

Report of the Strategic Director (Service Delivery)

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 2015 (as amended) responses to County Matters and strategic submissions to the Secretary of State.

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DMPA/2021/0164	1.1	Etwall	Etwall	6
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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 report of the Strategic Director (Service Delivery) 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 Strategic Director (Service Delivery), 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.

Glossary of terms

The following reports will often abbreviate commonly used terms. For ease of reference, the most common are listed below:

LP1	Local Plan Part 1
LP2	Local Plan Part 2
NP	Neighbourhood Plan
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
PPG	Planning Practice Guidance
NPPF	National Planning Policy Framework
NDG	National Design Guide
SHMA	Strategic Housing Market Assessment
SHELAA	Strategic Housing and Employment Land Availability Assessment
s106	Section 106 (Agreement)
CIL	Community Infrastructure Levy
EIA	Environmental Impact Assessment
AA	Appropriate Assessment (under the Habitat Regulations)
CPO	Compulsory Purchase Order
CACS	Conservation Area Character Statement
HER	Historic Environment Record
LCA	Landscape Character Area
LCT	Landscape Character Type
LNR	Local Nature Reserve
LWS	Local Wildlife Site (pLWS = Potential LWS)
SAC	Special Area of Conservation
SSSI	Site of Special Scientific Interest
TPO	Tree Preservation Order
PRoW	Public Right of Way
POS	Public Open Space
LAP	Local Area for Play
LEAP	Local Equipped Area for Play
NEAP	Neighbourhood Equipped Area for Play
SuDS	Sustainable Drainage System
LRN	Local Road Network (County Council controlled roads)
SRN	Strategic Road Network (Trunk roads and motorways)
DAS	Design and Access Statement
ES	Environmental Statement (under the EIA Regulations)
FRA	Flood Risk Assessment
GCN	Great Crested Newt(s)
LVIA	Landscape and Visual Impact Assessment
TA	Transport Assessment
CCG	(NHS) Clinical Commissioning Group
CHA	County Highway Authority
DCC	Derbyshire County Council
DWT	Derbyshire Wildlife Trust
EA	Environment Agency
EHO	Environmental Health Officer
LEP	(D2N2) Local Enterprise Partnership
LLFA	Lead Local Flood Authority
NFC	National Forest Company
STW	Severn Trent Water Ltd

Item No. 1.1

Ref. No. [DMPA/2021/0164](#)

Valid date: 22/02/2021

Applicant: Sarah Armstrong

Agent: Redrow Homes Limited

Proposal: **Approval of reserved matters (access, layout, scale, appearance and landscaping) pursuant to outline permission ref. DMPA/2020/0985 (The variation of condition no. 9 (relating to skylark habitat compensation) of permission ref. 9/2017/1191 (relating to outline permission (all matters reserved for future approval) for residential development of up to 50 dwellings with open space, drainage and associated works) on Etwall Common, Land at SK 2730 1591, East of Egginton Road and North of Jacksons Lane, Etwall Common, Derby**

Ward: Etwall

Reason for committee determination

This item is presented to the Committee at the request of Councillor Brown due to local concern and unusual site circumstances. The item is also a major application which has been subject to more than 4 no. letters of objection where a recommendation to approve has been made.

Site Description

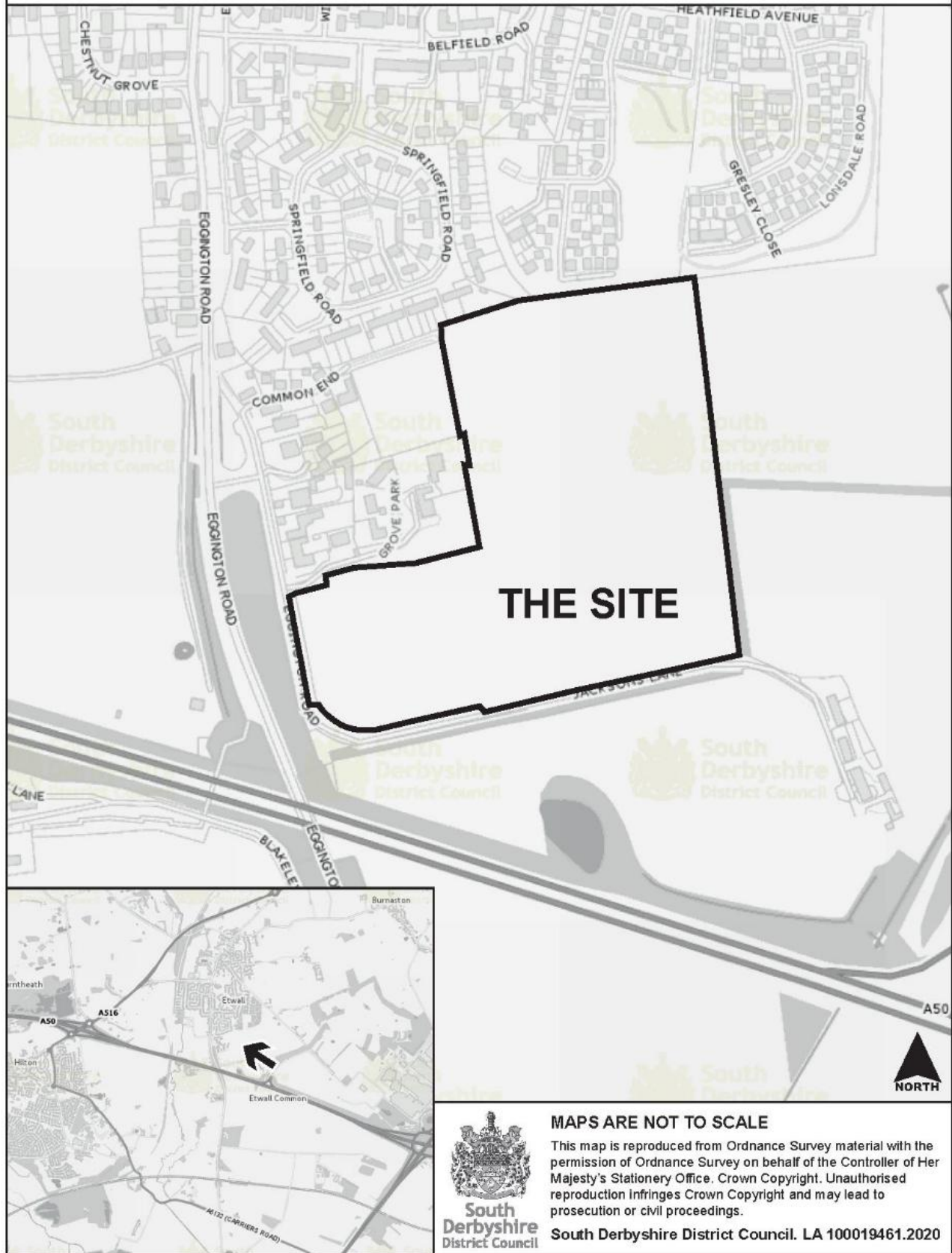
The site comprises three arable fields in an L shape formation across 8.65ha fronting Egginton Road and Jacksons Lane, Etwall. The site is generally flat with marginal changes in topography with levels falling gently from north east to south west in the most southern section of the site. The site is bound by mature hedgerows with self-seeded scattered trees within and on the field margins. Some of the trees on site are protected by Tree Preservation Orders. There is a mature tree belt south of Jacksons Lane which is also protected by a TPO then more fields and the A50 running east to west with a partial landscaped bund.

To the north west of the site are existing dwellings and allotments on Common End, Grove Park and Springfield Road, along with the Bloor Homes development to the north and north east which is accessed from Willington Road. The site is within the settlement confines of Etwall which has a range of local services and facilities, including schools, leisure centre, library, pharmacy, restaurant and post office. The site is not subject to any other statutory or non-statutory designations.

