

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 also 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.

Item 1.1

Reg. No. 9/2009/0156/FH

Applicant:

Mrs Jackie Clark
Mount House
Commerce Street
Melbourne
Derby

Agent:

Mrs Jackie Clark
Mount House
Commerce Street
Melbourne
Derby

Proposal: The retention of a support for ornamental trees at
Mount House Commerce Street Melbourne Derby

Ward: Melbourne

Valid Date: 20/02/2009

Reason for committee determination

The application is retrospective and the Committee has previously resolved to take enforcement action.

Site Description

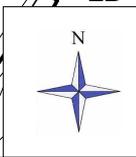
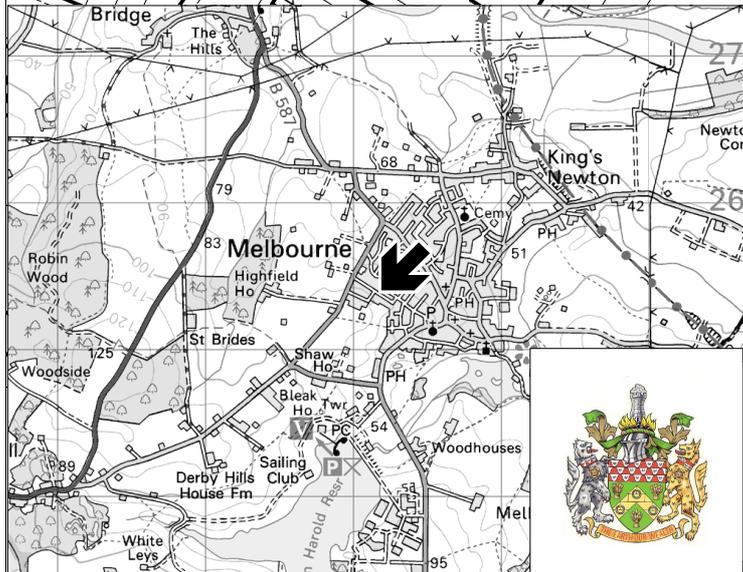
The property is a large Victorian detached villa, with kitchen and bedroom windows in the side elevation. These face the side elevation of a newly erected dwelling at 46A Commerce Street, which contains a kitchen door and window at ground floor level, serving an open plan kitchen, dining and living area. The main windows to this room face the property's garden and the proposal is not visible therefrom.

Proposal

The application relates to a structure, some 3.7m to 3.9 m in height, measured from the applicant's ground, and 13 m in length, comprising slender vertical metal stanchions affixed to the boundary wall, between which wires are held in tension. The purpose of the development is to provide a framework to pleach a recently planted Hornbeam hedge.

Applicants' supporting information

- a) The purpose of the proposal is to restore privacy lost when 46A was built and to contain and constrain the growth of the trees. Without the support the trees would grow as standard specimens, with consequent growth into the neighbouring property, far bushier, and potentially considerably higher. Unchecked, Hornbeam can grow to a height of 25 metres with a spread of 20 metres.



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- b) There is no realistic alternative location for the hedge other than alongside the boundary.
- c) Planning permission was not sought in the first instance because it was believed that permission would not be needed for the support structure. The reason an application was not made immediately after being advised of the requirement is because it was understood that it would not be expedient for the authority to take enforcement action.
- d) The Hornbeam species lends itself to pleaching (effectively a 'hedge on stilts') and is a typical feature of Victorian and Edwardian landscaping. Pleaching cannot take place without the supporting structure.
- e) The support is a slim uniform structure that has no impact on reducing light or views to the neighbours. In any case it will be almost entirely hidden by the growth from the trees within two years.
- f) Hornbeam is not a high water demanding species and its root system is not invasive.
- g) The structure has been designed with flexible uprights and sliding hoops to connect the trees to the wires to reduce stress on the tree branches and the wall. The integrity of the wall, which belongs to the applicants, was taken into account as a priority.

Planning History

The Committee resolved to take enforcement action at its meeting on 20 January 2009.

Responses to Consultations

The Parish Council initially raised no objection but asks that consideration be shown to the neighbour's objection.

Melbourne Civic Society has no objection although it feels the height is perhaps excessive. However as there is no public interest the Society does not wish to comment further.

The Council's consultant arboriculturist has affirmed that if the trees are not pleached they will assume the growth habit as shown on the applicant's illustrative drawing.

Responses to Publicity

Two letters of support have been received, commenting that the structure is barely visible and will enable the trees to be managed in a more sympathetic manner than without it.

The adjoining neighbour has supplied reports from a chartered town planner and structural engineer. In summary the objections raised are as follows:

- a) There would be loss of daylight and sunlight to the only window in the kitchen and dining area of 46A. Members are invited to visit the site to view the impact.
- b) The appearance of the structure is overbearing. The wires are very visible from the kitchen window. It extends to a height of more than 4m relative to the ground level at No 46A.
- c) When mature the structure will create significant overshadowing to 46A. The trees should not be considered in isolation.

- d) The pleaching effect is out of character with the surrounding landscaping and area.
- e) Planting 15 trees on the boundary wall and in close proximity to 46A is likely to cause structural damage to the wall and property.
- f) The attachment of the frame and wires will increase flexural stress levels to the wall by 300%, as a result of which the wall would likely become dangerous and subject to collapse.
- g) Action under dangerous structures legislation could be too late.
- h) No action has been taken by the applicants to reduce the height of the structure despite the decision by the committee on taking enforcement action in January.

Development Plan Policies

None relevant.

National Guidance

None relevant.

Planning Considerations

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

- Impact of the structure on the general character of the area.
- Impact on the living conditions of the occupiers of the adjoining dwellinghouse.

Planning Assessment

The structure is set well back from the street and has negligible impact on the general character the area.

The structure itself is visually very lightweight and there is no demonstrable loss of light to the neighbour, or overbearance, attributable to it.

The trees do not need planning permission and in the event of refusal of permission they would assume their natural growth habit.

The matter of potential damage to structures caused by the trees is a civil matter not controllable through the planning system. If at some time in the future damage to the boundary wall occurs, resulting in the general public becoming at risk, then it could be considered a dangerous structure. As such Section 77 or 78 of the Building Act 1984 could be applied, through the Building Control section, to remove the danger.

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.

Item 1.2

Reg. No. 9/2009/0157/OX

Applicant:
Mr Michael Harrison
23 York Road
Church Gresley
Swadlincote

Agent:
Bryan Wolsey (Planning) Ltd
29 Chapel Street
Ticknall
Derby

Proposal: **Outline application (all matters except means of access to be reserved) for the residential development of 23 York Road Church Gresley Swadlincote**

Ward: **Gresley**

Valid Date: **24/02/2009**

Reason for committee determination

The application is brought before Committee at the request of Councillor Southerd because local concern has been expressed about particular issue, which should be considered by the Committee.

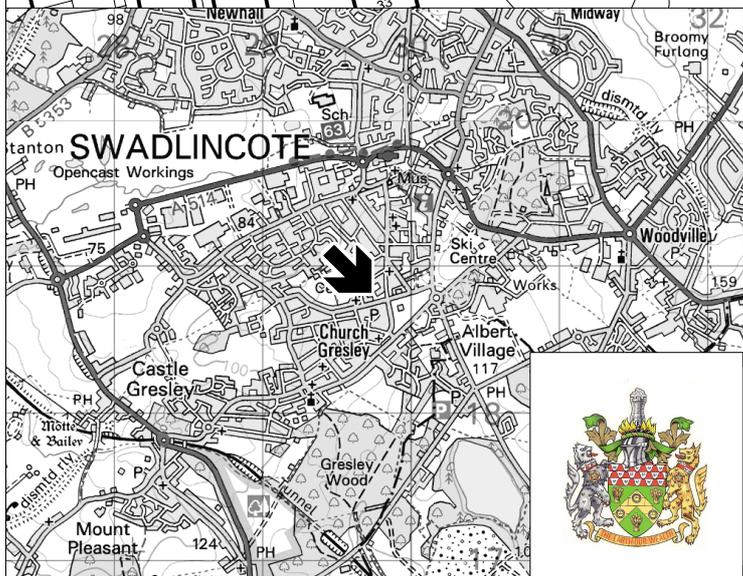
Site Description

The site is located half a mile north of the main centre of Church Gresley on York Road. The application site includes 23 York Road and the land to the rear. This particular section of York Road is characterised by semi-detached properties set 37-60 metres away from the road frontage. There is an area of common land which is grassed and crossed by driveways to the properties which varies from 12-30 m in width immediately adjacent to the York Road. There is a line of Lime trees on the road frontage which are covered by TPO 113.

One tree is located in the front garden area of No. 23, which is not protected and one Lime tree is adjacent to the front boundary wall of No. 27 and is protected by TPO 113. There is also a protected Horse Chestnut tree 22m from the front boundary of No. 23 within the garden area of No. 27 with its trunk approximately 1m from the eastern boundary with No. 23.

23 York Road is a gable roof detached property with two single storey garage/storage buildings and large parking area to the front of the dwelling. No's 19-29 York Road are in close proximity with 1-2m between properties. The area to the rear of No. 23 is unused garden land and there is an empty swimming pool adjacent to the north west

9/2009/0157/OX - 23 York Road, Church Gresley



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corner. The south western boundary of this area has hedging and 10m high trees in places as does the north eastern corner. These trees are not covered by a TPO.

