it only a matter of time before H5N strain of Bird Flu arrives in this country.
- b) The operation will produce smells – from the birds and incineration operations to dispose of dead birds.
- c) There will be noise from the birds scraping and scratching the ground inches from the boundary of the house.
- d) The field is contaminated by pesticides so how can the produce be described as 'free range organic'?
- e) The siting of the mobile home, farm building and access road show no regard for the amenities of the adjacent dwelling. The road could sweep away from the house rather than come close to it.
- f) The Castle Way is a very busy road with traffic from Willington and Repton, Quarry traffic and it is used by the Toyota work force. It will only get worse if the Willington Power Station application is approved. There have been numerous accidents on the A38 slip road.
- g) This application is only to the benefit of the applicant and there is no benefit to the local community. The so-called employment benefits are minimal. There are also plenty of eggs in the supermarkets, all at discounted prices and so there is no need for this additional farm. These applications have no redeeming features. Many others hold this view but feel that the development is a fait accompli and that it is not worth objecting.
- h) Foxes and vermin will be attracted.
- i) Cats will be tempted to kill the chickens.
- j) Property values will be reduced

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: General Development Strategy Policy 4 & 5, Environment Policy 14, Housing Policy 6

Local Plan: Environment Policy 1, 4, 5, 11; Housing Policy 8.

Planning Considerations

The main issues central to the determination of this application are:

- Compliance or otherwise with Development Plan policies i.e. the need for the agricultural development in the countryside;
- Its potential for impact on the countryside and its contribution or otherwise to the local distinctiveness of the area;
- Environmental factors (noise dust smell and vermin).
- The suitability of the access, access point;
- The agricultural quality of the land;
- The need for the residential accommodation.

Planning Assessment

Development in the countryside is only acceptable if it is necessary for it to be located there. The proposal is clearly an agricultural operation relating to the production of food from the land - a location in the countryside is therefore necessary (General Development Strategy Policy 4, Environment Policy 1 & 5 apply to this issue).

If development is necessary in the countryside, then the development should be so designed and located such that the impact of the proposal is minimised (Policy Environment Policy 5 relates to this element). Public vantage points for this development are limited to views from The Castle Way and potential distant views from the Trent and Mersey Canal Conservation Area. Neither of these vantage points could be said to be harmful to the character and appearance of the countryside. The judgement then is whether or not the impact of the development would be such that the proposal could be refused and that refusal could be sustained at appeal. The conclusion is that the refusal of an agricultural related development in the countryside when there are examples of similar structures in the District would be difficult to sustain at appeal. The buildings have a relatively low eaves height, the proposed roof colour would help to merge them into the sky and the silos can be conditioned to ensure that they do not form a prominent intrusion into the countryside.

The environmental impacts (as identified above in Planning considerations) have attracted no objection from the Environmental Health Manager. There is clearly limited noise impact arising from the development that can be controlled by condition. Dust is not produced of a scale where refusal of permission could be considered. Although smell from the buildings is an issue when the material is removed from the building and transported from the site, this is a 'one off' occurrence that may last for a couple of days when the buildings are cleared. This is not considered unreasonable in a rural environment. Your officer has visited other sites operated by the applicants and found that the day to day smells on the occasions he has visited are no more, and perhaps

less, than would be found at any other farm. Thus it is not considered that a condition requiring odour control measures would be justified.

The County Highway Authority has raised no objection to the potential impact of the proposal on the local highway network.

The agricultural land in this area is generally Grade III that is not classed as the best or most versatile. The policies seek to protect land that is Grade I II or IIIA.

With regard to the siting of the mobile home, it has been demonstrated that the welfare of the birds requires a permanent on-site presence. The agricultural justification supporting the application for the dwelling complies with the methodology set out in PPS7 and shows a functional need. The financial appraisal shows that the potential business would support the provision of the dwelling.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above.

Recommendation

GRANT permission subject to the following conditions:

1. This permission shall be for a limited period only, expiring on 31 May 2009 on or before which date the structure shall be removed and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period.

Reason: The case for the construction of the free-range egg production buildings is based on the need for the full-time presence of an agricultural worker at the site. Temporary permission is granted on this basis and to assess the viability of the business prior to the assessment of the need for a permanent dwelling in three years time in accordance with the advices in PPG 7.

2. The occupation of the dwelling shall be limited to the family and/or dependents of a person employed, or last employed, wholly or mainly, in agriculture, as defined in Section 336 of the Town and Country Planning Act 1990, or in forestry.

Reason: The site is within open countryside where the Development Plan provides that development shall be confined within the limits of an existing town or village, except where the needs of agriculture or other overriding reasons justify a departure from that policy. The Local Planning Authority is concerned to ensure that agricultural workers' dwellings are maintained available to meet the needs of the locality and to avoid proliferation of dwellings in the countryside.

3. The mobile home shall not be occupied in advance of the stocking of the egg production buildings permitted under applications 9/2006/0412 & 9/2006/0413 unless otherwise agreed in writing by the Local Planning Authority in response to an application made in that regard.

Reason: The need for the mobile home is based on the requirement to supervise stock on the land in accordance with planning policy, thus occupation of the structure without the presence of the stock would be contrary to the provisions of the Development Plan.

4. No development shall take place, until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the Local Planning Authority in writing.

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible.

5. No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: In the interests of flood protecting and pollution control.

Informatives:

You are advised that any finds of objects of treasure are subject to the provisions of the Treasure Act 1996 and must be referred to the Derby and South Coroner at 18 St. Mary's Gate, Derby, DE1 3JR, (Tel. 01332-222159).

Further to the requirement for a watching brief during excavations to ascertain if archaeological remains require recording, a brief to control the works and advice on suitable contractors can be obtained from Andrew Myers, Development Control Archaeologist, Conservation and Design Group, Derbyshire County Council, Environmental Services Department, Shand House, Dale Road South, Matlock, Derbyshire, DE4 3RY. Tel: 01629 585146, Mob: 07881 850742.

06/06/2006

Item 1.3**Reg. No. 9/2006/0412/M****Applicant:**

John Bowler (Agriculture) Ltd
Ivy Court
Willington Road
Etwall
Derby
DE656JG

Agent:

Beckett Jackson Thompson Architects
8 Eldon Chambers
Nottingham
NG12NS

Proposal: The erection of a 6000 bird free range organic egg production unit on land off Castle Way Willington Derby

Ward: Willington/Findern

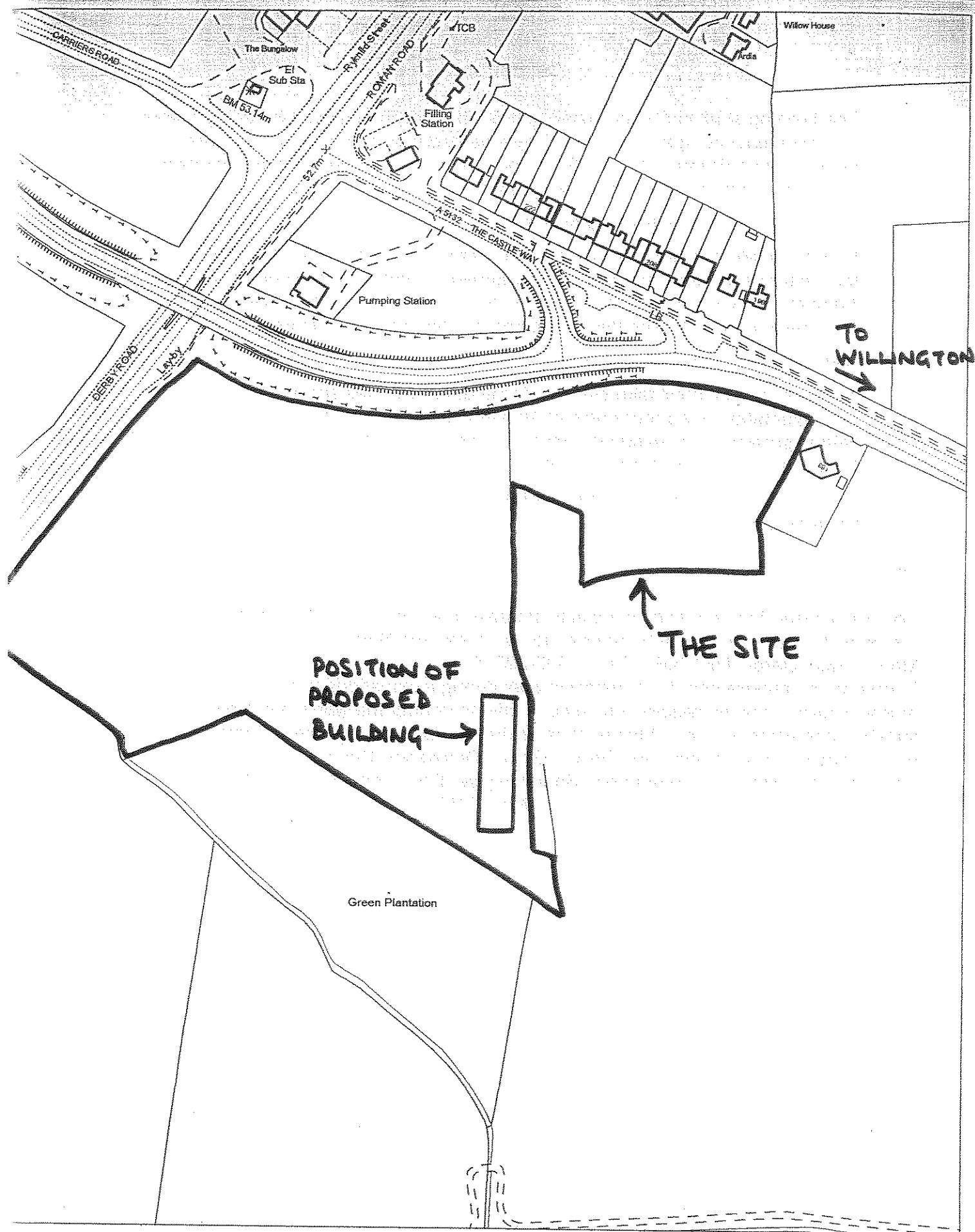
Valid Date: 05/04/2006

Please see report on 9/2006/0411

Recommendation

GRANT planning permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Notwithstanding the submitted details, no part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building have been submitted to and approved in writing by the Local Planning Authority.
Reason: To safeguard the appearance of the existing building and the locality generally.
3. Notwithstanding the submitted indicative landscaping scheme, a detailed scheme for the protection, enhancement and ongoing management of the site in terms of landscaping and nature conservation features shall be submitted to and approved in writing by the Local Planning Authority.
Reason: In the interests of the appearance of the area.