The proposal

The application seeks permission for the approval of the reserved matters of access, layout, scale, appearance and landscaping following outline permission for the residential development of up to 50 dwellings with open space, drainage and associated works. The outline permission (9/2017/1191) has been superseded by DMPA/2020/0985, a s73 application to vary condition 9 (the skylark mitigation condition) of the previous outline consent which was approved at committee. This application therefore now seeks to approve the reserved matters following the permission issued for DMPA/2020/0985. In addition, permission is sought to remove the Design Code submission from the legal agreement which sits alongside the 9/2017/1191 and DMPA/2020/0985 permissions as it has been confirmed that Redrow will be the sole developer bringing the site forward. The proposals include a mixture of 2 no. three, 34 no. four and 14 no. five bedroom houses presented in gable and hipped roof style, each with a detached garage and off-road parking. In area A, 8 houses are proposed to the corner of Egginton Road and Jacksons Lane; in area B, 20 houses are proposed and in area C, 22 houses are proposed. The site will be accessed from Egginton Road which will lead to 4 adoptable streets from which sections of private driveway will lead to some plots. A total of 11,500sqm of public open space is proposed across the site with numerous pathways, feature planting and seating areas planned and a

DMPA/2021/0614 - Etwall Common, Land at SK2730 1591, East of Egginton Road and North of Jacksons Lane, Etwall Common, Derby DE65 6NP



400sqm Local Equipped Area for Play (LEAP). The LEAP is proposed to include 6 pieces of equipment including: an inclusive orbit roundabout; timber team swing; joined logs; net bridge; inclined twine and orangutan timber climber also with litter bin, bench seat and various grass/rubber surfacing with gates and fencing forming the enclosure to the play area, with 3 birch trees and shrub planting proposed. The external facing materials for the dwellings are stated as Ibstock Leicester Weathered Red Stock and Ibstock Arden Olde Farm House bricks and red/slate grey Forticrete Gemini roof tiles, with some dwellings featuring Weberpral M render chalk. A variety of boundary treatments are proposed including 1.8m brick screen walls, 1.8m close boarded fencing, 1.8m close board feature fencing and 2m acoustic fencing with superficial mass of 12kg/m². Retention of existing mature hedgerows is proposed. A 15m landscaped buffer is proposed to the eastern boundary with other areas of planting proposed, off and on plot, including tree lined Street 1 and various adoptable verges. To the boundaries of the site are the surface water drainage features comprising swales, ponds and ditches with a series of flow control leading to surface water outfall areas. Footpaths are also proposed throughout the site to create a circular route through and also providing footpaths up to the northern boundary with the recently erected housing site off Willington Road, to the west towards the Common Lane allotments and south onto the corner of Jacksons Lane.

Applicant's supporting information

Design and Access Statement (DAS) – The DAS states that there are a number of listed buildings within Etwall including Grade II Sir John Port Almshouses (900m from site) and Etwall Lodge (500m from site) and the Etwall Conservation Area is 650m north of the site. The applicants consider that Etwall has good communication routes including A50 to the south, M1 16 miles to the east and Willington train station 4km to the south east. Derby is 9km north east of the site and Burton-upon-Trent is 9km south west. Toyota is 500m south east of the site. The site would be served by John Port Spencer Secondary School and Etwall and Kadampa Primary Schools. Also close to the site in Etwall and beyond are a chemist, post office, supermarket, leisure centre, library, community centre, cricket club and pubs. The DAS states there is a bus stop 50m from the site on Egginton Road connecting to Burton, Derby and Willington, with Willington station providing connections to Cardiff, Nottingham and Birmingham. East Midlands Airport is 30km to the east of the site. The DAS notes there are no public rights of way within the site or abutting its boundary, however that the National Cycle Route 54 runs adjacent to the west of the site along Egginton Road. It is stated that in the event there are archaeological remains, condition 11 on the outline approval seeks a Written Scheme of Investigation for archaeology to be submitted for approval with subsequent site investigation and recordings carried out. The DAS notes the mixed terraced and detached properties in the immediate area from 17th century to post war with predominant facing materials of brick and render with slate roofs of varying density. In respect of noise from the A50, a buffer area has been proposed to the southern area of the site which includes pathways, landscaping and site drainage between the road and the housing with a bund proposed to the south west of the site to address noise. In addition, for the southern line of housing, a continuous building line is proposed to help distribute noise alongside acoustic fencing. The DAS confirms the densities across the site to be as follows: residential development 6.9ha (50 no. units); POS 1.75ha; Character Area A no more than 4 dwellings per ha; Character Area B no more than 6 dwellings per ha and Character Area C no more than 8 dwellings per ha. The DAS explains the development is formed via the character of Arcadia drawing on picturesque approach to landscape design and layout of country housing and parkland of the 18th century with landscaping and heavy tree planting the dominant feature of the character of the site rather than the houses themselves. It is not considered that a development of 50 dwellings would cause detrimental impacts on the surrounding highway network. The developer considers that the development would create: a place that assimilates well with its surroundings; a place which makes effective use of land in line with the outline planning consent; a place with its own distinctive and recognisable character whilst respecting location; a place with lasting qualities and a place which people will enjoy living in. They consider that the design of the development has been driven by a desire to produce a high-quality residential environment which pays due regard to its local context, and affords a genuine prospect of evolving as an integral component of Etwall in years to come.

Ecological Design Strategy November 2020 – This was prepared in line with condition 3 of the outline consent which states 'The reserved matters listed at condition 1 shall broadly be in accordance with the

illustrative masterplan (ef:0166_SK_02F) and the design principles of sections 5 and 7 of the Design and Access Statement (ref PRO0270 version R4). Notwithstanding these parameters, each application for reserved matters approval shall incorporate or be supported by, in so far as relevant to that/those matter(s), the following specific detail/requirements:

(i) An ecological design strategy (EDS) addressing mitigation, compensation and enhancement which shall include the following:

- details of retained habitats and suitable protection measures;
- details of newly created habitats including ponds and swales;
- identification of green corridors; and
- locations and specifications for a range of bat and bird boxes'

As hedgerows are a priority habitat within the Lowland Derbyshire Biodiversity Action Plan due to their importance to wildlife in terms of providing habitat, habitat connectivity and resources. The existing hedgerows will be largely retained and provide the basic framework for the green infrastructure at the site. It is said that excluding H2 to the west where the access will be created, all site boundary hedgerows and their associated trees will be retained. Pedestrian access will be created through hedgerows H1, H6 and H7 to create access from the development onto Jacksons Lane, to the allotments to the west and to the north linking into existing open space, though these will be small sections of hedgerow and the removal is not considered would significantly impact the connectivity of hedgerows. It is said other hedgerows will be enhanced by boundary planting to make them more substantial to provide better ecological enhancement. Within the site at hedgerow H4 and H5 breaches it is proposed that new trees will be planted either side to create a tree lined street etc. for commuting and foraging bats. Translocation studies for hedgerow 2 as per condition 10 will be discharged at a later date. Fenced root protection areas will be used around all retained hedgerows and trees to avoid damage and soil compaction. Protective fencing will be installed to create an appropriate buffer zone, in accordance with the specifications and extents within the Pre-Development Tree Survey Report and Tree Constraints Plan by Midland Tree Surgeons. The grassland margins and hedgerows will be protected as per the great crested newt and reptile method statement by FCPR 2020. To encourage birds, mammals, reptiles and amphibians, new wildflower grassland planting will be established also within the bund to the south west of the site. All wildflower planting will be subject of a grass cutting scheme and different types. To encourage great crested newts, reeds and other planting close to SUDS features are proposed, including native fauna. Log piles, insect hotels, bat and bird boxes are also proposed in various locations across the site. Green corridors are proposed throughout the site including at the extreme boundaries to encourage growth, habitats and foraging including lighting scheme.