Proposal

Outline planning permission is sought for residential development with all matters apart from access being reserved for approval as part of a subsequent reserved matters application. No.23 York Road and its outbuildings would be demolished to facilitate the access to the rear part of the site. The indicative layout shows 8 small detached and terraced dwellings circling a turning head with 1 dwelling located adjacent to the south western boundary to the rear of the current property No.23. An area of parking is proposed in what is currently the front garden area of No.23.

Applicants' supporting information

Design and Access Statement concludes that the site proposal is in accord with the development plan.

Planning History

The site currently accommodates a Commercial Car garage and house.

Responses to Consultations

County Highways Authority states that prior to being in a position to give conditions two points require classification/amendment. It questions whether the LPA are confident that access can be provided over the grassed area fronting the site, as this area of land is not part of the adopted highway nor is it stated to be controlled by the applicant. The applicant suggests that the land is common land. There are no pedestrian intervisibility splays at the point where the access crosses the unadopted footway which is directly adjacent to the front boundary. An amended plan now received shows the access moved by 1m and a traffic hump provided within the site curtilage to reduce vehicle speed before crossing the footway upon existing the site curtilage. This was submitted in response to a request for such from the highway Authority.

Severn Trent Water has no objection subject to drainage conditions.

Derbyshire County Council Education seeks a contribution of £11,276 towards the extension of existing buildings at the infant and junior schools.

The Council's Landscape Consultant has no objection subject to access being moved 6m away from the trunk of the Horse Chestnut Tree T1 of TPO 113 as shown on the amended plan.

Responses to Publicity

A neighbouring household has sent three letters of objection as follows:

- No.21 York Road is not shown on the plans (it is attached to No.19)
- The building work and demolition of No.23 and its outbuildings would leave open access to the front garden of No.21 York Road
- There would be noise and disturbance during construction

- No.21s outbuildings are attached to those of No.23 therefore this is a party wall issue
- The access road would run down the side of No.21 which would reduce amenity by traffic and noise taking away their peace and quiet.
- The Proposed access is close to a busy crossroads which would increase the risk of accidents for road users and pedestrians
- The impact on local flora and fauna is unacceptable
- Loss of mature trees which are a habitat for birds
- Trees have preservation orders on them
- There would be an Impact on existing drainage

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan: Policy 3 – New Development

Local Plan: Housing Policies 4 and 11, Environment Policies 9 and 10, Recreation and Tourism Policies 4 and Transport Policy 6.

National Guidance

Planning Policy Statement 1: Delivering Sustainable Development (2005)

Planning Policy Statement 3: Housing (2006)

Planning Policy Guidance 17: Planning for Open Space, Sport and Recreation (2002)

Planning Considerations

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

- The principle of development
- Residential Amenity
- Impact on the protected trees
- Highways issues in relation to access
- Common Land

Planning Assessment

The principle of development

The land is previously developed and sits well inside the main urban area. As such the principle of development is not at question under prevailing development plan and national policies.

Residential Amenity

The nearest residential properties to the site are 19, 21, 23, 27 and 29 York Road (No.25 has been demolished and the area is now used as garden area for No. 23). In terms of impact, particularly overlooking and privacy, the indicative layout demonstrates that such a development can be accommodated within the site in accordance with the Council's Supplementary Planning Guidance dependent upon details which would be controlled at reserved matters stage.

No.23 currently has an established commercial repair garage use and the impact on the amenity of neighbouring properties would be reduced by the proposed residential development, as it would be more in keeping with the surrounding area and would not cause the noise and disturbance that the existing use would.

Trees

There are four trees adjacent to the site boundary that are covered by TPO 113 and the trees exact locations are described in the above site description. No dwellings are proposed in close proximity to these trees.

The access road was originally proposed two metres from the trunk of the protected Horse Chestnut tree. Comments from the Council's tree consultant required this distance to be increased to 6m and this is now shown on the amended layout plan received on 3 April.

Previous advice given at pre-application stage was to achieve 6-10 m clearance from a dwelling to the Horse Chestnut tree; the nearest property on the indicative layout would be 23m away. It was also stated that similar distances would be required for trees in the rear of the site in order to avoid overshadowing of properties windows and avoid potential pressure to heavily prune or fell the trees. Such a distance can be achieved regarding the trees on the south western, north western and north eastern boundaries.

Highways Issues

The access to the site has been submitted for approval at this outline stage. A 5m wide access is proposed involving a re-alignment and widening of the existing access to provide sufficient width for two cars to pass and re-alignment at the access with York Road, which complies with previous advice from the County Highways Authority. Amended plans have been received which address the pedestrian intervisibility. The access drive would be a splayed vehicular crossover and sixteen 2.4m x 4.8m car parking spaces can be achieved in the indicative layout. The County Highways Authority has concerns with regard the control of land between the front boundary of No.23 and York Road. However, recent refusals on highways grounds due to the lack of control of land have been allowed at appeal. Therefore, the Highways Authority does not wish to recommend refusal on this basis.

Common Land

The issue of the common land is a material planning consideration. The area of land between the front boundary wall of No.23 York Road and the road itself has been identified as registered common land through records from DEFRA. Common land is defined in the Commons Registration Act 1965 as:

".. meaning either land subject to rights of common (as defined by the Act) or waste land of a manor not subject to rights of common, but as not including town or village green or any land which forms part of a highway".

Rights of common can include:

- Grazing sheep or cattle (herbage)
- Taking peat or turf (turbary)
- Taking wood, gorse or furze (estovers)

- Taking of fish (piscary)
- Eating acorns or beechmast by pigs (pannage)

The District Council has the power, with the consent of the County Council to help people maintain the rights of common and to institute or defend legal proceedings for that purpose. Both the County and District Councils may make an application to the County Court where there have been encroachments on common land. The Commons Registration Act 1967 gives powers to a District Council to protect unclaimed common land, where no person is registered as the owner under the Act.

Case law relates to village greens, open space and enclosing areas by fencing. Common land can also be exchanged for compensation. Similar cases involve the creation of footpaths and car parking on common land which was found to cause no harm to the common. In relation to this application, an amendment to an existing access over common land is proposed. Each property in this area of York Road has a vehicle access over this area of common land. In light of legislation and case law, it is considered that this proposal would not cause harm to the common and as the District Council has powers over common land, refusal on this basis is not sustainable.

The issue raised by an objector in relation to demolition of outbuildings attached to their buildings is a legal matter, which is not within the remit of planning. In relation to having an open boundary, a suitable boundary treatment condition could be attached to any permission to retain the privacy of adjacent neighbouring properties (which could include the retention of part of an existing building but this would be up to the developer). A drainage condition would be attached to any permission.

Conclusion

The proposed residential development is located on a brownfield site, close to the centre of Church Gresley and Swadlincote. The indicative layout has demonstrated that residential development can be achieved on site without a substantial impact on the amenity of neighbouring properties or the protected trees. The common land would not be harmed by the changes to the access and thus a satisfactory access can be achieved.

Recommendation

That subject to the receipt of a signed unilateral undertaking for the provision of £372 per person for open space, £220 per person for outdoor facilities and £122 per person for built facilities, £11,276 for education and £4,408 for healthcare provision; **GRANT** permission subject to the following conditions:

1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
 (b) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990.

2. Approval of the details of the layout, scale, appearance and the landscaping shall be obtained from the Local Planning Authority in writing before any development is commenced.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.

3. 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 dwellings 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.

4. No development shall take place until details of earthworks have been submitted to and approved in writing by the Local Planning Authority. These details shall include the proposed grading and mounding of land areas including the existing and proposed levels and contours to be formed, showing the relationship of the proposed mounding to existing vegetation and surrounding landform.

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

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.

6. 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.

7. Notwithstanding the submitted details, prior to the commencement of building operations on adjoining areas, the boundary with the area of protected trees shall be fenced with chestnut pale fencing to a minimum height of one metre staked at 2 metre centres. The fencing shall be retained in position until all building works on adjoining areas have been completed unless otherwise agreed in writing with the local planning authority.

Reason: To protect the trees/landscape areas from undue disturbance

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. No development shall take place until full details, including surface materials, of a vehicular turning and parking areas within the site have been submitted to and approved in writing by the Local Planning Authority. The turning area shall be provided as approved prior to the first occupation of any dwelling and shall thereafter be retained for that purpose.

Reason: In the interests of highway safety.

10. Prior to the occupation of any dwelling the access approved on drawing 06 shall be completed. The development shall only be carried out in accordance with the approved details.

Reason: In the interests of highway safety.

Informatives:

The proposed development lies within an area which could be subject to current coal mining or hazards resulting from past coal mining. Such hazards may currently exist, be caused as a result of the proposed development, or occur at some time in the future. These hazards include: Collapse of shallow coal mine workings; Collapse of, or risk of entry into, mine entries (shafts and adits); Gas emissions from coal mines including methane and carbon dioxide; Spontaneous combustion or ignition of coal which may lead to underground heatings and production of carbon monoxide; Transmission of gases into adjacent properties from underground sources through ground fractures; Coal mining subsidence; Water emissions from coal mine workings.