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4. The building shall not be occupied unless and until the loading/unloading, parking and manoeuvring space has been implemented in accordance with the details on the submitted drawing 0612.003/A. Thereafter, the facilities shall be maintained free of any impediment to their designated use.

Reason: In the interests of highway safety.

5. No work shall take place on the site until details of a scheme for the disposal of foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: In the interests of pollution control.

6. No development shall take place, until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the Local Planning Authority in writing.

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible.

Informatives:

You are advised that any finds of objects of treasure are subject to the provisions of the Treasure Act 1996 and must be referred to the Derby and South Coroner at 18 St. Mary's Gate, Derby, DE1 3JR, (Tel. 01332-222159).

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06/06/2006

Item 1.4**Reg. No.** 9/2006/0413/M**Applicant:**

John Bowler (Agriculture) Ltd
Ivy Court
Willington Road
Etwall
Derby
DE656JG

Agent:

Beckett Jackson Thompson Architects
8 Eldon Chambers
Nottingham
NG12NS

Proposal: The erection of a 6000 bird free range organic egg production unit on land off Castle Way Willington Derby

Ward: Willington/Findern

Valid Date: 05/04/2006

Please see report on 9/2006/0411

Recommendation

GRANT planning permission subject to the following conditions:

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

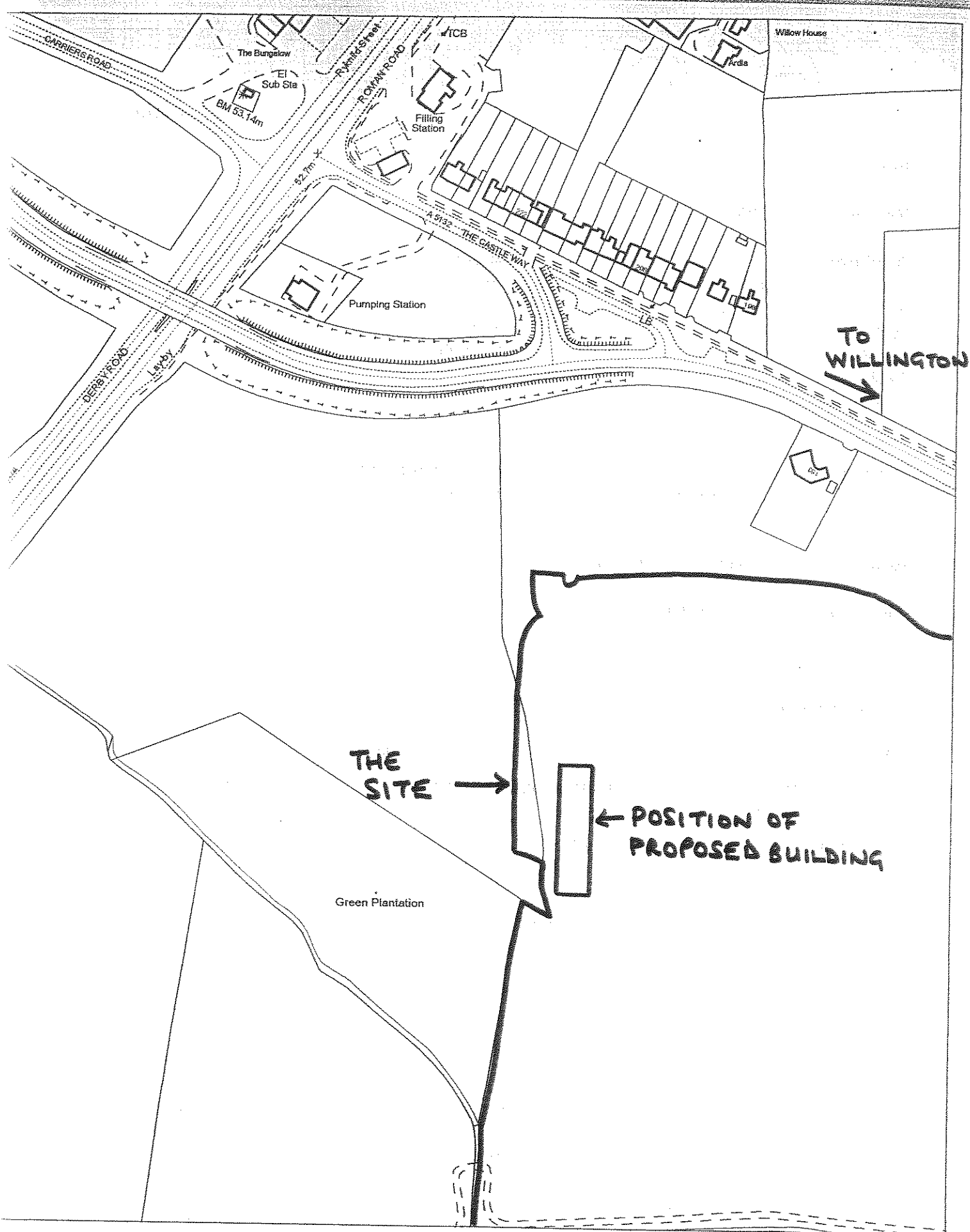
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

2. Notwithstanding the submitted details, no part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building have been submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard the appearance of the existing building and the locality generally.

3. Notwithstanding the submitted indicative landscaping scheme, a detailed scheme for the protection, enhancement and ongoing management of the site in terms of landscaping and nature conservation features shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of the appearance of the area.



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4. The building shall not be occupied unless and until the loading/unloading, parking and manoeuvring space has been implemented in accordance with the details on the submitted drawing 0612.003.A. Thereafter, the facilities shall be maintained free of any impediment to their designated use.

Reason: In the interests of highway safety.

5. No work shall take place on the site until details of a scheme for the disposal of foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: In the interests of pollution control.

6. No development shall take place, until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the Local Planning Authority in writing.

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible.

Informatives:

You are advised that any finds of objects of treasure are subject to the provisions of the Treasure Act 1996 and must be referred to the Derby and South Coroner at 18 St. Mary's Gate, Derby, DE1 3JR, (Tel. 01332-222159).

Further to the requirement for a watching brief during excavations to ascertain if archaeological remains require recording, a brief to control the works and advice on suitable contractors can be obtained from Andrew Myers, Development Control Archaeologist, Conservation and Design Group, Derbyshire County Council, Environmental Services Department, Shand House, Dale Road South, Matlock, Derbyshire, DE4 3RY. Tel: 01629 585146, Mob: 07881 850742.

06/06/2006

Item 2.1**Reg. No.** 9/2006/0356/FH**Applicant:**

Mrs E Robbins
Thurlestone Grange
Thulston
Derby
DE723FE

Agent:

John Gratton
Blair Gratton Associates
83 Burton Road
Derby
DE1 1TJ

Proposal: The erection of a wrought iron gate with brick piers and walls at Thurlestone Grange Thulston Derby

Ward: Aston

Valid Date: 27/03/2006

The application is brought to Committee at the request of Councillor Atkin.

Site Description

Thurlestone Grange is a large Grade II listed house set in open countryside to the north of the A6. The roadside boundary is defined by a mature hedge. The house is set some 170 m back from the road. The site is in the green belt.