Drainage Strategy – This explains that the disposal of surface water from new developments is to be managed to ensure that flood risk is not increased elsewhere. This development has been designed in accordance with this requirement and the hierarchy of discharge destinations as set out in the Part H Building Regulations. It is stated that the site has benefit of an existing planning permission of which conditions 18 and 19 refer to surface water drainage strategy. It goes on to say that initial infiltration testing was completed to assess the suitability of infiltration, whilst some water level reduction has occurred, none of the boreholes had fully emptied and as such it was concluded that the site would fail BRE365 testing and as such unsuitable to infiltrate to ground. To this end, the surface water drainage strategy for the site will be for the discharge of water to adjoining watercourses. It goes on to say that the site has a network of existing ditches on field boundaries and it is proposed to split the site into three networks and provide attenuated discharges at each outfall. Discharge rates are proposed to be 2.0l/s per outfall, the minimum practicable rate. It is proposed that to ensure there is a minimal risk of pollution entering existing watercourses, prior to each outfall, there shall be an open detention basin, containing a sediment forebay and bio-retention area, as well as upstream swales to provide additional treatment and attenuation. The multiple SW outfalls are also key in maintaining water flow to existing hedge lines and to encourage biodiversity, whilst also allowing the site levels to remain close to existing ground levels. The foul water system proposed is a gravity system and a new foul sewer shall connect to the existing STW FW sewer in Old Egginton Road (MH8601).

Relevant planning history

DMOT/2021/0274 - Approval of details required by condition 9 attached to ref. DMPA/2020/0985 (The variation of condition no. 9 (relating to skylark habitat compensation) of permission ref. 9/2017/1191 (relating to outline permission (all matters reserved for future approval) for residential development of up to 50 dwellings with open space, drainage and associated works)) on – approved – July 2021

DMOT/2020/1396 - Approval of details required by condition 11 attached to ref. 9/2017/1191 DMPA/2020/0985 (outline application (all matters reserved for future approval) for residential development for up to 50 dwellings with open space, drainage and associated works) on – part approved – May 2021

DMPA/2020/0985 - The removal of condition no. 9 (relating to skylark habitat compensation) of permission ref. 9/2017/1191 (relating to outline permission (all matters reserved for future approval) for residential development of up to 50 dwellings with open space, drainage and associated works) on – approved at planning committee – May 2021

9/2018/0003 - the side pruning of all species of trees covered by South Derbyshire District Council tree preservation order number 264 at – granted – 26th February 2018

9/2017/1191 – outline application (all matters reserved for future approval) for residential development for up to 50 dwellings with open space, drainage and associated works on – approved with conditions – committee – May 2019

9/2015/0759 - erection of up to 98 dwellings with associated public open space and sustainable drainage at – withdrawn – May 2016

9/2007/0300 - The siting of one 22.5 metre high monopole, 6 antennas, 2 600mm transmission dishes, 2 equipment cabins and associated development at – approved with conditions – committee – July 2007

Responses to consultations and publicity

Original consultation period

Police Force Designing Out Crime Officer – made an observation as follows – 25th March 2021 –

- Scheme mostly accords with what we wish to see from a community safety and designing out crime perspective.
- Some aspects of boundaries and housing treatment need to be improved and should not be too problematic.
- East-west pedestrian movement through Common End is problematic as it is a private cul-de-sac with probably access rights for allotment owners squeezed with shallow frontages very close to the pathway, so from a legal and design perspective doesn't look suitable for mass circulation. At best this would affect defensible space of Common End residents, at worst be a crime generator for housing and the allotments which have existing problems with nuisance and thefts.
- S106 money allocated for public open space in the area – the allotments may be seen as a public space that could benefit from that with improvements to boundary areas.
- Opposite end of proposed peripheral footpath at north eastern corner of the site connects to a similar circular route for the Bloor site but passes through an area of new tree planting with no consideration outside of the red lined area. This needs resolution with effective links with wide opening in the existing hedge for open sight lines and also negotiation of the ditch there. It would appear existing openings would be as a result of dog walkers.
- Boundaries for the properties are mostly ok for the privacy and security of individual plots but treatment around public open spaces stops short of this and additional may lead to unwanted lines of desire developing around the backs of some plots on the western edge.

- The rear gardens of plots 5 are exposed to a wide drainage ditch and public open space, this space is enclosed by a short section of fencing close to plot 5 with the remainder as hedging. Garden boundaries are 1.2m high post and rail fence and this combination is not adequate for the security of these plots. These need securing with 1.8m high fence or otherwise.
- Plots 1, 3 and 4 have a narrow strip of presumably drainage land between the site and neighbouring housing and low height post and rail fencing is not adequate for securing gardens in this context.
- Plots 9 and 17 near the drainage ditch are unsecured and enclosed to the site of the allotments leaving potential for a desire line to develop between the potential footpath to Common End and the swale in front of plots 9-11 and plots 5-8 and plots 1, 3 and 4. These portions of land need to be secured to prevent further foot access.
- Boundary hedges to frontages of properties should be low height versions as taller growing varieties (Oleaster and Portuguese Laurel) can impede security and surveillance of the site. Are these varieties suitable and what are the maintenance arrangements or is this left to the home owners?
- The provision for the side elevation of key plots is disappointing and only the Highgrove house at plot 2 has a study window looking out over the street of any relevant plots. Additional substantial windows should be provided to enable an outlook from habitable rooms in the following instances: Blenheim – to the snug/dining area of plots 5 and 50, and to the family/lounge areas of plots 33, 41, 47 and 48; Harrogate – to the left side of plots 13, 18, 27 and 40 and to the right of plot 20 (no handling is shown on site plans although from the house access points shown this seems to be the case) and Balmoral – to the lounge of plots 4, 9, 17, 24, 34, 44 and 46.

Derbyshire County Council Planning Policy – no objection April 2021- A S106 agreement has been signed on this outline permission with contributions towards primary, secondary and post 16. As such, officers have no further comment on this reserved matters application. Highways commentary from members shall be considered by the relevant department.

Landscape Officer – no objection subject to conditions – April 2021: the plant schedule for the trees and native species hedgerow to include quantities to be planted; a plan showing the exact position of each species of tree; a plan showing all the native species hedgerows to be planted (a line drawing is acceptable); a plan of sections through the attenuation basin/ponds and swales with a slope of no more than 1:5; a detailed plan of the proposed LEAP; a plan showing the specification and position of all the proposed bird and bat boxes as the submitted documents; the submitted Fence Detail plan of boundary treatments, to show access points and their frequency for hedgehogs; a 5 year Ecological and Landscape Maintenance Plan; enhancement of biodiversity that will mitigate for the increased development of the site and use of native species planting to this end.

DCC Archaeology Officer – No objection – conditions on the outline cover approval of archaeological work which has been approved recently and the archaeological work has not yet commenced.

Environmental Health Officer – no objection.

Derbyshire Wildlife Trust Officer – no objection – the submitted scheme should provide a welcome net gain for biodiversity in line with the objectives of the National Planning Policy Framework and policy BNE3 of the South Derbyshire Local Plan. The Proposed Site Layout Proposed Site Layout Drg No 2267/03/02 Rev E and the Landscape Masterplan GL 1451 01C broadly accord with the Illustrative Masterplan 0166_SK_02F submitted with the outline application and, as such, meet the requirements of Condition 3 of the outline permission. The proposed treatment of retained hedgerows and trees which have largely been incorporated within areas of public open space/green infrastructure as required by condition 3(b) of the outline consent are welcomed. The details provided in the Ecological Design Strategy (EDS) produced by FPCR dated November 2020 which includes details of the locations and specifications of a range of bat and bird boxes as Figure 1. This satisfies the requirement of condition 3(l) of the outline permission. Conditions should be used.