Applicants must take account of these hazards which could affect stability, health & safety, or cause adverse environmental impacts during the carrying out their proposals and must seek specialist advice where required. Additional hazards or stability issues may arise from development on or adjacent to restored opencast sites or quarries and former colliery spoil tips. Potential hazards or impacts may not necessarily be confined to the development site, and Applicants must take advice and introduce appropriate measures to address risks both within and beyond the development site. As an example the stabilisation of shallow coal workings by grouting may affect, block or divert underground pathways for water or gas. In coal mining areas there is the potential for existing property and new development to be affected by mine gases, and this must be considered by each developer. Gas prevention measures must be adopted during construction where there is such a risk. The investigation of sites through drilling alone has the potential to displace underground gases or in certain situations may create carbon monoxide where air flush drilling is adopted. Any intrusive activities which intersect, disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) require the prior written permission of the Coal Authority. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action. In the interests of public safety the Coal Authority is concerned that risks specific to the nature of coal and coal mine workings are identified and mitigated.

The above advice applies to the site of your proposal and the surrounding vicinity. You must obtain property specific summary information on any past, current and proposed surface and underground coal mining activity, and other ground stability information in

order to make an assessment of the risks. This can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months prior notification should be given to the Director of Environmental Services at County Hall, Matlock (telephone 01629 580000 and ask for the District Highway Care Manager on extension 7595) before any works commence on the vehicular access within highway limits. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.

Item 1.3

Reg. No. 9/2009/0185/SRF

Applicant:
Sainsbury's Supermarket LTD

Agent:
Ms Claire Southam
Indigo Planning Ltd
36 Park Row
Leeds

Proposal: **The extension of existing foodstore, relocation of existing petrol filling station, reconfiguration of car park & pedestrian footpaths, alterations to access and associated landscaping at J Sainsbury Plc Civic Way Swadlincote**

Ward: **Swadlincote**

Valid Date: **06/03/2009**

Reason for committee determination

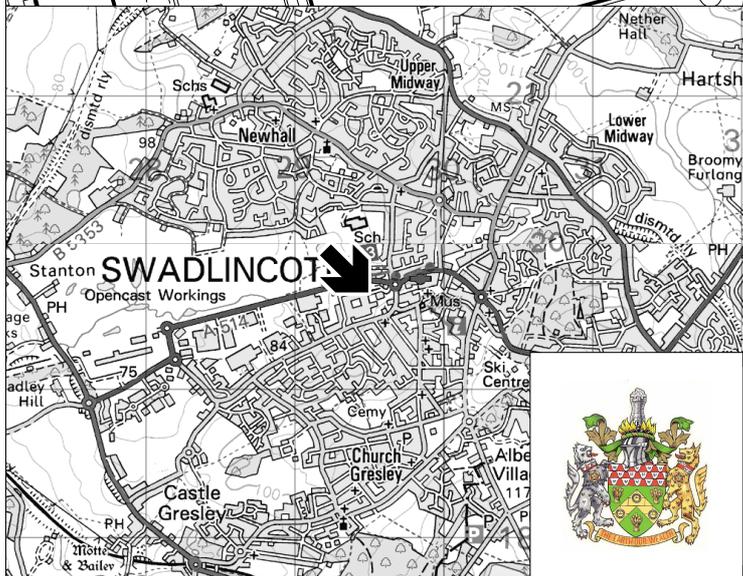
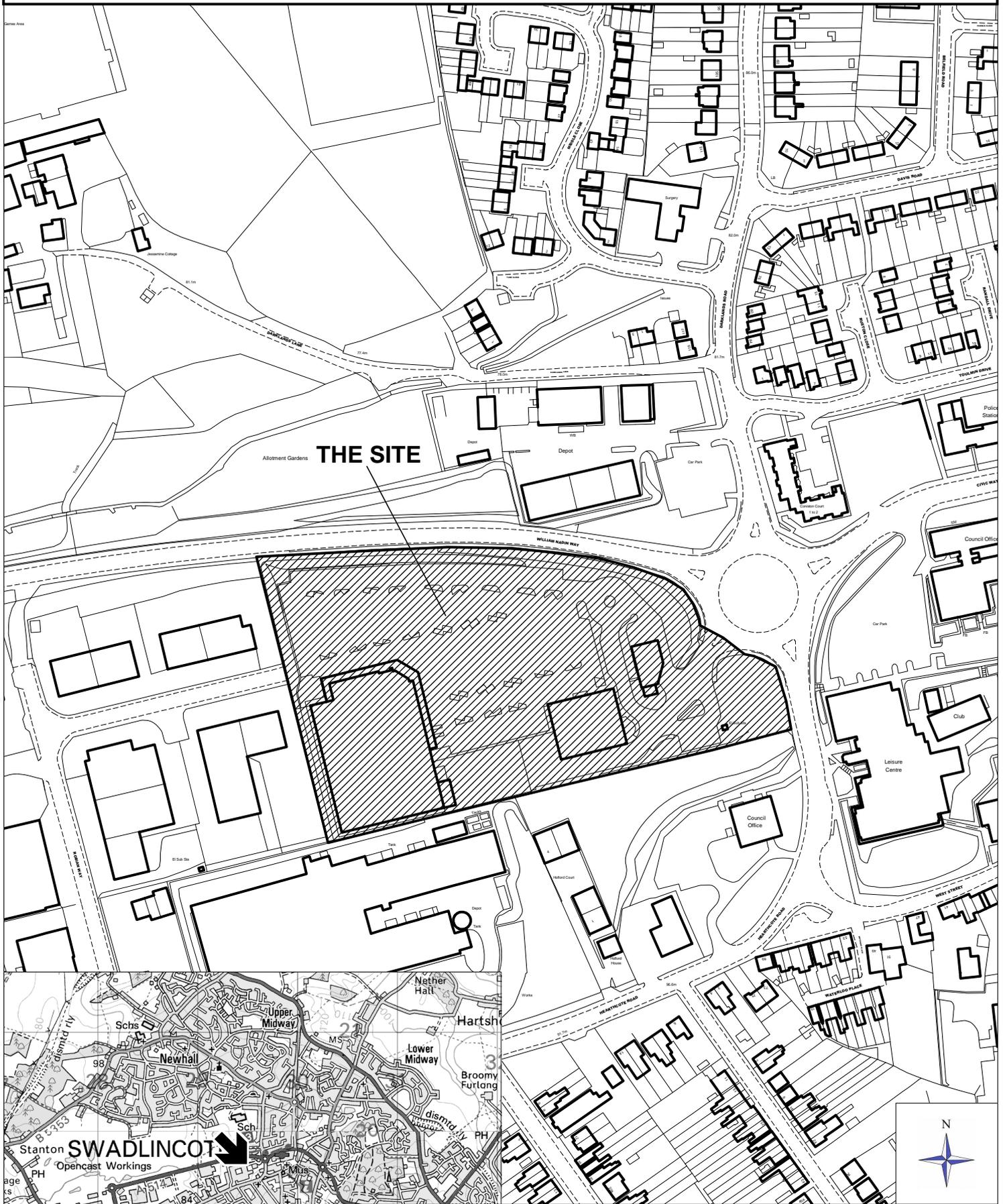
The application is brought before the Committee at the discretion of the Head of Planning Services, as it is a major application of local interest.

Site Description

The 3.1 hectare site is located to the north west of Swadlincote town centre accessed from the main roundabout that links the A514 William Nadin Way from the west and Civic Way (also the A514) to the east. The site is on the main route through the town and is therefore a gateway site. The supermarket's existing petrol filling station (PFS) is adjacent to this main roundabout at a lower land level. The access road curves around the PFS with a recycling area to the south and there is a mini-roundabout within the site to access the car parking area. There is an existing brick built Co-op Home Electrical store located in between the PFS at the entrance to the site and the Sainsbury's store in the south western corner of the site.

There is extensive landscaping on the boundaries to the site with semi-mature trees on the northern bank bounding William Nadin Way. There are industrial buildings to the south and west of the site, the Council offices and leisure centre to the east and the Council's depot to the north east with some green space to the north west. Main residential areas nearby are to the north east and south.

9/2009/0185/SRF - J Sainsbury's Plc, Civic Way, Swadlincote



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Proposal

The application is for an extension to the existing Sainsbury's supermarket, relocation of petrol filling station, reconfiguration of car park and pedestrian footpaths, alterations to access and associated landscaping. The main extension would be located on the eastern frontage to the existing store and would involve the demolition of the adjacent existing Co-op Home Electrical Store.

The net sales floor area available on the site currently (including existing permissions not implemented) is 3,432 sq.m. The net available sales floor area under the current proposal would be 4,784 sq.m. This represents a 40% increase in net sales floor area. The proposal includes the creation of a mezzanine floor which would incorporate the customer restaurant and sales area.

A number of minor amendments to the scheme have been received during the course of the application to satisfy various comments received but the scheme basically remains as submitted. The proposed layout changes involve the relocation of the PFS to where the recycling area is at present in the south eastern corner of the site to the south of the access road. PFS customers would turn left immediately after the roundabout to gain access. The landscaped areas adjacent to the roundabout would remain with new retaining walls and replacement landscaped banks. The service yard would be adjacent to the southern boundary to the west of the PFS and would be enclosed by a 2.9 metres high screen wall. The access road would curve around the eastern elevation of the store. The recycling area would be relocated to the north eastern corner of the site within the car parking area. A plan has been submitted to indicate the location and type of speed control proposed within the site.