Proposal

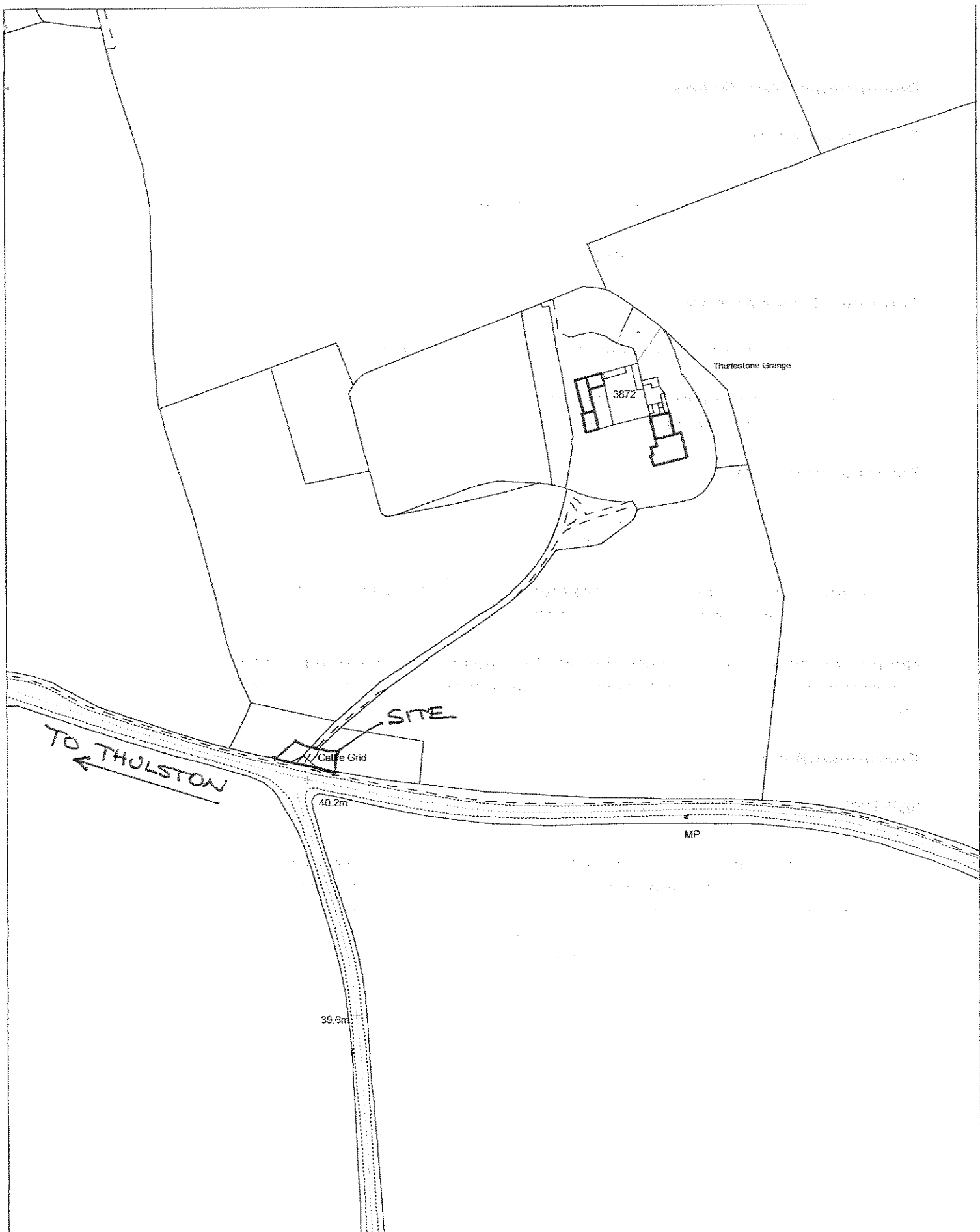
The proposal involves the erection of 2.5 m high wrought iron gates and 2.8 m high decorative pillars with wing walls reducing in height from 1.9 m to 1.3 m.

Responses to Consultations

The Parish Council and Highway Authority have no objection.

The Design and Conservation Officer comments as follows:

- a) The current gateway is low-key but appropriate to the surroundings.
- b) In pre-application discussions the applicant was advised not to use brick piers with wing walls, on the grounds that an ostentatious gateway so far removed from the buildings would be an intrusion into the rural setting of the Grade II listed building.
- c) It was suggested that gates be hung on metal columns with finials, and that the wings should be in the form of hedges.



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Development Plan Policies

The relevant policies are:

RSS8: Policy 31

Joint Structure Plan: General Development Strategy Policies 4 & 7 and Environment Policy 10

Local Plan: Green Belt Policy 3 and Environment Policies 1 & 13

Planning Considerations

The main issues central to the determination of this application are:

- Impact on the openness of the green belt.
- Impact on the setting of the listed building and character of the countryside.

Planning Assessment

Being a replacement for the existing gates serving a dwelling, there would be no material impact on the openness of the green belt.

On the advice of the Design and Conservation Officer the design of the pillars and wing walls would be detrimental to the rural setting of the listed building.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above.

Recommendation

REFUSE for the following reason:

1. The design and scale of the proposed gate pillars and wing walls would be incongruous in the open rural setting of the locality, to the detriment of the character of the countryside and the setting of the Grade II listed Thurlestone Grange, contrary to the following development plan policies: RSS8: Policy 31; Joint Structure Plan: General Development Strategy Policy 4 and Environment Policy 10; Local Plan: Environment Policies 1 & 13.

06/06/2006

Item 2.2**Reg. No.** CM9/2005/0154/CM**Applicant:**

Cemex UK Materials Ltd
 Cemex House, Coldharbour Lane
 Thorpe
 Egham
 Surrey
 TW20 8TD

Agent:

Cemex UK Operations Ltd
 Cemex House, Church Lane
 Bromsgrove
 Worcestershire
 B61 8RA

Proposal: Proposed extension to quarry under Derbyshire County
 Minerals Application number CM9/1205/154 at
 Willington Quarry Castleway Lane Egginton Derby

Ward: Etwall

Valid Date: 09/02/2006

This application is to be determined by the County Council as Mineral Planning Authority with the benefit of comments from South Derbyshire District Council.

Site Description

The proposal is to extend the existing mineral extraction site that is currently being undertaken via an access off The Castle Way Willington. It is a broadly flat site within the Trent Valley located between the villages of Willington, Repton, Newton Solney, Egginton and Burton lies some 3 Km to the south. The additional area of mineral extraction equates to about 16.7 hectares.

Proposal

The proposal is as described above and the minerals extracted would be sand and gravel.

Applicants' supporting information

An Environmental Statement within which the applicants seek to justify the expansion of the site accompanies the application. A copy of the statement is available for inspection within the Planning Section. In brief, the company consider that the land represents a logical expansion of the site and this expansion could be achieved without significant harm to the character and appearance of the area or local dwellings. Its development would also secure the long-term presence of the company without the company having to remove plant and equipment from the land in the short-term.

Planning History

There are two current applications relating to mineral extraction on the existing site. The first requests an alteration of the restoration scheme will be the subject of a separate report when the flood risk assessment is submitted.

The second requests an extension of time to allow the existing site to be worked out. However, if the above application were permitted, then it would extend the time period and this second application would be withdrawn.

Permission to extract minerals from this site was granted in the 1990's and involved the construction of a haul road off the Castle Way as well as a bridge over the Trent and Mersey Canal.

Responses to Consultations

The County Planning Authority is responsible for all consultations in respect of this application and will report any responses to the Committee when it meets to consider the application.

Responses to Publicity

The Local Planning Authority has received no objections direct arising from this application but again the responsibility for publicity lies with the County Planning Authority.

Development Plan Policies

The relevant policies are:

RSS8: Policy 37

Joint Structure Plan: Minerals Policies 1, 2 4 7 5

Minerals Local Plan: Policies MP 18 and 19.

Planning Considerations

The main issues central to the determination of this application are:

- The need for the minerals in the context of national requirements
- The scale of the expansion
- The impact on the character and appearance of the area.
- The impact on residents.
- The impact on natural history and archaeological interests.

Planning Assessment

Clearly minerals can only be extracted in locations where they exist. Minerals Policy 18 makes provision for the expansion of established mineral working sites provided that they can be accommodated in an environmentally sensitive manner.

Minerals Policy 19 states that proposals for the working of aggregates outside permitted sites will not be permitted except where they are required to meet a proven need; they involve amending the boundaries of existing operations and would result in significant net environmental benefits without significantly increasing the level of permitted reserves.

The County Planning Authority has advised that the proposed expansion would significantly add to the level of reserves in advance of the consideration of the likely need for minerals that is being undertaken as part of the Minerals Local Plan review. Accordingly to allow the expansion of the site to the extent proposed would seem to be premature. However, there is the consideration of the investment in the area that has taken place to make the aggregates in this locality accessible namely the access road, bridge and the minerals processing plant. If the review results in an increased need for supply then the retention of these elements would seem to be justified pending the outcome of the review.

In the light of this it is recommended that the County Planning Authority be advised that the Local Planning Authority objects to the application as submitted but would be pleased to consider an application on a smaller area to secure the investment in the area pending the outcome of the review of the Derby and Derbyshire Minerals Local Plan.

The limited expansion of the site would not have a significant impact on the character and appearance of the area. The access to the Castle Way would continue to be used and this seems to have operated satisfactorily since it was constructed without undue impact on the amenity of the occupiers of nearby dwellings.

The County Planning Authority will be advised by its own officers of the archaeological and nature conservation impacts. Officers are aware that the existing minerals site has revealed important archaeological remains.

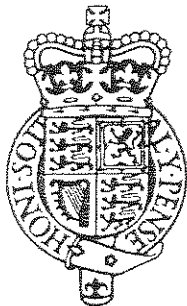
None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above.

Recommendation

Advise the County Planning Authority that South Derbyshire District Council **OBJECTS** to the application as submitted but would welcome the opportunity to comment on any amended scheme that reduces the size of the area to be worked pending the outcome of the review of the Derby and Derbyshire Minerals Local Plan.