County Highways Authority Officer – object to the proposals for the following reasons – May 2021 –

- Tracking looks tight - some turning heads may need to be extended to allow for refuse vehicles.
- Site layout plan lacks dimensions for footways and carriageways so we cannot approve them at this time. Dimensions are required to avoid any need to alter the layout at Section 38 stage which would then increase the likelihood of a variation of any consent.
- Footways around the rear of swales are not a good idea as the swale banks will inevitably get parked on. Also looking at the drainage strategy, the swales would need to be adopted by the Water Authority as they take more than just highway water. We would therefore have a break in the adopted highway limits which is not acceptable.
- Streets 1 and 2 need footways around both sides to allow for pedestrian access to all dwellings without using the active carriageway.
- Check visibility from all dwelling accesses. Some critical ones on inside of bends with trees in visibility area plots 47, 5, 31 and 12
- The use of isolated raised table to suppress vehicle speeds is no longer acceptable to DCC. If speeds are anticipated to be a safety issue, the horizontal layout needs to be redesigned to remove any over long straights.
- Access to Egginton Road appears to show gates on the drawing. I assume this an existing access and they will be removed
- Culverts below carriageways will require LLFA approval and possibly structural approval depending on their size.
- Surface Water catchment plan shows private water in all the swales etc so none of these will be accepted as highway drains and the Water Authority will need to take all the drainage system except the gullies and gully connections.

The Drainage Strategy document appears to state that infiltration will fail. It seems odd that they are placing a heavy reliance on swales as opposed to a piped system discharging to the retention basins. If the Water Authority are adopting everything then it will probably not be an issue – confirmation required.

Lead Local Flood Authority Officer – made observations as follows – April 2021 – the LLFA are satisfied that the proposed layout will have capacity to safely drain surface water and will await the full surface water drainage details as required at the Discharge of Conditions application stage. The LLFA will need to see evidence showing that the ditches on site have satisfactory connectivity to a mapped ordinary watercourse off-site to ensure that the site will be able to safely drain off-site and to ensure that flood risk downstream will not be increased. The proposed culverting to ditches under proposed access roads within the proposed site layout drawings will require Ordinary Watercourse Land Drainage Consent to be applied for to the Flood Team.

Etwell Parish Council – object to the proposals for the following reasons:

- Common End and the track adjacent to the allotment gardens is also not shown on the DCC map as an adopted highway or PROW and is owned by the adjacent houses, with the allotments leased by the Parish Council. The only permitted access along Common End being access to the houses and allotments. No permitted access to the field (development site) is available.
- If a footpath to the south-eastern corner is constructed this will lead pedestrians onto Jacksons Lane where the hedges give poor visibility, leaving a footpath short of the surfaced road and will give a short dangerous non surfaced length.
- Extra mitigation required for the noise from the Freeport.
- Is a roundabout still planned for Egginton Road?
- Will the 30mph limit be extended?
- The turning head at the junction of road 2 and 3 shown on the Engineering layout is not utilised in the vehicle tracking drawing. It would appear to be the preparation for a future road to the adjacent field rather than a turning point. This is reinforced by residents recently seeing surveyors in the field.
- If the extension of the site is under consideration, the extension will be outside the current Local Plan village boundary.

- Jacksons Lane is not shown on the DCC public map as an adopted highway or PROW. Is it permitted to provide a footpath access from the estate onto Jacksons Lane?
- The site ownership red line on drawing 2267-03-E Site Layout includes the hedge between the site and the allotments. This is not consistent with the lease dated 02 07 1943 between Etwall Parish Council and the Borough of Burton upon Trent which shows the boundary as the centreline.

22 objections were received from the public raising the following comments:

- Loss of grass verge to Egginton Road will impact landscape and general rural character of the area and from tarmacking may lead to drainage issues.
- Not clear what the junction works are for the site access onto Egginton Road and there may be access issues.
- Not clear why there is the outline of a path that exits on the eastern side of Egginton Road and why it is required. This is the same for the western side of the road opposite to no. 93 and 95 Egginton Road as there is currently no footway there and is filled with spring bulbs.
- The pathway onto Jacksons Lane on a bend needs to be reconsidered as there is nowhere for people to walk to (Broomhill Cottages are a dead end), no pavement, lighting and it is not adopted or a public right of way and could therefore be dangerous and remove sections of hedgerow.
- The pathway to Common End and allotments would not be allowed due to rights of access issues.
- The plans include sections of road that just end abruptly - is the plan for further extension to this housing development?
- Greenfield/ green belt land should not be used to provide 4/5 bedroom homes as this is not what we need to build required homes for housing crisis.
- Full flooding and drainage assessments need to be carried out again (originally done in 2016/17) as in early 2021 the top corner of Jacksons Lane flooded near to where the new estate entrance would be and no tarmac was visible. The level has not been that high for 20 years and has come from the housing off Willington Road because of the gradients. The fields have also been flooded.
- Following recent Willington Road development, dramatic change in wildlife and this will impact it more.
- Current serving roads aren't safe and with children coming to the development this would be worse when they are walking to school.
- Amenities like doctors, shops and schools haven't been catered for in this new development.
- Traffic will increase dramatically as a result of the Freeport and so will noise, as such this development should be future proofed for that.
- Speed at entrance of site to Egginton Road is 50mph and could be a traffic hazard and dangerous.
- The development would result in the erosion of Etwall as a village.

Second round of consultation August 2021:

Designing Out Crime Officer – 2nd September 2021 - made an observation as follows:

- Some of previous comments have been addressed and others have not.
- Issue of connectivity from Common End to proposed development and Bloor Homes development with no indication of how legally and practically these features will be maintained to ensure safer pedestrian movement or how they will impact neighbours amenity. These are recommended for refusal.
- There is open and inadequately enclosed land to rear/side of plots 1, 3 and 4 and 9/17 which remain unresolved from previous comments.
- Access to rear of plots 6 to 8 have been improved and there is now a selection of species for house frontage ornamental hedging.

Landscape Officer – no objection subject to conditions:

- A plant schedule, for the trees and native species hedgerows, to include quantities to be planted.
- Increase fruit trees to on plot planting to rear gardens.
- The exact position of each species of trees.
- All native species hedgerows to be planted to be shown.
- The position of all proposed bird and bat boxes.
- Any boundary treatment to show hedgehog access.
- A five year Landscape and Ecological Management Plan.
- Enhancement of biodiversity that will mitigate for increase development of the site to improve native species with local biodiversity including hedgehogs, birds, bats and bees etc.

Environmental Health Officer – recommend further details of noise mitigation measures (acoustic fence and bund) are conditioned.

County Highways Authority Officer – 1st October 2021 – no objection - the Highway Authority is not entirely happy with the design and layout of roads 1 & 2 with the swales between the footway and the carriageway. However, they note the applicant has offered assurances that the swales in the highway are designed to take highway surface water only, as such, it is not considered that there is sufficient reason for recommending refusal of the proposal on highway safety grounds. The applicant should be aware that provision of swales within the adopted highway will attract a significant committed sum and, depending on the final design/construction details of the swales and their outfalls, their inclusion may compromise the adoption of the road as public highway. Noted a number of drawings refer to the road off Road/Street 2, serving plots 37 – 40, as Street 4, on others it is Road 3. The width also varies from 4.8m to 5m. The carriageway width will need to be 5m if the road is intended for adoption. However, on some drawings it is referred to as remaining private. If the road is intended to remain private, its junction with Street 2 will need to be constructed as footway with a dropped vehicular crossover and highway limited demarked. Bin dwell areas sufficient to accommodate 2 bins per dwelling served will need to be provided on private land close to the highway for use on collection day. To address the above comments, conditions relating to no ramps/raised tables, road width (5m if intended for adoption), provision of bin collection points and surfacing of driveways should be included in any consent in the interests of highway safety. Notes relating to works within the highway, Advance Payments Code, adoption of roads and the swales are recommended.