The existing car park has 386 spaces, 65 of which are operated by the Co-Op retail unit. Seven additional car parking spaces are proposed. 28 disabled parking spaces are proposed in close proximity to the entrance to the store. 18 parent and child spaces are proposed adjacent to the northern and eastern elevations of the store. 24 cycle parking spaces are proposed adjacent to the eastern elevation. Two pedestrian accesses are proposed on the northern boundary with William Nadin Way, one of which links with an existing pedestrian crossing and would be ramped due to the change in land levels. A new footpath on the site would run directly from the store entrance to the crossing on Hearthcote Road and from there to the town centre.

The main elevations of the store are the northern and eastern elevations which face the William Nadin Way and the roundabout. Full height glazing wraps around these elevations with a projecting glazed tower feature on the corner to emphasise the entrance to the store. This tower feature is the highest element of the scheme and has double height glazing with a section of vertical timber cladding above which would house the Sainsbury's sign. The glazed sections are broken up by a projecting canopy which has feature columns at intervals and a section of 'brise soleil' at the top of the glazing to provide shade. Above this section would be a strip of horizontal timber cladding. Adjacent to the glazed sections would be brickwork to match the existing store with cream horizontal cladding above. On the eastern elevation a large sign would be attached to a section of this cladding. On the northern elevation more glazing would be introduced on the ground floor within the existing brickwork adjacent to the proposed checkout line and the stairwell to the mezzanine floor would be fully glazed.

Applicants' supporting information

Design and Access Statement – This report includes details of the site context, the design concept, pedestrian routes together with outlining the sustainable construction measures.

Planning and Retail Report – The report includes detailed analysis of retail data for the area to provide justification on the 5 key tests identified in PPS6. The conclusions are that there is a clear need for the proposed extension, it would not have a material impact upon the vitality and viability of Swadlincote Town Centre and it accords with National and Local Development Plan Policies.

Transport Assessment – The report contains detailed analysis of the existing highway network and infrastructure, access, parking and servicing and capacity calculations. The report concludes that there would be an increase in trips as a result of the extension and this has been combined with collected traffic data and committed development data. The junction modelling carried out predicts that the roundabout would continue to operate effectively. Overall it is considered that there is no highway reason why permission should not be granted.

Statement of Community Involvement – This statement outlines the methodology in terms of stakeholder involvement, advertisements and the public exhibition exercise. Analysis of public consultation results highlighted that 89% of respondents were in support of the proposed extension.

Landscape Appraisal Report – This report outlines the character and contribution of all existing landscape features and makes an assessment on their retention/removal in order to inform the landscape strategy. It identifies that the existing landscaping areas on the northern boundary and areas adjacent to the roundabout to the east are important for screening and this strategy is the basis of the landscaping scheme.

Contamination Reports – Phase 1 Desk Study & Phase 2 Intrusive Investigations – Phase 1 of the report characterises the geological and environmental setting by reviewing available data from a number of sources including the Environment Agency. Phase 2 was based on borehole testing for chemical soil analysis, groundwater and ground gas monitoring. These tests will inform the foundation construction methods. The conclusions drawn are that the risk from contamination is very low.

Planning History

9/2009/0102 - The extension to foodstore bulk stock area (renewal of planning permission 9/2004/0327/F), Granted

9/2007/0943 - The provision of ramped pedestrian access and realignment of car park to provide a pedestrian route, Refused 12/10/07

9/2004/1398 - The renewal of planning permission 9/1999/0928/F to provide additional floor space, customer restaurant, a new entrance amended car parking layout and associated landscaping, Removal/Variation of Conditions Granted 15/12/2004

9/2004/0327 - The erection of an extension to foodstore bulk stock area, in conjunction with the approved store extension under planning permission 9/1999/0928/F, Granted 12/05/04

9/2001/0726 - The creation of a footpath link from store car park leading onto William Nadin Way, Granted 23/09/2002

9/2001/0434 - Extension of petrol filling station kiosk, installation of 2 additional petrol pumps, the repositioning of existing pumps, the re-alignment of the kerb and an extension to the canopy, Granted 26/06/01

9/1999/0928 - The erection of extensions to provide additional floorspace, customer restaurant, a new entrance, amended car parking layout and associated landscaping, Granted 25/02/00

9/1993/0153 - The erection of retail stores and a filling station and the formation of an associated car park and access in accordance with condition 2 of planning permission 9/0491/0018/O on the site of the former engineering works, Granted 29/06/93

Responses to Consultations

The County Highways Authority's comments can be summarised as follows:

- The principle of the extension to the store is regarded as acceptable;
- There is a concern relating to the proposed car parking provision.
- The relative proximity of the site to the town centre provides the possibility of pedestrian linked trips.
- The proposed increase of cycling provision is welcomed.
- In terms of the relocation of the petrol filling station (PFS), there are concerns in relation to the proposed location of this aspect of the scheme as it allows a relative short distance between the Civic Way roundabout and the entry into the PFS.
- Further detail with regard the pedestrian access and PFS location has been supplied on the basis of the level information provided. This aspect of the scheme is regarded as acceptable. However, it is the concern of the Highways Authority that there would be an increased potential for conflicting turning movements in the vicinity of the PFS access, exacerbated by the speed of vehicles existing the roundabout and entering the site access. The submitted Road Safety Audit identifies a number of points of concern with regard to the internal layout of the site. The Applicant's Highway Consultant Mayer Brown indicates that these would be addressed by the developer in a diligent manner and in due course.

The Highways Authority remains of the view that the revised access arrangement is poor and the relocation of the PFS is unwise in view of the identified concerns regarding potential vehicle speeds on the access road and associated conflicting movements within the site. However, it is considered that problems are unlikely to occur on the public highway and thus the Highways Authority is not in a position to recommend refusal when the concerns relate to private land. Conditions relating to the construction storage area, vehicle wheel washing, detailed engineering design of the access, signage, laying out of the car parking and servicing areas and completion of the pedestrian links prior to use are recommended.

Derbyshire County Strategic planning comments are summarised as follows:

- On the basis of the County Council's assessment, it is considered that the proposed extension would be broadly acceptable in the context of national and regional planning policy for town centres and retail developments. In particular, the proposed extension would be likely to meet a qualitative need for new convenience retail floorspace within Swadlincote;
- In terms of the sequential test, it is considered that there are no sequentially preferable sites available which could accommodate the proposed development;

- The development is of an appropriate scale for the current and likely future role and function of Swadlincote town centre;
- The extension would be unlikely to harm the vitality and viability of the town centre overall;
- The extension would be situated in a highly accessible and sustainable location;
- The development would be likely to claw-back to Swadlincote significant amounts of expenditure on main food shopping which is currently leaking to competing stores and centres outside the catchment area, with consequent benefits to the town centre in terms of spin-off trade to other businesses and a potential reduction in vehicular trips and mileage for main food shopping.
- The only issue of concern relates to quantitative need. In this respect, it is considered that the defined catchment area of the store may have been drawn too widely with a consequent effect that much higher levels of surplus available expenditure and capacity have been identified, which may not have been the case had a more appropriate catchment area been defined for the store and extension based on a 10 minute drive-time. Notwithstanding the issue above, it is considered that the proposed development meets all the other tests in national planning policy guidance on town centres and retailing.

The Council's Design Excellence Officer states that initial concerns about pedestrian connectivity to the town centre have been addressed with an amended plan that provides a route that is sufficiently direct, has an element of natural surveillance and minimises conflict with vehicles. The architectural detailing of the proposed extension has been amended in a number of places to address concerns about the type of materials used and the overall appearance of the building. Glass has now replaced grey cladding on the stair core on the north elevation. There were concerns that the large expanses of white cladding on the building would give it too much of an industrial character. This cladding has now been changed to a softer cream tone that should also show fewer signs of weathering and staining. The balance of the building has also been shifted. The stair core on the north elevation was initially the highest point of the structure. This stair core has now been reduced in height and the entrance lobby has been increased in height with the addition of a timber screen. This timber screen allows the entrance lobby to dominate the structure, drawing attention to the entrance and allowing the building to be understood much more clearly. The additional timber on the most prominent element of the building also makes a stronger and more obvious reference to the National Forest.

He considers that the concept and detailing of the proposed extension – with a dominant entrance lobby with a strong vertical emphasis – a surrounding structure with a strong horizontal emphasis – and a materials palette of predominantly brick, glass, timber and cream cladding - is now acceptable in architectural terms. The more detailed working drawings will, however, require careful monitoring to ensure a satisfactory built product.

The Derbyshire Police Crime Prevention Design Advisor (CPDA) comments as follows:

- There is concerned about the safe pedestrian routes. The sloping path from Civic Way above the petrol filling station splits and passes in front and behind the Kiosk, the primary route actually crossing the road feeding the service yard.
- The actual block structure of the Kiosk has fenestration only on the one main entrance elevation; the other sides are blank apart from a fire escape and a colleague access door. A suggestion is that additional fenestration is added to

the rear and side facing the footpath route to add to and improve the safety of users and could also add a useful line of surveillance to monitor the service entrance gateway. An alternative is the use of CCTV. This whole area and route should also be well lit. Prior to the pedestrian crossing point behind the Kiosk, would advise that traffic calming measures should be deployed due to a lack of line of sight for delivery vehicles turning left to enter the service yard.