2. PLANNING AND OTHER APPEALS

| Reference | Place | Ward | Result |
|------------------|------------------------------------|-----------------------|---------------|
| 9/2004/0280 | Woodland Road, Stanton | Newhall & Stanton | Dismissed |
| 9/2004/1271 | Cheviot Close/Hearthcote Road | Swadlincote | Dismissed |
| 9/2005/0215 | Goseley Dale Farm, Woodville Road | Hartshorne & Ticknall | Dismissed |
| 9/2005/1209 | 174a Oxford Street, Church Gresley | Church Gresley | Dismissed |



Appeal Decision

Hearing and site visit held on 1 March 2006

by **Timothy S. A. Belcher LLB (Hons) Solicitor (Non-Practising)**
an Inspector appointed by the First Secretary of State

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-inspectorate.gsi.gov.uk

Date

28 APR 2006

Appeal Ref: APP/F1040/A/05/1176998

Woodland Road, Stanton, Burton-on-Trent, DE15 9TH

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Morris Homes (East Midlands) Limited & Fryett's Fabrics Limited against the decision of South Derbyshire District Council.
- The application Ref 9/2004/0280/M, dated 27 February 2004, was refused by notice dated 21 December 2004.
- The development proposed is the erection of 51 No. houses, garages, roads and sewers (2.9 acres approx).

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. During the course of the Council's processing of the application the number of dwellings reduced from 51 to 48.
2. The Unilateral Undertaking¹ makes provision for on-site Public Open Space, a financial contribution towards off-site woodland planting, a financial contribution towards off-site youth and adult play facilities, a financial contribution towards healthcare facilities, the provision of affordable housing within the site and a financial contribution towards education. The Council have raised concerns regarding certain aspects of the wording of the Unilateral Undertaking². I have had regard to these concerns and considered the response from the appellants³. Whilst there is some merit in the Council's comments they do not identify fundamental flaws in the Undertaking and there are no reasons to conclude that the objectives set out in that Undertaking would not be satisfactorily achieved.

Main Issues

3. I consider the main issues in this case are:
 - whether the proposed redevelopment of the site is sustainable and necessary under the sequential approach to the provision of the housing in this part of the Council's area, and
 - whether it has been demonstrated that the site is no longer needed for employment purposes or that the present use of the site causes significant harm to residential amenity.

¹ Document 13

² Document 14

³ Document 15

Planning Policy

The development plan

4. The site is previously developed land as defined in Planning Policy Guidance Note 3: "Housing" (PPG 3). Therefore, its reuse for housing would comply with national and county policies of reusing previously developed land in preference to green field sites.
5. The development plan for the area includes the Regional Spatial Strategy for The East Midlands (RSS 8), the Derby and Derbyshire Joint Structure Plan adopted in 2001 and the South Derbyshire Local Plan adopted in 1998. Both the Structure Plan and the Local Plan were adopted prior to the publication of PPG 3. The site is outside the urban area of Swadlincote as defined in the Local Plan. I have been referred to RSS 8 Policies 1, 2 and 3, Structure Plan General Development Policies 1, 2, 3, 4, Housing Policies 3, 6, Economy Policy 1 and paragraph 4.92 and Local Plan Housing Policies 4 and 8 and Environmental Policy 1. The relevant parts of the Development Plan explain that underpinning RSS 8 and at the heart of the strategy is the sequential approach to the location of new development. In order to ensure the most sustainable mix of locations within, adjoining and outside urban areas a sequential approach to the selection of land for development should be adopted in Development Plans in accordance with a defined priority. The appellants accept that the site is not within an urban area. Accordingly, the site does not fall within the top two priority areas specified in Policy 2 of RSS 8. However, they assert that the site is within a location adjoining an urban area which is well served by public transport (the third priority area). If they are wrong about that they claim that the site is still in a suitable location which is well served by public transport (the fourth priority area).
6. The Structure Plan explains that new development should respect the principles of sustainable development by contributing to the provision of opportunities for minimising the overall need to travel by ensuring convenient access between homes, jobs and services and encouraging the increased use of public transport by development in locations well served by the public transport network. New development will be located within or well related to settlements, make good use of existing or potential infrastructure particularly where this would enable a choice of travel mode and favour the use of public and non-motorised transport. As much of the housing provision as possible will be made within urban areas. New housing in areas away from existing settlements will only be permitted in specified circumstances. The appellants do not accept that the site is located away from a settlement. However, they accept that none of the exceptions set out in Housing Policy 6 apply in this case.
7. There will be a need to resist proposals which would result in the loss of business land to other uses such as housing except where the continued business use is considered to be incompatible with adjacent uses for reasons including noise or traffic generation. Accordingly, development which would lead to a reduction in the supply of business land and buildings will only be permitted where the development would not lead to a qualitative or quantitative deficiency of land for such uses in the sub-area or the current use is incompatible with existing adjacent uses.
8. The Local Plan explains that residential development within or on the fringes of the built-up area of Swadlincote as defined on the Proposals Map will be permitted provided that the site is substantially surrounded by development. Housing outside settlements will only be

permitted in specified circumstances. The appellants agree that none of those circumstances apply in this case.

The emerging Local Plan

9. The Council commenced, progressed and has now withdrawn a review of the Local Plan. The Local Plan Review had reached an advanced stage towards its formal adoption. The Inspector's Report into objections lodged against the Local Plan Review had been received by the Council. In the Council's formal Planning Policy Position Statement dated 11 August 2005 they state that they may have regard to the Inspector's Report in determining planning applications. There is currently a planning application before the Council to redevelop the site for housing (43 dwellings). The Council confirmed that they would not be relying in the Inspector's Report as a material consideration in the determination of that application. In the light of the Council's position I do not consider that I should have regard to the Local Plan Review in the determination of this appeal.

Government Advice

10. I have also been referred to advice in Planning Policy Statement 1: "*Delivering Sustainable Development*" (PPS 1), PPG 3, Planning Policy Guidance Note 4 "*Industrial and Commercial Development and Small Firms*", Planning Policy Guidance Note 13: "*Transport*" and the statement of the Minister of State for Housing and Planning made on the 17 July 2003.
11. PPS 1 explains that Councils should bring forward sufficient land in appropriate locations to meet the expected needs for housing taking into account issues such as accessibility. Further, they should provide improved access for all to jobs, health, education, shops, leisure, community facilities, open space, sport and recreation by ensuring that new development is located where everyone can access services or facilities on foot, bicycle or public transport rather than having to rely on access by car.
12. PPG 3 explains that the Government is committed to promoting more sustainable patterns of development by concentrating most additional housing development within urban areas; adopting a sequential approach to the allocation of land for housing and managing the release of land. In identifying sites to be allocated for housing in local plans, Councils should follow a search sequence, starting with the re-use of previously developed land and buildings within urban areas identified by an urban housing capacity study, then urban extensions, and finally new development around nodes in good public transport corridors. Councils should seek only to identify sufficient land to meet the housing requirements set out as a result of the Regional Spatial Strategy and strategic planning processes. In doing so they do not need to consider all the land in their area. They should not extend the search further than required to provide sufficient capacity to meet the agreed housing requirement.
13. Councils should consider favourably planning applications for housing which concern redundant land or buildings in commercial use but which are no longer needed for such use unless the proposal fails to reflect other policies in PPG 3, particularly those relating to the site's suitability for development or where the proposal would undermine the planning for housing strategy set out in the development plan (where this is up-to-date), in particular if it would lead to the overprovision of new housing and this would exacerbate the problems of, or lead to, low demand or it can be demonstrated that the site's development for housing would undermine regional and local strategies for economic development and regeneration.

Reasons

Is the proposed redevelopment of the site sustainable? Is its redevelopment necessary under the sequential approach to the provision of the housing?

14. The site is located on the opposite side of Woodlands Road (A444) to 18 dwellings (Nos. 9 to 43) and The Gate Inn (a public house). It fronts onto Woodlands Road and is surrounded on its other three sides by land and buildings within the Green Belt. The site is located some distance from the boundary of Swadlincote as defined in the Local Plan. Further, the boundary of Swadlincote nearest to the site is on the opposite side of Woodlands Road, which is itself a busy highway that links Burton Upon Trent to the M42. I am aware that part of Swadlincote's urban area straddles the A444 but this occurs a considerable distance from the site. Due to the physical separation between the site and defined boundary to Swadlincote and the intervening road I do not consider that the site can be described as adjoining an urban area.
15. I am aware that the urban edge of Swadlincote is likely to move closer to the site when the comprehensive development of the intervening employment site known as Tetron Point has been completed. However, there will still be some distance separating the site and Tetron Point as well as Woodlands Road itself.
16. For the same reasons explained above I do not consider that the site can be described as being on the fringes of the built up area of Swadlincote. Even if I am wrong in that assessment, the Local Plan requires the site to be substantially surrounded by development if it is to be redeveloped for residential development. I accept that there is development along two sides of the site but the greater area surrounding the site is open countryside. Accordingly, I find that the proposal would be contrary to the relevant policies of the Local Plan.
17. The site is within distances specified in PPG 13 whereby people living at the site could cycle to educational, employment, leisure, shopping and other facilities and some of these destinations are also within walking distances mentioned in PPG 13. However, pedestrians and cyclists would have to use the A444 which is a busy road carrying a substantial amount of traffic, including HGVs. As regards pedestrians I do not consider that the A444 is an enjoyable road to walk along due to the noise, speed and levels of traffic, including HGVs, using it. There is a cycle lane marked on the carriageway near the site but, in my assessment, many cyclists would be reticent about using this road, for the reasons explained above, and it is highly unlikely that parents would allow their children to cycle along it.
18. I have also had regard to the level of public transport that would be available for future residents of the site. The nearest urban area to the site is Swadlincote. There are no buses that run along that part of Woodlands Road adjacent to the site which go into the town centre. There are bus stops within several hundred metres of the site from which buses can be caught into Swadlincote which provide a reasonable level of service. However, I consider that the combination of the levels of traffic using Woodlands Road and the distance from the site to the bus stops would mean that future residents of the dwellings would be unlikely to use public transport as an alternative to the private car. For the same reasons I conclude that the site is not well served by public transport. Accordingly, the proposal does not accord with the locational strategy set out in RSS 8 or the policies relating to the principles of sustainable development set out in the Structure Plan. Further,

the proposal would be contrary to the Government's aims set out in PPG 13 of promoting accessibility to jobs, shopping, leisure facilities and services by public transport and reducing the need to travel, especially by car. For all of the reasons explained above I consider that the proposal would be contrary to the relevant policies for new residential development as set out in the development plan.