Lead Local Flood Authority Officer – 29th September 2021 – No objection - within the proposed amended layout, there will be capacity to safely drain surface water and await the submission of the full surface water drainage details as required at the discharge of condition stage (18 and 19). With regard to the March flooding, this can be considered when conditions 18 and 19 are dealt with.

Severn Trent Water Ltd – no objection - Foul is proposed to connect into the public sewer, which will be subject to a formal section 106 sewer connection approval. Surface water is proposed to discharge to a watercourse, which we have no comment. It is advised to discuss surface water proposals with the Lead Local Flood Authority. For the use or reuse of sewer connections either direct or indirect to the public sewerage system, the applicant will be required to make a formal application to the Company under Section 106 of the Water Industry Act 1991. Suggest informative regarding public sewers.

Tree Officer - no objection

Derbyshire Wildlife Trust – 28th September 2021 - comfortable with the approach proposed to secure detailed enhancement measures as part of the later discharge of conditions process.

6 objections were received from the public raising the following comments:

- a) Footpath taken onto the top of Jacksons Lane is very dangerous as it is a single track road, not adopted, used by multiple vehicle types with no pavement. Over the years with increased dog walkers etc. using it there have been near misses of highway safety incidents particularly at the bend where people cannot see vehicles coming.

- b) Footpath through to the allotments leading people down Common End is not appropriate and there is no permission to physically connect to this.
- c) The hedgerow on Jacksons Lane should not be removed as part of the works as it is established and mature, creates a good visual and sound barrier and is home to multiple wildlife.
- d) Drainage Strategy does not take into account the March 2021 flooding on Jacksons Lane and the Severn Trent comments do not reflect this either. The FRA and Drainage Strategy needs to be amended accordingly. The drainage needs to take into account the recent Willington Road development and be updated to ensure the situation is addressed and the site and surrounding area is safe from flooding.
- e) Will a 30mph limit on Egginton Road be implemented plus a roundabout to make accessing the site safe.
- f) The turning head on roads 2 and 3 do not show a vehicle tracking drawing and instead will be used as an extension road for further housing in the field as seen by surveyors in the site which is outside the village boundary.
- g) One plan shows a footpath on the western side of Egginton Road and the other does not therefore what is actually being constructed.

Etwall Parish Council – object to the proposals for the following reasons:

- The two exits of footpath in the north west corner at Common End and the south east corner of Jacksons Lane are problematic.
- The Common End aspect is a private road with access limited to the householders on Common End and the allotments, which is an unadopted road with the owner of the field subject of the application surrendering their rights of access, as such new occupiers of the development would not have a right of access over Common End. Allotment holders are concerned over loss of security if an access point is created.
- Jacksons Lane is a private, unadopted road and the footpath to be terminated at the boundary would create an unofficial access through the current hedge and is not acceptable to householders on Jacksons Lane.
- The road layout has been amended to allow for future development of the adjacent field by the addition of two cul-de-sacs. This would appear to be preliminary work to create additional housing to that permitted in the Local Plan and increase the development to the number of houses originally requested and rejected, now over a greater area which they object to by default.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

Local Plan Part 1 - S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), H21 (Affordable Housing), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), SD6 (Sustainable Energy and Power Generation), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF6 (Community Facilities), INF7 (Green Infrastructure), INF8 (National Forest), INF9 (Open Space, Sport and Recreation)

Local Plan Part 2 – SDT1 (Settlement Boundaries and Development), H23 (Non-Strategic Housing Allocations – 23B Jacksons Lane, Etwall), BNE7 (Trees, Woodland and Hedgerows), BNE10 (Heritage)

The relevant local guidance is:

South Derbyshire Design Guide Supplementary Planning Document
Affordable Housing SPD
S106 Agreements A Guide for Developers
Trees and Development

The relevant national policy and guidance is:
National Planning Policy Framework (NPPF)
Planning Practice Guidance (NPPG)

Planning considerations

This application seeks to approve the reserved matters of access, layout, scale, appearance and landscaping following approval of outline permission. The principle of the development has therefore been established and hence the following assessment takes into account only the matters which are relevant to the conditions concerned. Taking this into account, along with the documents submitted (and supplemented/ and or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- Impact of the development on overall housing mix and local character.
- Impact of the development on residential amenity.
- Impact of the development on highway safety.
- Impact of the development on biodiversity
- Impact of the development on trees, hedgerows and landscape character.
- Impact of the development on flood risk and drainage.
- Other matters.

Planning assessment

Impact of the development on overall housing mix and local character:

The most applicable policies to consider are S1, S2, S4, H1, H20 and BNE1 of the LP1 and H23B of the LP2, the Design SPD and the SHMA 2021. Between them these policies and guidance seek that new development involving housing provides a mixture of types, sizes and tenure over an appropriate layout and of good quality design that reflects the needs of the local population and architectural styles of the immediate locality.

The site is wholly located within the non-strategic housing allocation H23B of the LP2 called 'Jacksons Lane, Etwall'. The main body of text for the policy states 'The following sites are allocated for housing development as shown on the Policies Map and in the site specific maps under Policies 23A-N. The key considerations for each of the sites are:

- i) transport impacts – including vehicular access points, visibility, pedestrian and cycle links and impacts on the existing road network.
- ii) impact on the surrounding landscape/and or townscape.
- iii) management of flood risk and drainage
- iv) impact on designated and non-designated heritage assets and settings.
- v) biodiversity impacts.
- vi) the design and layout to take account of site characteristics. '

The site specifics for Jacksons Lane are stated as:

- 'Around 50 dwellings.
- Footpaths to be included that offer access to the allotments, Part 1 allocation to north and onto Jacksons Lane. In area A and B the consideration of separated footways/cycleways.
- Consideration of future noise impact on the site.
- Character area A – no more than 4 dwellings per hectare (gross)
- Character area B – no more than 6 dwellings per hectare (gross)
- Character area C – no more than 8 dwellings per hectare (gross)
- A landscape buffer implemented along the eastern boundary of the site.
- No more than 3 dwellings on the frontage of site to Egginton Road.

- No buildings to be in the area directly south of Etwall Grove.
- An off-site affordable housing contribution to be made.'

Following the approval of the original outline 9/2017/1191 and the subsequent variation DMPA/2020/0985, condition 3 of both these permissions seek that the reserved matters development is brought forward in line with broad principles of the Design and Access Statement supporting the outline application and the Illustrative Masterplan and in respect of design, an internal layout in accordance with the 6C's design guide should be provided which meets the densities as set out in Policy H23B.

The proposed development comprises 50 dwellings which is therefore in compliance with Policy H23B. The density proposed mirrors that required and in Area A, four and five bedroom houses are proposed which considering the density requirements, are appropriate in this instance. The orientation of the outward facing development results to the south west corner having 1 no. dwelling fronting Egginton Road itself, with the remaining outwardly facing units orientated with their front elevations facing south west towards the corner of Egginton Road and Jacksons Lane or Jacksons Lane directly. This again is in compliance with H23B and will help create a more active frontage for the development, particularly along its southern boundary. As seen from the Proposed Site Layout, a large area of public open space has been provided which includes tree planting, drainage ditches/swales and footpaths within Area A and retains an open area directly south of the attractive Etwall Grove, again as per Policy H23B. The footpaths and noise consideration elements in respect of Policy H23B will be considered in the coming sections of this report.