The Council's Economic Development Section requests that the possibility of providing coach spaces within the car park be investigated to benefit tourism in the town.

The Council's Waste Management Section is concerned about the size of the proposed recycling area stating that three 1100 can banks, 1 book bank and 2 paper cardboard banks are required to reach existing capacity. In response to an amendment to enlarge the proposed recycling area, the Council's Waste Management Officer considers 6 further banks are required in order to meet the capacity of the existing facility.

The Environmental Protection Manager has no objection subject to conditions. Severn Trent Water has no objection.

The comments of the Environment Agency will be reported verbally.

E.On Central Networks has no objection.

In response to the scheme originally submitted, the Council's landscape consultant has required clarification with regard trees to be retained on the northern boundary. He has identified that the car park floods due to a high ground water table and therefore has suggested species more tolerant to these conditions be planted such as Italian Alder. He also requested more tree planting within parking area by the creation of a tree avenue adjacent to the pedestrian walkways. This has now all been achieved in an amended landscaping scheme.

Responses to Publicity

One letter of objection has been received from Peacock and Smith (planning consultant) on behalf of Morrisons Supermarkets Plc. Their reasons for objection are outlined below:-

- The proposed store is an out-of-centre location as it is over 300 metres from the Primary Shopping Area
- There is no quantitative need for the extension based on the Council's Retail and Leisure Study (2005)
- Growth figures are over estimated and do not take account of the recently published Retail Spending Outlook produced by Map Info (March 2009)
- Level of leakage due existence of large superstores at Burton-upon-Trent and Ashby-de-la-Zouch and claw back from these stores is questioned as they represent a more sustainable choice.
- Within Swadlincote 73.4% of respondents of the submitted Retail Study carry out their main food shop in Swadlincote.
- Scale is not appropriate, as it would make it the largest store in Swadlincote therefore dominating local foodstore shopping patterns.
- Other edge of centre sites should be considered within the sequential test as it is an out-of centre site.

- Retail report does not clearly identify the trade diversion from the Morrisons store.
- The Morrisons store is a 'key anchor' to the town centre which generates linked trips to the town centre. The proposed loss of trade to Morrisons would therefore have a significant adverse impact on the vitality and viability of Swadlincote Town Centre.

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan : Promoting Better Design - 2
 Distribution of New Development - 3,
 Regional Priorities for Town Centres and Retail
 Development – 22
 Regional Approach to Traffic Growth Reduction - 45
 Regional Car Parking Standards – 48

Saved Local Plan: Environment 10 – The National Forest,
 Transport 6 – New Development
 Shopping 1 – Existing Shopping Centres

National Guidance

Planning Policy Statement 1 – Delivering Sustainable Development
 Planning Policy Statement 6 – Planning for Town Centres
 Planning Policy Guidance 13 - Transport

Planning Considerations

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

- The principle of the development in relation to the provisions of the Development Plan and National Policy
- The principle of the extension in relation to (inter alia) the retail impact on Swadlincote Town Centre with regard the PPS6 tests
- Design/Sustainable Building
- Highway safety
- Landscaping
- Section 106 agreement
- Reducing crime

Planning Assessment

The principle of the development in relation to the provisions of the Development Plan and National Policy

Policy 22 of the East Midlands Regional Plan seeks to ensure that Local Authorities, EMDA and Sub-Regional Strategic Partnerships work together on a Sub-Area basis to promote the vitality and viability of existing town centres. Where town centres are underperforming, action should be taken to promote investment through design led initiatives and the development and implementation of town centre strategies. Local planning authorities should, within town centres, bring forward retail, office and leisure

development opportunities and any other town centre functions as set out in PPS6, based on identified need.

Shopping Policy 1 in the adopted Local Plan aims to ensure that the vitality and viability of Swadlincote town centre is sustained and enhanced subject to criteria requiring suitable scale and character, acceptable traffic generation and parking. In specific relation to the proposed development, the Policy seeks to ensure that developments immediately adjacent to the centre are permitted, provided; they cannot be accommodated in the centre; the site is not required for business or industrial use; and, that adequate links to the centre are provided for pedestrians and the disabled. This is classed as an edge of centre site and the submitted sequential test required by PPS6 (discussed below) outlines the reasons why the proposal cannot be accommodated within the centre. The site has an established retail use and adequate links for pedestrians and the disabled have been successfully incorporated within the scheme.

The principle of the extension in relation to (inter alia) the retail impact on Swadlincote Town Centre with regard the PPS6 tests

These policies are reflected in PPS6 which sets out the government's objectives for development in town centres, namely: in planning for the growth and development of existing centres; promoting and enhancing existing centres by focusing development in such centres; encouraging a wide range of services in a good environment accessible to all. Other Government objectives which need to be taken account of in the context of the key objective are: enhancing consumer choice by making provision for a range of shopping, leisure and local services, which allow genuine choice to meet the needs of the entire community (particularly socially-excluded groups); supporting efficient, competitive and innovative retail, leisure, tourism and other sectors, with improving productivity; and improving accessibility, ensuring that existing or new development is, or will be accessible and well-served by a choice of means of transport.

In order to assess new retail developments favourably, PPS6 requires applicants to satisfy five main 'tests':

- a) The need for development;
- b) That the development is of an appropriate scale;
- c) That there are no more central sites for the development;
- d) That there are no unacceptable impacts on existing centres;
- e) That locations are accessible.

a) In relation to quantitative need, the retail study which has been undertaken is based on a 15 minute drive-time for the catchment area of the store, whereby other recent large foodstore proposals in Swadlincote, including the Morrison's superstore and the previous application for the Sainsbury's extension, have been based on a 10 minute drive-time catchment area for the stores. The agent has submitted further clarification and justification on this issue. The study area is based on Sainsbury's trading information (gathered from Nectar loyalty card data) which demonstrates that the majority of the existing trade is derived from a 15 minute drive time. The household survey undertaken as part of the retail assessment also provides justification as a high percentage lived beyond the 10 minute drive time. The study area is also influenced by the rural character of the surrounding area (which does not include Burton and Ashby) where a more appropriate drive time is 15 minutes. The net sales area would be greater than the existing extensions at the store permitted and that of Morrison's, therefore a

larger catchment area is considered appropriate. The 15 minute drive time was found to be appropriate by the Competition Commission in its study into supermarket trading.

The applicant's supporting statement makes it clear that the primary purpose of the proposed extension is to meet a clear qualitative need for improvements to the store, which has fallen below company standards and includes additional floorspace for the sale and display of food and non-food goods, new lobby area, more circulation space and wider aisles to improve circulation and reduce congestion. The store is currently over-trading and customer surveys have shown a significant level of dissatisfaction with the shopping environment of the store. The County Council considers that there is therefore a clear qualitative need for the extension to the store and this view is concurred with.

b) The total amount of floorspace in Swadlincote town centre is 36,000 sq m gross. The proposed extension would amount to an 11% increase in floorspace compared to the existing level of provision in the town centre. Given that Swadlincote town centre is performing well and the Morrison's store is also trading very well (based on their company average sales density figures), it is considered that the conclusions in the applicant's statement, that the level of trade diversion and impact on Swadlincote town centre would be unlikely to harm the vitality and viability of the centre, are sound. In fact, given the high level of trade which is leaking out of the area as identified through the household survey information, Indigo Sales Density estimate and the Council's Retail Study (2005), the extended store would be able to compete more effectively and be likely to attract some of the leaking trade back to Swadlincote, with consequent sustainability benefits and spin-off trade benefits to the town centre to offset the negative trade diversion effects.

c) In terms of the sequential test, Government advice in PPS6 requires applicants for extensions to large foodstores to consider whether the extended floorspace could be disaggregated from the main store and located within a more sequentially preferable location. The applicant's retail statement has assessed five sites within and adjacent to Swadlincote town centre which might be able to accommodate further retail development. A key consideration in this case is the size of the extended floorspace which is 4,313 sq m gross and 3,013 sq m sales. The five sites were located in Belmont Street, Midland Road, Sharpes Industrial Estate, West Street/High Street and the former Kwik Save site. All these sites were ruled out, as they were too small and/or located within the Conservation Area.

d) The proposed extension is likely to attract the majority of its trade from large foodstores within the catchment area. The applicant's retail statement appropriately indicates that the predominant impact on Swadlincote would be on the Morrison's foodstore with a much less an impact on smaller convenience stores. The total trade diversion from town centre convenience stores is forecast to be £2.8 million or 5.8%. The vast majority of trade would be diverted from other competing large foodstores in the catchment area, particularly Tesco at Ashby (£3 million), Sainsbury's at Burton (£1 million) and Tesco at Burton (£1 million). The applicants report predicts that the store extension would generate an additional 2,200 linked trips from the store to the town centre per week; as a result of both the improved access and increase in customer numbers.

e) PPS6 requires that developments are accessible by a choice of means of transport, especially public transport, walking and cycling as well as by car and the impact on car

use, traffic and congestion is limited. The proposed site is on the edge of Swadlincote town centre, immediately to the west of the defined town centre. The proposed development is on an existing bus route, with a stop adjacent to the site and Swadlincote bus station located approximately 200m to the east. In addition to the public transport provision the existing pedestrian access to the site has been altered to include a dedicated pedestrian ramp leading to the town centre. The applicants contend that the new access would significantly improve access to and from Swadlincote town centre. On the basis of the above, there is a choice of means of transport to access the site and this test is passed.