19. The Council have explained that as at 31 March 2005, within the Swadlincote Sub-Area there is a predicted oversupply of housing up until 2011 of 329 dwellings. Further, there is sufficient land available to accommodate over five years housing supply⁴. The position in the Derby Sub-Area differs as there is a shortfall of 1718 dwellings in that Sub-Area. This has arisen following the withdrawal of the Local Plan Review (as explained above)⁵. However, I was advised by the Council that there were outstanding planning applications in the Derby Sub-Area to more than compensate for the shortfall. The appellants suggested that permission for this site would reduce the pressure on green field sites in the Derby Sub-Area. However, the Council advised that this would not be the case – permission for this site would merely exacerbate the oversupply of housing in the Swadlincote Sub-Area. I have had regard to the clear advice set out in PPG 3⁶ and I consider that granting planning permission for this proposal would be contrary to that advice.
20. I therefore conclude that the proposed redevelopment of the site would not be sustainable and is not necessary under the sequential approach to the provision of the housing in this part of the Council's area. Accordingly, the proposal is contrary to the relevant development plan policies and advice in PPG 3.

Is the site no longer needed for employment purposes? Does the present use cause significant harm to residential amenity?

21. As at the Hearing date the appellants had marketed the site through the services of Savills (Commercial Property Agents) for about 10 months. Further, the property had been marketed prior to the planning application being made but the details of action taken and enquiries arising from that marketing initiatives are limited. During that 10 month period that the site was marketed by Savills there had been no viewings or offers. The site had been exposed to the market via a sales board adjacent to the A444; advertisements in the press; mail-shots to potential interested parties; distribution of details to established estate agents and exposure through the agents' website. I was advised that whilst the property had not been advertised in the national press it was unlikely that such exposure would find an industrial occupier for the premises.
22. The Council are concerned that the details of the site were not advertised in local papers circulating in and around Swadlincote. However, the appellants confirmed that the leading commercial estate agents in the area were supplied with details of the property as was the Council itself for entry on to their vacant commercial properties list. Why this property was not included in that list is not clear.
23. The Council are also concerned that the property has not been exposed to the market for a sufficient length of time. The Council have obtained independent evidence as to the best practice for the marketing of commercial properties. This advice suggests that it is not

⁴ Document 8 – Paragraph 60

⁵ Document 8 – Paragraph 61

⁶ PPG 3 - Paragraph 30

uncommon for marketing to take in the region of 12 to 18 months, and in some instances up to 2 years.

24. It was suggested by the appellants' agent that the only further action that could be taken was to expose the property to the market via an auction. This had not been done and was not contemplated mainly because there were no alternative premises that Fryett's Fabrics Limited could move to at short notice.
25. On the evidence available I consider that the length of exposure of this site to the market by Savills is too short to conclude on the balance of probability that the property is redundant to industrial or commercial uses. Even if I am wrong about this I have had regard to the clear advice in PPG 3⁷ (as set out in the Policy section above) that planning permission for housing should not be granted if such would undermine the planning for housing strategy set out in the development plan. I have explained above why I consider the proposal is contrary to the relevant housing and locational policies of the development plan.
26. I have also considered whether the existing use of the site is incompatible with the nearby residential and other uses. From the Council's records, in the last 10 years there have been five complaints relating to litter, bonfires, untidiness and night-time noise from lorries. None of these complaints have been made within the last five years and all were resolved satisfactorily. The appellants have carried out their own survey of local residents which I have had regard to. Some local residents have experienced daytime disturbance resulting from traffic (noise and congestion), smells, industrial noise and noise from alarms and traffic at night. There are problems which occur if deliveries are made to the site at times when the entrance is closed to traffic and large HGVs park on the carriageway until the premises are opened the next morning. Having had regard to these matters I am of the view that problems do arise from time to time but can be resolved through the proper management of activities on the site and deliveries to the site. Accordingly, I do not consider that the use is incompatible with the nearby residential uses.
27. Turning now to the Structure Plan Policy tests not dealt with above, the Council consider that the site is well situated to assist in meeting the needs of the existing economically and socially deprived residential parts of the Swadlincote Sub-Area. However, I have had regard to the location of other nearby employment sites and consider that the loss of this site would not seriously disadvantage those living in those parts of the Swadlincote Sub-Area referred to above. Further, whilst I note the site's location and its access directly on to the A444 I do not consider that this is any better than that which is available from other larger employment sites nearby. Accordingly, I do not consider that the proposal would lead to a qualitative deficiency in employment land in this part of the District.
28. I am aware of the shortfall in the amount of employment land available in the Swadlincote Sub-Area as at March 2005⁸ compared with the Structure Plan requirement. However, it is clear that this shortfall has arisen following the withdrawal of the Local Plan Review and the allocations made therein. As land had been identified through the Local Plan Review process it appears to me that this apparent deficiency can be overcome within the current Structure Plan period (if needed). I accept that even if the Local Plan Review allocations were reinstated the loss of this site would leave a minor shortfall compared with the

⁷ PPG 3 – Paragraph 42a

⁸ Document 7 – Paragraph 34

Structure Plan target. However, the evidence given at the Hearing regarding the actual take up of land for employment uses in recent years suggested that there would be sufficient employment land available to meet the anticipated needs for employment growth within the current Structure Plan period. For these reasons, I do not consider that the loss of the site would result in a quantitative shortfall of employment land in the Swadlincote Sub-Area.

29. To summarise, I have explained that the present use is not incompatible with the existing nearby residential uses. Further, I have explained why I do not consider that the marketing exercise has shown that the site is no longer needed for employment uses. However, the policy requirement in the Structure Plan is that the proposal should not lead to a qualitative or quantitative deficiency in land for business uses in the area and on these two matters I have concluded that these problems would not arise from the proposal.
30. In my assessment there is a conflict between the policy approach set out in Paragraph 42(a) of PPG 3 and the Structure Plan approach. PPG 3 explains at paragraph 38 that its policies may supersede the policies in the development plan. In this case I am satisfied that the policies in PPG 3 should prevail over the development plan given that the policy approach in paragraph 42(a) was published in January 2005 whereas the Structure Plan was adopted in 2001. Clearly the First Secretary of State's approach is that set out in PPG 3.
31. I therefore conclude, for the reasons explained above, that the present use of the site does not cause significant harm to residential amenity. Further, I am not satisfied that the site is no longer needed for employment purposes. Accordingly, the proposal would be contrary to advice in PPG 3.

Other Matters

32. Local residents have raised concerns regarding highway dangers, flooding, sewage, overshadowing, overbearing impact, the loss of the lay-by in front of their houses and loss of privacy to the occupier and danger to the animals at Council Farm.
33. There is no objection to the proposal from the Highway Authority who are primarily responsible for ensuring that new development would not have an unacceptable impact on highway safety and there is no evidence to suggest that their assessment is incorrect. I am satisfied that concerns regarding the disposal of surface water and sewage could be satisfactorily addressed through the imposition of appropriate conditions. I am also content that the new dwellings would be a sufficient distance from the existing dwellings on the opposite side of Woodlands Road so as to avoid overshadowing or have an overbearing impact. I was advised that the scheme would not involve the loss of the lay-by. I know that the proposal would result in more people living in the area and being close to Council Farm than is currently the case. However, I do not consider that this would result in an unacceptable loss of privacy for the occupier of the farm or any dangers for his animals.
34. I am aware and understand that Fryett's Fabrics Limited consider that their business would be better served by modern premises that can accommodate large HGVs. Further, I know that Fryett's Fabrics Limited may rationalise their business operations by closing the appeal premises and moving to other premises away from the area and the resulting impact that this may have on employment for local people.

35. Whilst I have found that these other matters do not weigh against the proposal they are insufficient to counterbalance the material harm that I have identified under the main issues referred to above.

Conclusions

36. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should not succeed.

Formal Decision

37. I dismiss the appeal.

Timothy Becker.

INSPECTOR.