Following on from consideration of the development compliance with H23B non-strategic housing policy, also supporting the application are a Planning, Design and Access Statement, Site and Materials Layouts and House Type plans/elevations drawings. After review of the original submission, concern was raised at the provision of wide hipped roof detached dwellings to the Egginton Road frontage where the predominant character of the dwellings currently occupying the road are tall, gable roof, brick fronted villas with feature bay windows and gables with inset porches. In addition, there were issues with the overall layout and orientation of plots in respect of orientation to the road, provision of side windows to allow driveway surveillance of vehicles/cycles, relationship with public space and concerns over poor boundary treatments to properties where dwellings backed onto landscaping/drainage or the LEAP as per the Designing Out Crime Officer comments. These issues have now been resolved with new gable style house types proposed throughout Area A closest to the existing Egginton Road dwellings at a scale commensurate with neighbouring properties, with all dwellings and their garages facing the road/driveway/LEAP/ponds and drainage basins that they serve or front to allow for best passive surveillance to assist neighbourhood interaction and to assist with overall site safety. Where plots are proposed to back onto or be side facing to public open space or off-plot landscaping, suitable boundary treatments of screen walls or enhanced timber board fencing, rails with hedgerows/tree planting are proposed which help address some of the Designing Out Crime Officer comments. In addition to this, the garages serving the dwellings have been amended in style so that they have a roof type that mirrors the associated dwelling of a suitable height that ensures that the dwelling is the predominant feature of architectural focus on each plot and site wide to help support the proposed theme of Arcadia that Redrow propose.

In terms of external facing materials, the brick, render and roof tile types as shown on the Proposed Materials Layout Rev J are considered to be acceptable and mirror themes within the wider Etwall area alongside those used in the construction of the existing dwellings on Egginton Road, Jacksons Lane, Grove Park, Hollies Court and Common End. At this time, as details of the colours and specifications of doors, windows, porches, feature stone, shingle, hung tiles, gas/electric boxes, rainwater goods have not been provided, details of these will be attached by planning condition to any approval to ensure they are appropriate with regards to local character.

Impact of the development on residential amenity:

The most applicable policies to consider are SD1 and BNE1 of the LP1 and H23B of the LP2 and the Design Guide SPD. Policy SD1 states 'A. The Council will support development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around

proposed developments. B. The Council will take into consideration the following: iii) the need for a strategic buffer between conflicting land uses such that they do not disadvantage each other in respect of amenity issues, such as odours, fumes, or dust and other disturbance such as noise, vibration, light or shadow flicker.' Policy H23B states there should be 'consideration of future noise impact on the site'.

In respect of the design related considerations regarding amenity, the dwellings within their plots are adequately spaced and orientated appropriately from one another so as not to cause overlooking, privacy loss, overbearing impacts or overshadowing both within the development itself and how it relates to existing neighbouring dwellings to the north and west. Private external amenity areas are of a size, orientation and positioning relative to the dwellings and garages within their plots so each will benefit from sufficient light and space provision.

The Officer Recommendation for 9/2017/1191 notes that the Noise Impact Assessment supporting that application states 'It has been identified that much of the development would not naturally achieve the internal noise criteria with windows open. Noise mitigation measures are recommended, including the internal layout of houses being designed to minimise the number of habitable rooms facing towards the A50; a further noise bund within the south-western corner of the site (adding to the existing 3m high bund adjacent to the A50, which would have a beneficial effect on the wider local noise environment); the southern-most line of housing having a continuous building line or environment noise barrier constructed as a garden boundary; and use of double glazing with an alternative means of ventilation. It is noted that the predicted internal noise levels are not high in comparison with noise levels in many urban areas, and with these measures the development would achieve compliance with the noise level criteria given in BS8233 for the daytime and night-time periods'. No specific noise mitigation conditions for the lifetime of the development were attached at that time. H23B does seek a future noise impact consideration for the site with regards to the A50. The layout of the site would result in 5 dwellings (1 in area A and 4 in area B) orientated south towards the A50 with plots 45 and 46 having their rear boundaries facing that direction. This is shown to minimise the number of dwellings within the site orientated towards the A50. This area of the site and the southern most plots are already set well back from the A50, beyond the existing 3m bund and a field to the south of the site plus within the site boundaries, the drainage swales/ditches for the sites surface water scheme and Street 4/private driveway. This together with the provision of 1.8m brick screen walls (materials to match the associated dwelling) and 2m high acoustic fencing achieving a superficial mass of 12kg/m² are considered suitable to address noise in this area. To the south-western point, a bund area of POS is planned to the corner of Egginton Road and Jacksons Lane. Further details of the bund and acoustic fencing and their provision will be secured by condition. Accordingly, the proposed residents will have an acceptable standard of amenity. In relation to potential noise from the Freeport, this has not yet been approved so is not required to be taken into account when considering mitigation for the proposed residents of this site.

In terms of the amenity of existing residents, separation distances proposed between the new and existing housing comply with the requirements of the Design Guide SPD and there is considered to be no significant impact arising.

Impact of the development on highway safety:

The most applicable policies to consider are S1, S2, S6, BNE1, INF1 and INF2 of the LP1 and H23B of the LP2 and the Design SPD. Between them, these policies and guidance seek that new development be located within sustainable locations with access to public transport and passive methods of transport with good links to existing transport infrastructure and that any impacts if mitigatable are secured on site or through financial contribution via commuted sum to off-site projects. Within the site itself, these policies and guidance seek that suitable road networks, pedestrian, cycle and electric vehicle charging infrastructure is in place and that parking is provided at a level commensurate and to a size standard as stipulated in the Design Guide SPD.

With regard to highways considerations, condition 3 of the outline permission seeks that any reserved matters application include, so far as relevant, the following:

'(e) the internal layout of the site shall be in accordance with the guidance contained in the 6C's Design Guide (or any subsequent revision/ replacement of that guidance) and Manual for Street issued by the

Department for Transport and Environment and Local Government (or any subsequent revision/replacement of that guidance);

(f) a swept path analysis to demonstrate that service and emergency vehicles can successfully enter and manoeuvre within the site;

(g) if applicable, the provision of bin collection points at the adoptable highway end of private shared driveways and courtyards, sufficient in size to accommodate two bins per dwelling to which they serve;

(h) each dwelling shall be provided with space for the parking of two vehicles for each 1, 2 and 3 bedroom dwelling or three vehicles for each 4+ bedroom dwelling, with any garages to be counted as a parking space of internal dimensions no less than 3m x 6m'.

This reserved matters also seeks approval of access, with the sole access for the development to be taken from Egginton Road. The access proposed would be dual flow, single lane and lead onto the principal 'Street 1' which sweeps through Character Area A into B, then leading off to Streets 2, 3 and 4, which themselves lead onto sections of private drives. To Streets 1, 2 and 3, there will be pedestrian pavements either side of the vehicular road and to Street 4 partially then a crossing point to a single pavement. Private driveways will function as shared surface. In addition to this, there is a separate pedestrian pathway round most of the site to create a walking route, which is not proposed to be adopted, which will link onto Jacksons Lane to the south eastern corner, north to Willington Road and west onto Common End near the allotments. To Streets 1, 2 and 3, adoptable grass highway verges are also proposed. In terms of parking, each dwelling is proposed to have a double or triple garage for parking and in front of this, driveways set back from the associated road/street. The application is also supported by a Refuse Strategy Layout which demonstrates which plots will have roadside pick up on adoptable highway routes and where plots are on private driveways, the bin collection points closest to the adoptable highway points. Various tracking and visibility splay drawings have also been provided.