Additionally, in light of the objection from Morrisons, clarification on the issues raised is appropriate. Their main basis for objection is that they consider the Sainsbury's site to be classed as out-of-centre. However, having considered the definition provided in PPS6, the Council does not concur with this view and classes the site as edge-of-centre. In relation to quantitative need, Sainsbury's have provided an up to date assessment of the retail expenditure within the catchment area. This assessment, due to its current nature is considered more reliable for this application than the Council's Retail and Leisure Study of 2005. No evidence has been submitted which supports the assertion that the growth figures have been over estimated.

In relation to trade leakage from Swadlincote, Morrisons question the ability of the proposed extension at Sainsbury's to claw back this trade leakage. Sainsbury's assumptions are based on the household survey data and no evidence has been provided to rebut this estimated claw back. Regarding trade retention within Swadlincote, the statistics for the Lidl store are included in appendix 6 of the submitted retail report and do not significantly increase the trade retention rate within Swadlincote.

Morrisons viewpoint regarding scale is unsubstantiated, section b above assesses this aspect in detail. Because the site is considered to be an edge-of-centre location, the sequential test is satisfied in the report. The Sainsbury's report forecasts a limited impact on Swadlincote town centre and no evidence has been provided to undermine this forecast, this is discussed further in section D above. In terms of accessibility, the site is considered to be within walking distance of residential areas, the town centre and Swadlincote bus station and so provides alternative options to the private car.

On the basis of the above assessment, it is considered that the proposed extension would be broadly acceptable in the context of national and regional planning policy for town centres and retail developments.

Design / Sustainable Building

Extensive negotiations have taken place with regard the design of the extension and changes to the existing store with the involvement of the Council's Design Excellence Officer. The main design cues were the prominence of the site on the main route through the town and the National Forest context. High quality design is promoted in Policy 2 of the East Midlands Regional Plan where it states:
"The layout, design and construction of new development should be continually improved ... by design led approaches which take account of local natural and historic character".

The tower feature was considered essential to the scheme to both emphasise the presence of the store on the main route through the town and to locate the store

entrance. Large glazed sections on the main elevations seek to provide active frontages and provide natural surveillance of the car parking area. The use of timber cladding links with the national forest theme and softens the appearance of the store as its existing appearance is hard edged with buff and red brickwork with a parapet roof. The canopy with feature columns serves to break up the massing as do the sections of cream cladding.

Policy 3 of the plan reiterates the link between design and sustainable construction techniques which should be incorporated within schemes to minimise energy use. On this basis, within the design it was important to incorporate sustainable building concepts such as the “brise soleil” blades which provide solar shading to the large glazed sections.

Sainsbury's state that they have been working with the Carbon Trust to become more energy efficient and reduce carbon emissions. The company has modified their UK energy supply agreements to ensure that 10% of electricity is sourced from renewables. Sainsbury's would install a rainwater harvesting system and water efficiency measures would be incorporated into the detailed design in order to reduce flow rates to watercourses. Water usage would be monitored regularly. The large glazed areas would reduce the reliance on artificial lighting and solar tubes would be installed in the roof to provide further natural light to the sales area. New windows would be installed along the checkout line also to increase daylight. The type of lighting would be high efficiency and the use of daylight linked dimming control systems would reduce energy use.

In relation to recycling, Sainsbury's promotes the recovery, reuse and recycling of its waste. Construction waste would be minimised and each store has recycling targets to be met. The customer recycling area is to be relocated as part of this proposal and would be slightly smaller in area. However, a similar level of recycling bins would be provided together with the opportunity of recycling a wider variety of paper products such as cardboard and Tetra cartons by the use of smaller bins. The proposed facility is similar in scale to other recycling centres that are efficiently employed at Sainsbury's stores throughout the country. A plan indicating the existing and proposed capacity of the recycling area has been provided. Although the Council's Waste Management Officer considers 6 additional banks are required in order to meet the capacity of the existing facility, the amended area is considered acceptable on the basis of the increase in household recycling collections since the construction of the existing recycling area.

Highway Safety

The Highways Authority's view is that when considering the existing floorspace (including extant extensions and the Home Electrical Unit) and proposed floorspaces and the fact that GFA extensions generate a disproportionate increase in trips, the net impact of this proposal in terms of additional vehicle trips is perhaps negligible.

The Highways Authority has a concern relating to the proposed car parking provision, to increase by 7 spaces, despite a near doubling of GFA. Whilst the proposals include the removal of existing non-food retail and associated parking requirement, the overall provision equates to around one space per 20sqm GFA, somewhat greater than the maximum recommended 1/14sqm ratio (PPG13). Some comfort is however gained from the parking accumulation assessments which indicate sufficient provision following the anticipated uplift in demand.

The proposed increase of cycling provision (additional 24 spaces) is welcomed, although the store manager admits that existing cycle parking (10 spaces) is rarely fully utilised. It is therefore considered that there may need to be further measures towards increasing the attractiveness of this mode. This has been achieved as the cycle parking is located near to the entrance to the store and would be covered by the canopy.

In its consideration of the submitted longitudinal section along the proposed footpath link to Hearthcote Road, the Highway Authority considers this aspect of the scheme acceptable. However, at the time of writing, it is the concern of the Highways Authority that there would be an increased potential for conflicting turning movements in the vicinity of the PFS access, exacerbated by the speed of vehicles exiting the roundabout and entering the site access. It is the view of the Highway Authority that information submitted by the consultants appears to mainly assess the potential for impact on the roundabout, caused by queuing back from the PFS entrance, and also seeks to compare the proposed layout with that of the an existing store in Truro, Cornwall. These layouts are not strictly comparable and the consideration of the existing accident data is not considered to be relevant. The present arrangement of the site access is not regarded as introducing the same conflict in view of the layout of facilities and in particular the current position of the PFS.

The submitted Road Safety Audit identifies a number of points of concern with regard to the internal layout of the site. The Highway Consultant's Mayer Brown has provided a plan identifying the location and type of speed control proposed within the site. As recommended in the Safety Audit speed control will be provided on the entrance to reduce vehicle speed. A flush pedestrian crossing area and signage upon exiting the roundabout to warn of speed control measures would be provided. A pedestrian route that would run along the side of the PFS would be segregated from vehicles to provide a direct safe route to the town centre. The consultants state that the proposed layout is typical of many stores in the UK and is not a new approach. The consultants also state that Sainsburys would not wish to promote a layout that attracts customer issues and the layout is tried and tested.

On the basis of the above comments, the further information with regard the risk identified and the developer's intentions to mitigate for them are considered acceptable and relate solely to within the site which is their responsibility. The Highways Authority acknowledge that the proposed speed control measures do represent some mitigation and that they do not consider that the scheme introduces demonstrable risk to users of the public highway.

Landscaping

The main areas of landscaping would be on the eastern and northern boundaries. The trees along the northern boundary would be removed and replaced. This is due to the reduction in the width of the bank which is required for the car parking area. Due to the loss of these fairly established trees, the proposed landscaping scheme includes trees more suitable to the area and ground conditions. Heavy standard trees would be used to ensure a higher level of impact until the trees become established.

The parking area would be softened by trees at the end of car parking sections along the northern boundary. In the main area of the car park, two tree lined avenues would be created to enhance and identify the pedestrian walkways within the parking area. One of these tree lined walkways links directly with the proposed pedestrian access on

William Nadin Way. The other runs along the centre of the car park parallel with the northern boundary to the store entrance. The species of trees have been carefully chosen due to the knowledge of the existing ground conditions in this area and the fact that different species of trees that have been planted in the area in the past have not survived the wet conditions.

A large area of landscaping would be retained adjacent to the proposed pedestrian link to Hearthcote Road and the access road. The car parking area would be screened by a landscaped area immediately adjacent to the roundabout which incorporates a row of trees. The proposed landscaping scheme is considered to satisfactorily reflect the National Forest location, as more trees would be planted as part of the scheme than the existing landscaping on site (i.e. 73 trees would be removed and 88 trees would be planted).

Section 106 agreement

It has already been identified that an important element of the impact of the development is its relationship with the town centre and in particular pedestrian access thereto. Planning Policy Statement 6 requires such schemes to encourage linked routes and trips to nearby town centres. Although the proposals already include a much needed improvement for pedestrians within the site, a Section 106 contribution has been sought for the upgrading of the existing route which links the eastern pedestrian access to the site from Hearthcote Road to The Delph in the heart of the town centre via the footway adjacent to the Leisure Centre carpark. This identified area would be the main carrier of pedestrians to and from the Sainsbury's store and its improvement together with the proposed pedestrian footpath along the northern boundary of the application site that links with an existing pedestrian crossing should encourage an increase in foot traffic. At this stage it would appear that any contribution received would help finance the first part of the route covered by the approved Swadlincote Town Centre Masterplan. The improvements for Market Street would include blue brick pavers, pavements clearly defined and improved for the mobility impaired. Existing trees would be retained and green space with landscaping and seating areas would be introduced.