APPEARANCES

FOR THE APPELLANTS

| | |
|--------------------------------|---|
| Mr. C. Waumsley DipTP, MRTPI | Freeth Cartwright LLP, Solicitors, Cumberland Court, 80 Mount Street, Nottingham, NG1 6HH. |
| Mr. C. Lilley | Morris Homes (East Midlands) Limited, 6 Boundary Court, Willow Farm Business Park, Castle Donington, Derby, DE74 2NN. |
| Mr. S. Turner | Fryett's Fabrics Limited Wrekin, Woodland Road, Burton-on-Trent, DE15 9TH. |
| Mr. B. Glover BSc(Hons), MRICS | Savills, 9 Fletcher Gate, Nottingham, NG1 1QQ. |
| Mr. P. Reynolds | Morris Homes (East Midlands) Limited, 6 Boundary Court, Willow Farm Business Park, Castle Donington, Derby, DE74 2NN. |
| Mr. D. Somerville | Morris Homes (East Midlands) Limited, 6 Boundary Court, Willow Farm Business Park, Castle Donington, Derby, DE74 2NN. |
| Mr. M. Edmunds | High Lea, Vicarage Lane, Frodsham, WA6 7DX. |

FOR SOUTH DERBYSHIRE DISTRICT COUNCIL

| | |
|-----------------------------------|--------------------------|
| Ms. A. Briggs | Area Planning Officer. |
| Mr. I. Bowen BA(Hons), BTP, MRTPI | Planning Policy Manager. |
| Mr. R. Groves BA(Hons), MRTPI | Planning Policy Officer. |

DOCUMENTS

| | |
|--------------|--|
| Document 1 – | List of persons present at the Hearing. |
| Document 2 – | Policies from the Regional Spatial Strategy For The East Midlands. |
| Document 3 – | Structure Plan Policies. |
| Document 4 – | Local Plan Policies. |
| Document 5 – | Minister of State for Housing and Planning (Keith Hill) – Statement of 17 July 2003. |
| Document 6 – | Copy of Council's letters of notification of the appeal and Hearing and list of persons notified. |
| Document 7 – | <i>"Summary of Industrial Land Availability in South Derbyshire at 31 March 2005"</i> handed in to the Hearing by the Council. |
| Document 8 – | <i>"Housing Land Supply in South Derbyshire as at 31 March 2005"</i> handed in to the Hearing by the Council. |

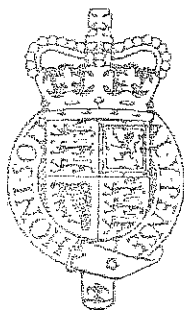
- Document 9 – *“Tetron Point Land Availability – Position as at 31 March 2005”* handed in to the Hearing by the Council.
- Document 10 – *“Tetron Point Land Availability – Position as at 28 February 2006”* handed in to the Hearing by the Council.
- Document 11 – *“Industrial Land Availability – 31 March 2005”* handed in to the Hearing by the Council.
- Document 12 – Bus Timetables for Services 15, 22, 25 & 27 handed in to the Hearing by the Council.
- Document 13 – Unilateral Undertaking by Fryett’s Fabrics Limited (1) Morris Homes (East Midlands) Limited (2) and HSBC Bank Plc (3) dated 13 March 2006.
- Document 14 – Letter dated 22 March 2006 from South Derbyshire District Council to the Planning Inspectorate.
- Document 15 – Letter dated 24 March 2006 from Freeth Cartwright LLP to the Planning Inspectorate.

PLANS

- Plans A to DD Application Plans
- Plan EE Plan identifying location of bus stops in relation to the site handed in to the Hearing by the appellants.

PHOTOGRAPH

1. Showing part of the site and on-road parking of HGVs handed in to the Hearing by the appellants.



Appeal Decision

Hearing held on 5 April 2006

Site visit made on 5 April 2006

by **Andrew Dale BA (Hons) MA MRTPI**

an Inspector appointed by the First Secretary of State

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Date

04 MAY 2006

Appeal Ref: APP/F1040/A/04/1171144

Site off Cheviot Close/Hearthcote Road, Swadlincote, Derbyshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by R and J Boddice against the decision of South Derbyshire District Council.
- The application Ref: 9/2004/1271/F, dated 24 September 2004, was refused by notice dated 24 November 2004.
- The development proposed is *development of site for 1 dwelling house and 6 flats together with associated car parking.*

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. The application was amended following its original submission with the Council's decision taking into account drawing No. C422/4 Revision B dated 1 November 2004. This shows minor alterations to the layout in response to some of the points raised by the highway authority. I have therefore considered the appeal proposal on the basis of the submitted plans as amended by drawing No. C422/4 Revision B.
2. Virtually the whole appeal site is affected by Tree Preservation Order (TPO) No. 221 (2004) which protects two groups of trees (G1 and G2) and a woodland (W1). It was common ground between the parties that there were some discrepancies between the TPO descriptions and the trees on the site within groups G1 and G2. Group G1 actually contains 2 Silver Birch, 1 Hawthorn, 1 White Beam and 1 Cherry, whilst group G2 contains 1 White Beam and 1 Cherry.

Main Issue

3. I consider that the main issue is the effect of the proposed development on the character and appearance of the area.

Planning Policy

4. The development plan includes the Derby and Derbyshire Joint Structure Plan adopted in January 2001 and the South Derbyshire Local Plan adopted in May 1998.
5. The appeal site is undeniably within the urban area of Swadlincote. Of the two Structure Plan housing policies put before me I consider therefore that Housing Policy 3 is of most relevance as it specifically covers proposals for housing development within urban areas. Such proposals should, amongst other things, be well related in scale and location to existing development, be well integrated with the existing pattern of development and surrounding land uses, avoid over intensive forms of development which would reduce the

quality of the urban environment and avoid the loss of valuable open space. Environment Policy 16 indicates that a TPO may be made to protect important individual, groups or areas of trees, hedges and woodland whilst provision will be made for the planting of trees and woodland through the use of tree planting schemes and conditions on planning permissions.

6. Local Plan Housing Policy 4 aims to permit housing development in the built-up area of Swadlincote provided that, amongst other matters, it does not involve the development of open spaces, gaps and landscape features which make a valuable contribution to the character or the environmental quality of the area and it is of suitable scale and character. Local Plan Environment Policy 9 has similar aims to Structure Plan Environment Policy 16 in seeking to protect woodland and specimen trees of value and secure new planting.
7. The Council's decision notice refers to the South Derbyshire Local Plan Revised Deposit Draft January 2003. The Council confirmed that this emerging Local Plan had been withdrawn in 2005.
8. I have also taken into account national policies in PPS1, PPG3 and PPG17 and emerging national policy in the Consultation Paper for PPS3. I have also been referred to Tree Preservation Orders: A Guide to the Law and Good Practice.

Reasons

9. It was common ground between the parties that Hearthcote Road in the vicinity of the appeal site marks a transition in the character of the area. On its northern side there are a number of factory and warehouse units but on its southern side generally on rising ground it is the residential environment that predominates. This residential character is not fundamentally altered by the presence of the building containing the Tesco Express shop and fish bar given the limited scale of the commercial development, the two-storey form of the building with residential flats over the commercial outlets, and the way in which the landscaped and planted areas soften the impact of the building and associated parking and servicing areas in views from Hearthcote Road and Cheviot Close further to the south. This mixed use development was built pursuant to a planning permission granted in 1996.
10. The proposed residential development would take up a considerable portion of the land that was reserved under the 1996 permission for soft landscaping. A comprehensive landscaping scheme was carried out in 1999 in accordance with a condition of that permission, and following the expiry of the standard maintenance period the Council made the TPO. It is quite in order for a TPO to be used to protect trees which are planted pursuant to conditions. The residential buildings would occupy a substantial part of the protected W1 woodland area. The Council does not dispute that the appellants' tree survey is an accurate representation of the trees on the site. This shows a total of 29 trees of mixed species in the W1 woodland area, including Silver Birch, Maple, Rowan, Horse Chestnut and Alder. There was agreement between the parties that the quality of maintenance of the landscaping since 1999 left a lot to be desired. Even so, I saw that the vast majority of trees in the W1 woodland area were now well established and were beginning to flourish.
11. I note that the White Beam and Cherry trees (numbered 33-36 on the appellants' tree survey) adjacent to the car park and within TPO groups G1 and G2 would be removed. I see no objection to this given the poor condition of the trees numbered 33 and 34, the ambiguity in the TPO which may mean that these 4 trees are not subject to protection, and the replacement landscaping proposed in that northern part of the site which would include

the removal of a dividing fence. However, I take a different view concerning the removal of the trees in the W1 woodland area.

12. To accommodate the development it would be necessary to remove 21 of the 29 trees planted in the W1 area. To my mind, the landscaping of this land was an integral part of the overall development scheme permitted in 1996. All too often landscaping is proposed or required almost as an afterthought in development schemes with trees planted on awkward leftover strips of land that may be too narrow or steep for root growth to properly establish. The landscaping belt planted (the W1 area) in this case was commensurate with and complementary to the associated built development with the allocated land being of a size and gradient which has allowed the plants to flourish despite poor maintenance. Taking a long term view, as I believe it is correct to do, I consider that this W1 area will eventually have the character of a mature landscaped buffer populated with a number of larger woodland type trees. Looked at as a whole it is already beginning to take on that character. The wholesale removal of so many of these trees as they are about to mature would be an unacceptable and harmful consequence of the development project and would conflict with the content of the 1996 application and the aims of the subsequent planting condition.
13. In views from Cheviot Close the W1 area already provides visual relief to the setting of the commercial development to the north and screens the greater part of the car park and servicing area. In views from Hearthcote Road it is beginning to appear as a green backdrop to the commercial development. Having regard to the definitions of open space in the Annex to PPG17, to my mind the W1 planted area is undoubtedly an amenity greenspace that is of public value. Open space has a variety of functions. PPG17 goes on to indicate that open space can be important simply as a visual amenity: even without public access, people enjoy having open space near to them to provide an outlook, variety in the urban scene, or as a positive element in the landscape. The W1 area performs well in all these respects. It was clear to me that the residents of Cheviot Close see the conservation of this amenity greenspace as being important to the environmental quality of the area. The Government attaches particular importance to the "greening" of residential environments. PPG3 states that developing more housing within urban areas should not mean building on urban greenspaces.
14. All that said there could still be an urban design imperative or a significant gain for the visual amenities of the area which would justify the development going ahead. However, having studied the evidence carefully I can find no such overriding factors that would favour the development. Bearing in mind the suburban nature of development hereabouts there is no compelling design case for Cheviot Close to be provided with better built enclosure. Given that the existing trees will continue to grow, I see no logical reason for the commercial development to be further screened by additional buildings. Whilst the scheme would exhibit a degree of variety in its built form, I agree with the local residents who argued that the development would be over intensive for the site. It would present an unduly hard built-up frontage to sections of Cheviot Close which would be at odds with the set-back of the houses along its southern side. The elevations facing the car park and servicing area would be dominated by areas of solid walling; this would give the development an unwelcoming appearance in views from Hearthcote Road. The bungalow at Brentwood does appear somewhat isolated but the development proposed at units 6 and 7 would produce a rather cramped spatial relationship being only about one metre away from the garage attached to Brentwood.