The driveways and garages proposed in relationship to the dwelling that they will serve are proposed at a ratio and dimensional standard in compliance with the relevant policies and standards, so that off-plot parking is achieved in a manner that does not cause vehicles to be the primary focus of the site and does not compromise highway safety. A condition will be attached that seeks retention of both the driveways and garages for the parking of vehicles only in the interests of sufficient on plot parking, highway safety and character, removing PD for conversion of the garages accordingly. Policy INF2 (E) states 'Parking – Development should include appropriate car parking provision having regard to:

c) the need to encourage travel on foot, by cycle and by public transport in preference to the private car by minimising parking provision;

f) the need to encourage the use of low emission vehicles'.

The Design Guide SPD also encourages the provision of secure cycle storage and electric vehicle charging points on a 1 no. per dwelling basis. Secure cycle storage could take place within the plot but the proposals do not demonstrate the locations of EVC points and as such these are recommended to be secured as a prior to occupation condition to encourage use of low emission vehicles. The refuse collection area strategy appears appropriate with regards to condition 3.

In respect of the road layouts and visibility, Highways have raised concern that footways around the rear of the swales beside streets 1 and 2 is not advisable as the swale banks will get parked on and that the swales will take more than just highway water. They also advise that the use of isolated raised tables to suppress vehicle speeds is no longer an accepted method and the roads should be re-designed to avoid over long straight sections if speeds are anticipated to be an issue. The applicant has confirmed the swales will only take highway run-off (no private) and that the swales are going to be designed with a maximum grade of 1:3 batter and as such would be a parking deterrent. In addition, they consider that the size of the proposed properties driveways and the amount of allocated parking, coupled with the low density of the scheme, mean that it is highly unlikely that residents, or their visitors, would choose, or need to, park over the swales. The applicant has designed out the need for the raised tables and has requested for this omission to be dealt with during the Section 38 process rather than amending the submitted plans. A condition preventing the use of raised tables or ramps within the development will be included to address this issue. The use of swales is not included within the Highway Design Guide and it is therefore likely the use of swales will generate a substantial commuted sum, possibly compromising the adoption of the roads as public highway. It is considered a refusal of the application based on the inclusion of swales could not be substantiated and swales are of

benefit to achieving sustainable drainage and additional soft landscaping on the site.

Subject to the conditions outlined, it is considered the proposed development will cause no harm to highway safety.

Impact of the development on biodiversity:

The most applicable policies to consider are S1, S2, S3, BNE3 and BNE4 of the LP1 and H23B of the LP2. Between them these policies seek that planning proposals that could have a direct or indirect effect on sites with potential or actual ecological or geological importance including: internationally important sites; nationally important sites (such as SSSIs); Sites of County Importance (such as Local Nature Reserves, Local Wildlife Sites and Local Geological Sites); Ancient woodlands, veteran trees and hedgerows and priority habitats and species will need to be supported by appropriate surveys and assessments sufficient to allow the Authority to fully understand the likely impacts of the scheme and the mitigation proposed. Where mitigation measures, or exceptionally, compensation cannot sufficiently offset the significant harm resulting from the development and/or where the development can potentially be located on an alternative site that would cause less or no harm, planning permission will be refused.

The outline permission was supported by ecological surveys and these informed the conditions attached to the decision notice. Condition 3 of the outline will be used to guide a detailed Landscape and Ecological Management Plan as per condition 21. Condition 3 seeks that any reserved matters application is supported by (i) an ecological design strategy (EDS) addressing mitigation, compensation and enhancement which shall include the following:

- Details of retained habitats and suitable protection measures;
- Details of newly created habitats including ponds and swales;
- Identification of green corridors; and
- Locations and specifications for a range of bat and bird boxes.'

The application is supported by an Ecological Design Strategy which sets out the principles for the LEMP to follow at a later date including locations and details of the items listed above. Whilst the EDS has not been updated to mirror the amends to the layout sought due to design/landscape revisions following the original round of consultation, the basic principles are still the same and are considered transferrable. The Derbyshire Wildlife Trust officer has reviewed the application, including the EDS, and has no objection to this approach. It is considered that the development is in compliance with policies relating to biodiversity.

Impact of the development on trees, hedgerows and landscape character:

The most applicable policies and guidance to consider are S1, S2, S3, BNE1, BNE3, BNE4, INF1, INF2, INF7 and INF9 of the LP1, H23B and BNE7 of the LP2, the Design SPD, Trees and Development SPD and Landscape Character of Derbyshire document. The reserved matters of landscape and layout have been applied for so condition 3 of the outline consent is relevant as follows: '(a) a Locally Equipped Area for Play (LEAP) and connectivity to public open space north of the site; (b) retained hedgerows and trees shall, as far as practicable, not act as enclosures to proposed dwellinghouses and be incorporated into public spaces/green infrastructure; (c) where applicable, details of measures to support hard landscaping within any root protection areas of retained trees or hedgerows.'

The application is supported by a Landscape Masterplan and a Local Equipped Area for Play (LEAP) proposal. Turning first to the LEAP, as per condition 3, it has been placed to the east of the site and covers an area of 400sqm as per the requirements in the s106 relating to the outline. The LEAP will include 6 pieces of equipment comprising: inclusive orbit, timber team swing; joined logs; net bridge; inclined twine and orangutan timber climber. The equipment will be within a timber fenced area with 1m high access and maintenance gates and also proposed are a bench and bin. The surfacing for the LEAP will comprise compact gravel surfacing, reinforced grass safety surfacing and bonded rubber mulch safety surfacing. A variety of low height shrub planting is proposed to the north eastern corner and eastern boundary of the LEAP with 3 Silver Birch trees to the western side. It is considered that both the siting of the LEAP, which will be accessed off the perimeter pathway, accessed also off Street

2, and it backing onto a 15m eastern landscape buffer, overlooked by properties proposed to the west, will be suitable in terms of connectivity, passive surveillance and maintenance. Its location will ensure a 20m buffer to protect the closest neighbours amenity whilst still allowing it to be overlooked somewhat without impacting privacy. The LEAP details will be attached by planning condition.

The private on-plot external amenity areas are considered to be of an appropriate size with respect to the size of the dwelling they will serve and in comparison to average garden sizes of dwellings in the immediate locality. In respect of the wider landscaping proposals, the revised plans are much improved including more suitable low height varieties of ornamental hedge planting to the frontages of each plot, with different species for each of the character areas. This has helped to address concerns on visibility and maintenance of plot hedgerows raised by the Designing Out Crime and Highways officers in terms of height for vehicle/pedestrian safety and passive surveillance. The on-plot tree, shrub, flower and grass planting with different species for the differing character areas are also considered acceptable. The Public Open Space (POS) meadowland grassland and around the attenuation features, plus street trees and verges are also acceptable. The landscaping plans also include references to benches and bins throughout the POS with images/specifications provided, though only the placement of the benches are indicated without numbers to be provided and no bin locations are actually shown. Following on from the planting schedule, whilst the species and sizes are appropriate, the locations and numbers of these in each location, alongside that for benches and bins needs to be further clarified and can be executed through use of planning condition. No issue is raised as to the type of Breedon gravel path proposed for the POS pathway through the site though the Landscaping Plan and Site Layout have differing layouts for these, as such this should also be rectified in the detailed landscaping plans. Whilst the public comments have raised concern about the legalities and safety of connections through portions of hedgerow to create a pathway around the site leading north to the Willington Road development, south onto Jacksons Lane (an unadopted highway) and west to the allotments and Common Lane, this is a policy requirement as per H23B and as per condition 3 of the outline. The requirement for the pathway connections was to allow the older parts of Etwall to connect to these new developments and to create better off-road pedestrian walkways for landscape character and healthier lifestyle uptake and as such, it was included in policy and brought forward in these proposals. The pathways would go up to the boundaries of the site but not through them for the time being, allowing the potential for future connections to the wider area subject to further liaison with relevant neighbouring land owners. To this end, no issue is raised and the proposals are deemed technically Local Plan compliant. The hedgerow and tree retention, replacement and limited removal (to create accesses through to each area) is in line with previous discussions following the outline permission and attached conditions, as is the POS to the south of Etwall Grove retaining views to this property. This is in line with the Landscape Officer's comments. In regard to the Landscape Officer's other comments seeking bird and bat box positions, hedgehog holes, five year Landscape and Ecological Management Plan and biodiversity enhancement, these are already covered by the various conditions attached to the outline permission seeking the submission of further detail of these elements via discharge of condition applications and as such will not be re-attached in any approval of this application. Condition 10 of the outline permission requires a scheme of tree and hedgerow protection measures to be agreed prior to development commencing. Subject to this condition and given the distance of the proposed dwellings from the protected trees, it is considered the development will cause no harm to protected trees. It is considered that the development is in compliance with the listed policies covering trees, hedgerows and landscape character.