Reducing crime

The main concern of the CPDA is in relation to the safety of users of the main pedestrian route in the site from Hearthcote Road. Amendments to this route have now been negotiated. The link is now fairly open on both boundaries and the slope is gradual. The retaining wall on the northern boundary would be reduced with railings which would be 2 metres above the footpath level. The northern boundary would be overlooked by the PFS and would have a handrail. The security of this footpath and amount of natural surveillance is essential in terms of ensuring its usage and in the provision of a safe link to the town centre to encourage linked trips. The insertion of further openings on the PFS Kiosk have been considered but discarded as posing a potential security issue for staff. As an alternative therefore, a condition requiring CCTV and sufficient lighting of the footpath is recommended.

Conclusion

The proposed extension is considered to accord with the tests within Planning Policy Guidance 6 and thus it would not have a significant impact on the vitality and viability of

Swadlincote Town Centre. The extension would generate linked trips which would be encouraged by the improvements funded in part by the S106 contribution. A high quality design has been achieved which addresses the National Forest context together with sustainable building techniques and an appropriate landscaping scheme. Highway safety has been considered in detail and further evidence and proposed mitigation will have to be assessed prior to determination.

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

Subject to correspondence from the consulted adjoining authorities raising no new issues; GRANT permission subject to the signing of a Unilateral Undertaking for a contribution to improvements to external works to encourage linked trips between the site and the town centre, and 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. No part of the development shall be carried out until precise details, specifications and 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 originally submitted details, this permission shall relate to the amended drawing no's PL02 E , PL04 D, PL07 A, PL06 A, PL13 B, PL12 A, PL15, PL16, GC.27688.010B received on the 6th and 22nd April 2009.
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
4. 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.
5. Before any operations commence involving the movement of materials in bulk to or from the site, facilities shall be provided that have previously been approved in writing by the Local Planning Authority, to prevent the deposition of mud or extraneous material on the access roads to the site.
Reason: In the interests of highway safety.
6. 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.

7. All hard landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme previously agreed with the Local Planning Authority.

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. Before any other operations are commenced (excluding demolition / site clearance), space shall be provided within the site for storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives and visitors vehicles, laid out and constructed in accordance with detailed designs first submitted to and approved by the Local Planning Authority. Once implemented the facilities shall be retained throughout the construction period in accordance with the approved designs free from any impediment to their designated use.

Reason: In the interests of highway safety.

10. Before any other operations are commenced a detailed engineering design of the alterations to the existing access to the Civic Way roundabout shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include details of kerb realignment, pedestrian crossing points and visibility sightlines. The approved scheme shall be implemented prior to the development being taken into use and retained accordingly thereafter.

Reason: In the interests of highway safety.

11. Prior to commencement of development a scheme for signing, including advance warning signs relating to the Petrol Filling Station access and directional signs to the town centre, to be provided within the application site shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the development being taken into use and retained accordingly thereafter.

Reason: In the interests of highway safety.

12. The development shall not be taken into use until space has been provided within the application site in accordance with the application drawings for the parking, loading and unloading, picking up and setting down passengers, and manoeuvring of staff, customers, service and delivery vehicles (including secure

covered cycle parking)], laid out, surfaced and retained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

13. The development shall not be taken into use until the pedestrian links to William Nadin Way and Hearthcote Road have been provided in accordance with the application drawings or such other alternative designs as may subsequently be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

14. Prior to commencement of development, construction details of the tower feature shall be submitted to and approved in writing by the Local Planning Authority and the development shall be built in accordance with these agreed details.

Reason: To ensure the visual amenity of this element of the scheme.

15. If the existing store has any gas protection measures these shall be extended and implemented in the design and construction of the extension hereby approved. The construction of the extension shall not impede, disrupt or damage any existing gas protection measures.

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.

16. Prior to commencement of development a scheme detailing the phased approach for the relocation of the existing petrol filling station shall be submitted and approved in writing by the Local Planning Authority. This shall include details of the suitability of the new site to hold and contain underground storage tanks and investigative works to ensure the satisfactory decommissioning of the site of the existing petrol station. The development shall be carried out in accordance with these agreed details

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.

17. Prior to occupation of the extension, a detailed lighting scheme (including the pedestrian footpath along the southern boundary) shall be submitted and approved in writing by the Local Planning Authority and the scheme shall be implemented in accordance with these approved details unless otherwise agreed in writing.

Reason: To preserve amenity, ensure the safety of pedestrians and prevent danger to road users.

18. Prior to the occupation of the extension and petrol filling station, details of CCTV cameras and scheme of surveillance within the site shall be submitted and approved in writing by the Local Planning Authority and shall be installed in accordance with these agreed details.

Reason: In the interests of security and crime prevention.

19. Prior to the first opening of the extension hereby permitted, all pedestrian footpaths on the site shall be completed in accordance with the submitted details and open for use in perpetuity.

Reason: In the interests of the proper access to the store by pedestrians.

20. The recycling centre as shown on drawing 2007-094/PL16 shall be installed in full prior to the opening of the extended store to the public and retained thereafter.

Reason: To ensure that proper recycling provision is made on the site.

21. The on-site road layout shall be constructed in accord with Mayer Brown's drawing no. SSLSWAD.1/14 revB to include the speed table, unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of on-site vehicle safety.

22. Notwithstanding the particulars of the application, details of the surfacing/paving materials to be used on the site shall be submitted for approval in writing by the Local Planning Authority prior to commencement of their installation. The approved materials shall be retained thereafter.

Reason: The submitted details are considered unsatisfactory.

Informatives:

Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness. The proposed alterations to the site access and the construction of parts of the pedestrian links within highway limits will require the applicant to enter into an Agreement with the County Council under Section 278 of the Highways Act 1980. No works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Environmental Services Department at County Hall, Matlock. The applicant is advised to allow at least 12 weeks in any programme of works to obtain a Section 278 Agreement.

The applicant should be aware, with regard to the pedestrian links, that steps will not be accepted within the highway.

The applicant's attention is drawn to the fact that Central Networks has a substation, HV and LV cables within the site and the CNDS Department at Toll End Road, Tipton, DY4 0HH should be contacted for advice. For safe working around their networks contact their Cablesafe Team on 0800 0150921. There is a substation within close proximity of the development and the as it is a potential source of noise the applicant / developer should adopt measures to ensure that acceptable noise levels are maintained for future residents.

The proposed development lies within an area which could be subject to current coal mining or hazards resulting from past coal mining. Such hazards may currently exist, be caused as a result of the proposed development, or occur at some time in the future. These hazards include: Collapse of shallow coal mine workings; Collapse of, or risk of entry into, mine entries (shafts and adits); Gas emissions from coal mines including methane and carbon dioxide; Spontaneous combustion or ignition of coal which may lead to underground heatings and production of carbon monoxide; Transmission of

gases into adjacent properties from underground sources through ground fractures;
Coal mining subsidence; Water emissions from coal mine workings.

Applicants must take account of these hazards which could affect stability, health & safety, or cause adverse environmental impacts during the carrying out their proposals and must seek specialist advice where required. Additional hazards or stability issues may arise from development on or adjacent to restored opencast sites or quarries and former colliery spoil tips. Potential hazards or impacts may not necessarily be confined to the development site, and Applicants must take advice and introduce appropriate measures to address risks both within and beyond the development site. As an example the stabilisation of shallow coal workings by grouting may affect, block or divert underground pathways for water or gas. In coal mining areas there is the potential for existing property and new development to be affected by mine gases, and this must be considered by each developer. Gas prevention measures must be adopted during construction where there is such a risk. The investigation of sites through drilling alone has the potential to displace underground gases or in certain situations may create carbon monoxide where air flush drilling is adopted. Any intrusive activities which intersect, disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) require the prior written permission of the Coal Authority. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action. In the interests of public safety the Coal Authority is concerned that risks specific to the nature of coal and coal mine workings are identified and mitigated.

The above advice applies to the site of your proposal and the surrounding vicinity. You must obtain property specific summary information on any past, current and proposed surface and underground coal mining activity, and other ground stability information in order to make an assessment of the risks. This can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com.

That the existing vegetation on the application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact English Nature, Peak District and Derbyshire Team, Manor Barn, Over Haddon, Bakewell, Derbyshire, DE4 1JE.

This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.

2. PLANNING AND OTHER APPEALS

(references beginning with a 9 is planning appeal and references beginning with an E is an enforcement appeal)

Reference	Place	Ward	Result	Cttee/delegated
9/2008/0229	Ingleby	Repton	Dismissed	Committee



Appeal Decision

Hearing held on 11 March 2009

Site visit made on 11 March 2009

by **Keith Manning BSc (Hons) BTP MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
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Bristol BS1 6PN

☎ 0117 372 6372
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Decision date:
28 April 2009

Appeal Ref: APP/F1040/A/08/2086548

Land to the west of The Gables, Main Street, Ingleby DE73 7HW

- 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 R Thompson against the decision of South Derbyshire District Council.
- The application Ref 9/2008/0229/F, dated 21 February 2008, was refused by notice dated 1 April 2008.
- The development proposed is erection of one dwelling.

Decision

1. I dismiss the appeal.

Main issues

2. I consider the main issues to be; whether or not the proposed development would conflict with and harmfully undermine the intentions of relevant policy concerning development in rural areas; and whether or not the proposed development would accord with sustainable development principles.