15. Turning to the proposed landscaping scheme, I see no objection to the inclusion of heavy standard or extra heavy standard trees but it would be important for a maintenance condition to be imposed given the time-consuming aftercare associated with such trees. As well crafted as the landscaping scheme is, it is necessarily constrained by the built development proposed and the restricted nature of the remaining land. It would neither overcome the visual drawbacks of the built development nor satisfactorily compensate for the diminution of the uninterrupted W1 belt of maturing trees and its value as an amenity greenspace. There would be minor improvements to the landscaping around the car park of the commercial development but this does not justify the built development proposed.
16. I acknowledge that the site is in a sustainable urban location which would favour a more efficient use of land but PPG3 warns that this approach should not compromise the quality of the environment. I conclude on the main issue that the appeal proposal would have an adverse and harmful effect on the character and appearance of the area, in conflict with aims within Structure Plan Housing Policy 3 and Environment Policy 16 and Local Plan Housing Policy 4 and Environment Policy 9.

Other Matters

17. I have looked at the car parking for the proposed residential units. The proposal is for a total of 7 residential units with 13 off-street parking spaces. I recognise the fears of local residents that such a ratio of flats to parking spaces could well result in on-street parking along Cheviot Close but this figure is broadly in line with advice set out in PPG3. In order to secure sustainable residential environments and reduce dependence on the car as a means of travel, national policy guidance advocates reduced off-street parking provision in locations like this which are close to public transport and readily accessible to shops, schools and the like. I do not consider that the configuration of Cheviot Close or the present parking situation necessitate more off-street parking than proposed. I note that the highway authority raised no objections to the amount of parking proposed.
18. Having regard to the orientation and relationship of the proposal to other properties I am satisfied that the living conditions for prospective occupiers and the reasonable expectations of neighbours, with regard to privacy, outlook and light, would not be unduly impaired.
19. The appellants were prepared to accept a condition to delete the proposed steps linking Cheviot Close to the car park next to the shops. If I had been minded to allow the appeal I would have imposed such a condition. Whilst the appellants saw benefits in linking the residential area to the shops, there would be no safe refuge for pedestrians once in the car parking area. Service vehicles would turn in close proximity to the bottom of the steps. The steps would not cater for the needs of disabled people. Their presence may have encouraged visitors to the shops to park in Cheviot Close particularly if the designated parking areas were full. The residents of Cheviot Close also expressed entirely laudable concerns for child safety arising from the inclusion of the steps.
20. The proposed residential development, especially units 6 and 7, would increase the natural surveillance of the car park and commercial development. I do not dismiss this benefit lightly especially in view of the incidences of criminal activity at the commercial property. However, this benefit is outweighed by my general findings on the main issue but also by two specific concerns I have about the siting of these two units which in turn are further indicators of the over intensive nature of the proposal. Service vehicles associated with the

commercial development would regularly pull up very close to the ground floor front-facing windows and door of unit 6. This would result in undue noise, disturbance, inconvenience and dangers for future occupiers. Moreover, it is apparent that the 1996 permission showed the vehicular turning area for service vehicles extending further to the west than currently laid out on site. Given that large service vehicles currently appear to run over and damage a landscaped area there remains a possibility that the Council may wish to secure the larger turning area. It could not do so if units 6 and 7 were built in the position proposed.

Conclusions

21. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Formal Decision

22. I dismiss the appeal.



INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mary Gibson
Peter Wood

Planning Officer for South Derbyshire District Council
Landscape Architect and Arboriculturist for South
Derbyshire District Council

FOR THE APPELLANTS:

Peter Diffey

Director of Peter Diffey and Associates Limited, Town
Planning and Development Consultants, Cotesbach
Villa, 54 Woods Lane, Stapenhill, Burton upon Trent,
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Edward Sharkey

Principal of Ed Sharkey Associates, Landscape
Architects and Environmental Consultants, 49 Meadow
Rise, Barton under Needwood, Burton upon Trent,
Staffordshire DE13 8DT

INTERESTED PERSONS:

Joan and Geoff Hughes
J Ward
Carl and Kay McGoldrick
G Tilson
J Talbot
P Toon

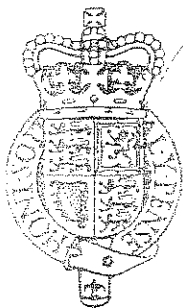
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10 Cheviot Close, Swadlincote, Derbyshire DE11 9EE
20 Cheviot Close, Swadlincote, Derbyshire DE11 9EE
22 Cheviot Close, Swadlincote, Derbyshire DE11 9EE

DOCUMENTS SUBMITTED AT THE HEARING

- | | | |
|----------|---|---|
| Document | 1 | Lists of persons present at the Hearing |
| Document | 2 | Housing Policy 4: Housing Development Swadlincote from South Derbyshire Local Plan adopted in May 1998 |
| Document | 3 | Photograph of vegetation on appeal site taken in March 2006 by Peter Wood |
| Document | 4 | Photomontages of development as seen from Cheviot Close and Hearthcote Road submitted by Peter Diffey |

PLANS

- | | | |
|------|---|---|
| Plan | A | 1:1250 scale Ordnance Survey map |
| Plan | B | 1:200 scale site survey, ref: 1742B |
| Plan | C | 1:200 scale tree survey, drawing No. 04-08/02 |
| Plan | D | 1:200 scale landscape proposals, drawing No. 04-08/03 |
| Plan | E | 1:100/1:200 scale site layout/floor plans/elevations, drawing No. C422/4 Revision B |
| Plan | F | 1:100 scale turning head elevation drawing of Unit 3 (unnumbered) |



Appeal Decision

Inquiry held and site visit made on 11 May 2006

by **David C Pinner** BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date

24 MAY 2006

Appeal Ref: APP/F1040/X/05/2004251

Land adjoining Goseley Dale Farm, Woodville Road, Hartshorne, Swadlincote

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Hardwick, Coleman and Whotton Ltd against the decision of South Derbyshire District Council.
- The application Ref: 9/2005/0215/Z, dated 23 February 2005, was refused by notice dated 18 April 2005.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is for the storage of builders' materials.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. All evidence was given under oath.

Background

2. The appeal site was formerly the garden for the original Goseley Dale farm house and also there had been some farm buildings on part of it. In 1993, the appellants constructed a new farmhouse for the farmer, Mr Bosworth, on adjoining land and received the appeal site as part payment for constructing the new house. At that time, the appeal site had outline planning permission for residential development. Evidence on behalf of the appellants suggests that they used the appeal site in 1993 for the storage of materials used in the construction of the new house and that they continued to use the site for storage, pending reuse, of low-value materials such as topsoil, subsoil, hardcore and aggregate from then onwards. Evidence from the Council and local residents suggests that it has only been in the past two or three years that the site has been used in any substantive way for the deposit of mainly spoil and rubbish arising from the appellant company's various construction projects.
3. The evidence comprises the recollections of employees of the company, Council officers and local residents. There is also documentary and photographic evidence comprising aerial photographs, video recordings made by Mr. Bosworth in 1998 and 2005, correspondence from the Council to the appellants and time sheets dating back to 1997 that include details of visits to the site by employees of the appellant company.

Reasons

4. The burden of proof lies with the appellant to show that, on the balance of probability, the claimed use began at least 10 years before the date of the LDC application and has continued since then.
5. The claim by the appellants that they used the appeal site for storing building materials used in the construction of Mr Bosworth's new farmhouse is disputed, but is not of particular relevance to the appeal in any case. The land was still owned by Mr Bosworth at that time and, if it was used as claimed, I would regard that as being an incidental activity to the construction of the new house rather than an independent use as a builders' yard by the appellant company.
6. Despite accusations to the contrary, I do not believe that anybody deliberately set out to give false evidence at the inquiry. It is a tall order to expect anybody to remember with any degree of accuracy exactly when such a mundane thing as the deposit of a pile of topsoil took place on the land unless they can relate it to some other event which would be important to them. I also accept that something could go unnoticed if it had not caused a problem. Under the circumstances, the documentary evidence takes on a great deal of importance.
7. The earliest piece of such evidence is an aerial photograph dated 27 June 1995. This purports to show a mound of something tipped in the middle of the land. Later aerial photographs taken in 1998 purport to show that the mound is still there. It was suggested that the mound was hardcore which was being stored until needed. It has since gone. Mr Bosworth recalled that the mound of hardcore was, in fact, the old driveway to the farm and that it was simply bulldozed into a pile and left on the land. As there is no dispute that a new access was constructed, I think this is probably correct. The pile shown in 1995 was therefore unlikely to comprise material that had been brought onto the land to be stored and more likely to be the old drive which was perhaps opportunistically removed from the land at a later date and used as hardcore.
8. Mr Bosworth's 1998 video recording, with voice commentary, shows the land in a weed infested state with no obvious signs of any storage use. In the commentary he mentions that an excavator had been on the site earlier that day digging up topsoil. He comments that this is a situation that had been going on for five years. It was suggested at the inquiry that in making that comment he had acknowledged that the site had been used for storage for five years. However, I think that what he meant was that the land had not been developed for housing as he had expected, and that other things had not been done, such as the proper fencing of the site, and instead it had been unmanaged and left to become weed infested and had been a nuisance to him and other neighbours for the past five years as a result.
9. Other documentary evidence dates back to 1997. A letter from the Council to the appellants dated 26 February 1997 notes that top soil and other material had been dumped on the site. After a follow-up letter of 1 April 1997, the Council pursued the matter no further on the basis that the site had reverted to nature by November of that year.
10. The appellant's own records in the form of job sheets dating back to 1997 show that employees visited the site from time to time. In the absence of any hard evidence or detailed and specific personal recollections, the evidence given by their witnesses at the inquiry is effectively based on the premise that if the land was being used in 1997, then it is inconceivable that it had not been used before then for similar purposes.
11. However, the time sheet records that specifically identify the appeal site contain only 3 entries for 1997. One simply says "top soil", on 6 February 1997 and the other two say "remove spoil to Hartshorne" on 17 and 18 February 1997. These acts correlate to the Council's letter of 26 February. The lack of complaints to the Council before then strongly

suggests to me that there was no previous occurrence of the site's use for the storage of topsoil and spoil.

12. From 1997 until 2003, the job sheet records show that the site was visited on very few occasions. There are no entries for 1998 that specifically mention the site, six for 1999, one for 2000 indicating that the site was tidied the week ending 17 December, one in 2001 indicating old pallets were collected the week ending 26 October and two entries in 2002 indicating that a skip was delivered on 5 August and collected on 7 August. In 2003, there is a great increase in recorded activity with further increases in 2004 and 2005. The Council received complaints in 2003 and wrote to the appellants on 1 September noting that the site was heavily overgrown and had also been used for the storage of topsoil and rubble. The job sheets show that materials of that type had been delivered to or collected from the site in March, June and August, so it is feasible that the topsoil and rubble referred to in the Council's letter had been deposited on the site earlier that same year.
13. This evidence suggests to me that the site was not used to any significant extent before 2003, hence no complaints were made to the Council. Furthermore, even then, the Council's letter does not indicate that they thought that a use of the land was taking place that might warrant enforcement action, since their threatened remedy is an "untidy land" notice under s215 of the Act. Their reference to planning permission possibly being required falls well short of an expression of the view that development requiring planning permission had taken place.
14. To summarise, there is no reliable evidence to show that the site was used for any purpose between it coming into the appellant company's ownership in mid-1993 until topsoil and rubble were dumped there in 1997. Although it seems that the Council did not act to get those materials removed, the fact that the site was allowed to revert to nature and that there was no further appreciable activity of that type until 2003 suggests to me that the land was not being actively used at that time for storage of those materials. I suspect that the materials had been dumped and any future re-use was a matter of opportunity rather than a conscious decision to retain them as an asset. Nothing more of any significance happened until 2003 when complaints were again made to the Council. I therefore conclude, on the balance of probability, that the land had not been used for the purposes of storing builders' materials for at least ten years beginning with the date of the application.

Conclusions

15. For the reasons given above and having regard to all other matters raised, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the land for the storage of builders' materials was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

16. I dismiss the appeal.



INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Niall Blackie

Solicitor-Advocate and Partner, Manby & Steward LLP,
Solicitors of Blount House, Hall Court, Hall Park Way,
Telford TF3 4NQ

He called

| | |
|---|--|
| Alistair Hardwick | Director, Hardwick, Coleman and Whotton |
| Ms Kay Davies BSc (Hons) DipTP MRTPI | Of Fisher German, appellant's agent |
| Mr John Whotton | Foreman, employed by Hardwick, Coleman and Whotton |
| Mr Victor Clamp | Joiner, employed by Hardwick, Coleman and Whotton |
| Mr Edward Holmes | JCB driver employed by Hardwick, Coleman and Whotton |

FOR THE LOCAL PLANNING AUTHORITY:

Jeanette Tsoi, Solicitor

South Derbyshire District Council

She called

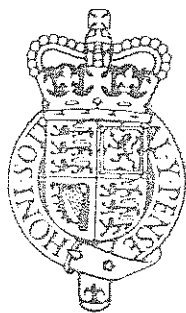
| | |
|---------------------------|--|
| Anthony Young MA MRTPI | Area Planning Officer, South Derbyshire District Council |
| Mr Rafe Shirley | Enforcement Officer, South Derbyshire District Council |
| Mr Paul Bosworth | Goseley Dale Farm House, 173 Woodville Road, Hartsthorpe |
| Mrs Jean O'Connor | 171 Woodville Road, Hartsthorpe |
| Mrs Rozanne Chambers | 171 Woodville Road, Hartsthorpe |

DOCUMENTS

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|------------|--|
| Document 1 | List of persons present at the inquiry |
| Document 2 | Council's notification letter of the appeal and list of those notified |
| Document 3 | Statement of Common Ground |
| Document 4 | Appendices 1 to 6 of Mr Hardwick's proof of evidence |
| Document 5 | Appendices 1 to 13 of Ms Davies' proof of evidence |
| Document 6 | Statement by Mr David Ikin of Broomy Farm, Woodville road, Hartsthorpe |
| Document 7 | Appendices to Mr Young's proof of evidence |
| Document 8 | Attachments to Mr Shirley's statement |
| Document 9 | Attachments to Mr Bosworth's statement |

PHOTOGRAPHS

Photo 1 Aerial photograph dated 27 June 1995



Appeal Decision

Site visit made on 11 April 2006

by **Jeremy Eagles** DipTP DMS MRTPI

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
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☎ 0117 372 6372
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Date: 8 May 2006

Appeal Ref: APP/F1040/A/06/2005592

174A Oxford Street, Church Gresley, Swadlincote, Derbyshire DE11 9NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr G Clark against the decision of South Derbyshire District Council.
- The application Ref 9/2005/1209/FH, dated 11 October 2005, was refused by notice dated 2 December 2005.
- The development proposed is the erection of an extension.

Summary of Decision: The appeal is dismissed.

Main Issue

1. The main issue in this appeal is the effect of the proposed development on the living conditions of the occupiers of the neighbouring property having particular regard to any overshadowing; overbearing effect or loss of outlook arising.

Planning Policy

2. The development plan includes the *South Derbyshire Local Plan* (LP) and of the policies brought to my attention Housing Policy 13 is of particular relevance. This allows for residential extensions provided that, amongst other things, they are not detrimental to the amenities of adjoining properties. The Council has adopted *Extending Your Home*, as supplementary planning guidance (SPG) which gives design guidance on domestic extensions. It has been subject to public consultation and I shall afford it substantial weight.

Reasons

3. The appeal premises comprise a modern detached house located in a predominantly residential area characterised by a variety of different house types and designs. Ground levels slope down steeply from the highway frontage with the effect that the existing building has 2 storeys at the front of the property and 3 at the rear. The proposal is to erect a first floor extension across the full width of the rear of the house above an existing ground floor addition.
4. The appeal property is located in close proximity to the neighbouring house, 174 Oxford Street. The existing dwelling extends approximately 4m beyond the rear windows of No 174. SPG advises that in order to protect windows in neighbouring properties from overshadowing, proposed 2-storey extensions should not breach the minimum distance along a 45° line drawn from the centre of the nearest ground floor primary window of the neighbouring property. However, I accept that due to the change in ground level the proposal would be generally at the same height as the ground floor of the adjoining property

and would have the effect of being a single storey extension which, SPG states, should be decided on its own merits.

5. The proposal would extend approximately 3.3m beyond the rear of the appeal property and the combination of this and the present rearward projection of the existing building beyond the neighbouring windows would result in a blank wall running for a significant distance in close proximity to No 174. I note that the rear of both properties faces north and that as there is no direct sunlight on the rear elevation of either building no shadows would be cast by the proposed development. However, the combined length of the projection of the existing property and the proposed extension would have a serious overbearing effect on the rear ground floor windows of No 174 and would reduce a very restricted outlook even further.
6. I accept that there would be no loss of privacy to the occupiers of No 174 and cannot comment on whether a conservatory would comply with SPG as this is a matter for consideration by the Council. However, I conclude that having regard to the overbearing effect of the proposal and likely loss of outlook from the neighbouring windows, the proposed development would cause significant harm to the living conditions of the occupiers of the adjoining property contrary to Housing Policy 13.

Other Matters

7. I saw two other rear extensions in the locality but do not consider that they are sufficiently similar to the proposal to provide a significant precedent in this case. I also note that the Council has no objection to the proposal on detailed design grounds. However, this is insufficient to outweigh my conclusion in relation to the main issue given above.

Conclusion

8. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Formal Decision

9. I dismiss the appeal.

Jeremy Eagles

INSPECTOR