Reasons

3. The appeal site is a sloping paddock within the valley of the River Trent that includes the remnants of a ruined cottage last inhabited, it is understood, in the 1950s. 'Woodbine Cottage', as it was known, was located on the lower part of the site, nearest the river, whereas the proposed dwelling would be on higher ground nearer to Main Street, a narrow road that follows the valley in this locality. Although the site as a whole encompasses what would have been the identifiable curtilage of the former cottage¹, the greater part of it lies outside that comparatively small area of land and I therefore consider the Council to have correctly classified the site as 'greenfield' for policy purposes².
4. The appeal site is one of a number of significant open breaks in the development that occurs in small clusters along Main Street, and which comprises houses, cottages, farmsteads and barn conversions. At the eastern end of the settlement is a public house, the 'John Thompson', run by the appellant's father, which has a small number of holiday chalets within its grounds. Ingleby is therefore a loosely structured, linear hamlet with no defined centre offering services, and is set within an open, largely agricultural, landscape characterised by extensive views across the River Trent.

¹ As shown, for example, on the map at Appendix 7 to the appellant's statement.

² Annex B to PPS3 *Housing* defines previously-developed or 'brownfield' land.

5. The appellant's mother lives immediately adjacent to the site. Although the appellant lives in a village at some distance from the site, he has latterly commenced employment at the public house brewing beer on the premises.
6. Relevant policy includes; saved policies of the South Derbyshire Local Plan; PPS7 *Sustainable Development in Rural Areas*; and the current RSS8, the East Midlands Regional Plan, which was issued in its final form on 12 March 2009. Policy 3 of the RSS is in substantially the same form as the draft included in Appendix 9 to the appellant's statement. Whilst I agree that the hierarchy of priorities for the location of new development does not preclude and in appropriate circumstances encourages development in rural areas, so as to provide for their needs, that principle must be applied with discrimination and by reference to more detailed local policy as relevant (bearing in mind that continuity in the plan-led system and a stable planning framework locally are intended³) and in a manner that is consistent with national policy.
7. As far as local policy is concerned, there is disagreement between the Council and the appellant as to which saved local plan policies are relevant: The Council deploys Housing Policy 8 (H8) on the basis of its view that the site lies in open countryside, whereas the appellant maintains that Housing Policy 6 (H6) is the appropriate policy insofar as Ingleby is a settlement, albeit one without defined village confines under the terms of Housing Policy 5 (H5).
8. On the face of it H6 and H8 are mutually exclusive. However, the lack of defined village confines in rural settlements not listed in H5 inevitably blurs the sharp distinction that could otherwise be made for policy purposes and this presents particular difficulties in a settlement such as Ingleby where dwellings are grouped in distinct clusters separated by open land such as the appeal site. This undoubtedly has the appearance of open countryside, especially in view of the open prospect it affords of the valley landscape to the north, of which it is effectively part, and the largely undeveloped nature of the land to the south of the road. It is one of the significant breaks along the road frontage that separate the small clusters or groups of dwellings forming the settlement.
9. To my mind, and notwithstanding the remnants of Woodbine Cottage discernible within the lower part of the site, the separation that it affords between the dwellings to either side is significant. It is broadly equivalent in magnitude to the road frontage formed by the grouping of The Gables and the adjacent cottages to the east and greater than that associated with the buildings around Yew Tree Cottage to the west. This, in turn, is separated by open land from the more significant group of dwellings associated with Elm Farm and Sycamore Farm where the road bends sharply to the south.
10. For the above reasons, the site may properly be considered part of the open countryside within which the buildings of Ingleby are set and on that basis H8 would apply and it is accepted by the appellant⁴ that there is no connection between the proposed development and a rural activity and that it would not qualify as a replacement for Woodbine Cottage for the purposes of that policy.

³ As explained in letter covering Secretary of State's Direction of 21 September 2007 to save policies from the South Derbyshire Local Plan

⁴ Appellant's statement paragraphs 6.1.3, 6.1.4 and 6.1.5

11. Although the proposed development would conflict with the intentions of H8, if applied, it is nevertheless pertinent, bearing in mind the particular difficulties presented by the physical form of Ingleby and the blurring of the distinction for policy purposes to which I have referred, to consider the alternative application of H6 as argued by the appellant.
12. H6 permits appropriate infill in the rural settlements not listed in H5 and I agree that such infill could not be automatically precluded by the priority accorded to developing within urban areas implicit in strategic and national policy. It must therefore be considered according to the specific intentions of H6. These are clear on the face of the policy notwithstanding that the term 'small gap' is nowhere defined. Both the policy and the explanation refer to such gaps as being within small groups of houses but I consider the appeal site to form an open break between such groups bearing in mind the degree of separation it creates one from another and notwithstanding the existence of Yew Tree Cottage on the road frontage between the Gables and Elm Farm. Accordingly, I do not consider that the proposed development would represent the infilling of a small gap of the type anticipated and hence I consider that there would be conflict with the intentions of H6 as relied upon by the appellant.
13. Moreover, if the appeal proposal were to be allowed as an exception to that policy, similar proposals within Ingleby, if also allowed, could cumulatively erode the loose structure of the settlement which is partly characterised by the significant open breaks between development of which the appeal site is one. The appellant's suggestion of a planning condition or obligation to restrict the curtilage of the proposed dwelling and preclude further development of the remainder of the site serves to underline the conflict with the intentions of the policy in such circumstances. Were there no such conflict, then no such restrictions would be necessary as policy 6 allows for normally not more than two dwellings in any event.
14. PPS7 does refer to the strict control of new building in the countryside away from existing settlements but I do not see this as in any way supportive of the proposed development at issue. The policy intentions of PPS7 are generic and intended to cover all forms of rural development including occupationally justified dwellings and affordable dwellings for local needs. It also requires strict control of development in the countryside outside areas for development allocated in development plans and in effect H6 of the South Derbyshire Local Plan provides for limited residential development on sites which do not include the appeal site even though it is closely associated with an existing settlement. Furthermore, it aims to protect the countryside for, amongst other things, its intrinsic character and beauty, an intention that is reflected by Environment Policy 1 (EV1) of the local plan, which applies outside settlements including those subject to H6 and its intention would logically encompass rural land, such as the appeal site, that does not qualify for infilling under the terms of that policy. Although the proposed dwelling at issue has undoubtedly been skilfully designed and located to be accommodated as harmoniously as possible within its surroundings including the topography, the appeal site itself makes a positive contribution to the rural scene and development upon it would therefore intrude harmfully on the countryside, albeit mitigated to a degree by its specific qualities in accordance with the second limb of EV1.

15. For the above reasons, I conclude that the proposed development, whether considered under H6 or H8 of the local plan, would conflict with and harmfully undermine the intentions of not only those policies but also to some extent the general intentions of EV1 and PPS7 to protect the countryside for its character and beauty.
16. The thrust of national policy, whether in terms of the general principles embodied in PPS1 *Delivering Sustainable Development*, or in terms of the more specific concerns of PPS3 *Housing* or PPS7, is that housing should generally be located where it is readily accessible to a range of necessary everyday facilities, including employment, so as to reduce the need to travel⁵, especially by private car. Although Ingleby is accessible⁶ to other villages, including Stanton-by-Bridge where there is a daily bus service, and there are towns also within a few miles radius, its location and circumstances are such that I consider, in practice, only those with time and considerable determination would elect to use forms of transport other than private motorised vehicles for even their most everyday needs. Locating additional housing in the settlement without compelling reasons to do so would not therefore sit easily with the thrust of national policy concerning sustainable residential locations or indeed that of Policy 3 of RSS8 notwithstanding that in certain circumstances the needs of rural areas might require additional housing in more remote and limited settlements such as Ingleby.
17. However, no such need has been demonstrated in this instance. Although it is material that the appellant has recently taken part-time employment in the local public house to which he would no longer have to travel from his current residence, it would be equally true that in order to satisfy their day to day needs in a variety of ways, occupiers of the proposed dwelling would generally have to travel to other towns and villages on a regular basis and hence that particular advantage would be effectively negated. I therefore accord little weight to it in sustainability terms and my overall conclusion on the second issue that I have identified is that, for the above reasons, the proposed development would not accord with sustainable development principles.
18. I have also taken into account all the other matters raised, including the fact that a number of permissions including barn conversions have been permitted in Ingleby, as have holiday chalets at the public house. However, the circumstances and policy considerations in those instances are not directly comparable to those of the proposed development at issue. I have also taken into account the strong local connections of the appellant and the increased opportunities to support his mother, but such personal circumstances are not sufficient in my estimation to outweigh the harmful conflicts with the intentions of relevant policy that I have identified. Nor do I consider the lack of objection from statutory consultees or third parties to be a matter of sufficient weight to alter the overall balance of my conclusion that, for the reasons I have given, the appeal should be dismissed.

Keith Manning

Inspector

⁵ See for example PPS1 paragraphs 13,23 and 27; PPS3 paragraph 36; PPS7 paragraph 8

⁶ Paragraphs 3.5 – 3.10 and paragraph 7.1 of appellant's statement

APPEARANCES

FOR THE APPELLANT:

Miss M Thomson LLB LARTPI	Marrons Solicitors, 1, Meridian South, Meridian Business Park, Leicester LE19 1WY
Miss K Phillips	Marrons Solicitors
Mr & Mrs R Thompson	Tap House, Smisby, Ashby-de-la-Zouch LE65 2TA

FOR THE LOCAL PLANNING AUTHORITY:

Miss N Toon MA

DOCUMENTS

1 Council's notification letter and list of those notified