Impact of the development on flood risk and drainage:

The most applicable policies and guidance to consider are S1, S2, S3, SD2 and SD3 of the LP1. Also relevant is condition 3 of the outline permission which seeks for any submission of a reserved matters application to include '(d) evidence to demonstrate that the sustainable drainage system detention basin has been designed to provide sufficient capacity to drain the site in accordance with conditions 18 and 19 of this permission'. Conditions 18 and 19 cover the detail relating to the destination of surface water for the proposals and management and maintenance plans thereof. During consultation, the public and the Parish Council have raised concern that following the original outline permission, there has been recent flooding (March 2021) to Jacksons Lane which they believe may be connected with heavy rainfall and the recent Willington Road development to the north which has resulted in the field being saturated and Jacksons Lane in part being covered by water with no road surface visible.

Supporting this application is a drainage technical note and Surface Water Catchment Plan. Severn Trent Water Ltd note that foul water is proposed to connect into the public sewer, which will be subject to a formal section 106 sewer connection approval. They have no comment in relation to surface water which is a matter for the LLFA. The LLFA advise that within the proposed layout, there will be capacity to safely drain surface water and they await the submission of the full surface water drainage details as required at the discharge of condition stage (for conditions 18 and 19). With regard to the March flooding, the LLFA advise this would need to be considered when conditions 18 and 19 are dealt with. Whilst recognising the concerns about recent flooding in the area, it is considered that an appropriate and acceptable surface water drainage scheme can be implemented at the site which will not cause increased flooding for neighbouring properties. The conditions on the outline are considered sufficient to secure an appropriate surface water drainage scheme for the development.

Other matters:

The applicants seek the removal of reference to the Design Code within the s106 legal agreement that sits alongside 9/2017/1191 and DMPA/2020/0985 approvals for outline permission. Within the definitions section of the agreement, the Design Code is defined as 'a framework to set out the access, appearance, landscaping, layout and scale parameters for the Site which shall then be binding on all subsequent owners'. The Design Code reference within the Third Schedule of the legal agreement states 'The Owners covenant with the Council as follows: 1. Not to submit any application for Reserved Matters Approval until such time as a Design Code for the Site is submitted to and approved in writing by the Council. 2. Not to submit an application for Reserved Matters Approval other than in accordance with the Design Code as approved in writing.'

The Officer Recommendation to committee for 9/2017/1191, states the following 'Consideration has also been given to whether a single or multiple developers would likely take this site forward, with the low density likely to discourage some of the usual housebuilders from showing an interest. The site would therefore likely encourage the Small to Medium Enterprises (SMEs), and even individuals wishing to construct their own home. A greater number of developers brings with it a greater range of design aspirations such that a mechanism would be required to ensure some 'unity' with the design of the wider site. A design code is therefore considered necessary if the site is sold to multiple developers, or marketed as individual serviced plots. This can be secured by way of a planning obligation, the trigger arising at the point of sale as opposed to at the reserved matters stage – the latter being an unreasonable requirement for multiple parties/individuals to create and coordinate this document.'

As the site is being brought forward as a single development by a single developer, it is considered that the Council's Design Guide SPD is sufficient to ensure that appropriate placemaking, architectural and landscape/layout design are provided in line with local guidance and policy without requiring a separate Design Code for the development to be approved prior to an approval of Reserved Matters. It is also considered that the applicants supporting documents outline their design rationale in sufficient detail, noting also reference to the Design and Access Statement compliance with the condition attached to the outline which seeks to ensure high quality and consistent design aspirations. To this end, it is considered that the requirement for the Design Code should be omitted from the legal agreement and therefore the Council also seek delegated authority to amend the legal agreement accordingly.

Conclusion:

As the development is in compliance with the listed policies and guidance, it is therefore recommended the reserved matters be approved, subject to conditions and a Deed of Variation to omit the Design Code requirement.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve subject to the following conditions:

A. Grant delegated authority to the Head of Planning and Strategic Housing to conclude negotiations on and complete an agreement under section 106 of the Town and County Planning Act 1990 so as to vary the original planning obligations as outlined in this report; and

B. Subject to A, approve the application subject to the following condition(s):

1. The development hereby permitted shall be carried out in accordance with drawings ref.: Fence details 2267/06/02 Rev A received by the Local Planning Authority on 25 January 2021; External Works Layout 2267/06 Rev G, Proposed Materials Layout 2267-07 Rev J, Street Sections 2267-13-Sections Rev C, Refuse Strategy Layout 2267 Rev E, House Type CAMBRIDGE - AS (Plots 11, 23) 2267/20 Rev E, House Type LEAMINGTON (Plots 14, 26) 2267/21 Rev A, House Type HARROGATE - AS Brick (Plot 22) 2267/22, House Type HARROGATE - AS (Plots 10,12,13,15,18,27,29,40,42) 2267/22 Rev C, House Type BALMORAL - AS (Plot 1) 2267/23 Rev E, House Type BLENHEIM AS (Plots 31,41,45,37) 2267/24 Rev C, House Type HIGHGROVE (Plot 5) 2267/25 Rev B, Triple Garage 2267/30 Rev B, Double Garage 2267/31 Rev B, House Type BLENHEIM - Area A - AS (Plots 3,47,48) 2267/33 Rev A, House Type CAMBRIDGE - OPP (Plots 16,25) 2267/34 Rev A, House Type HARROGATE - OPP (Plot 20) 2267/36 Rev A, House Type HARROGATE - OPP Brick (Plot 21) 2267/36, House Type BALMORAL - OPP (Plots 4,49) 2267/37 Rev A, House Type BALMORAL - OPP (Plots 4,49) 2267/37 Rev A, House Type BLENHEIM - Area A - OPP (Plots 2,50) 2267/38, House Type BLENHEIM - OPP (Plots 6,8,33,35) 2267/39, House Type BALMORAL - AS (Plots 7,17,32,36) 2267/40 Rev A, House Type BALMORAL - OPP (Plots 9,19,24,28,30,34,38,39,43,44,46) 2267/41 Rev A, Engineering Layout Sheet 1 of 1 20-001_02_01 Rev F, Surface Finishes Sheet 1 of 1 20-001_02_02 Rev E, Swept Path Analysis 20-001_02_03 Rev E, SW Catchment Plan Sheet 1 of 1 20-001_02_04 Rev E, Landscape Masterplan GL1451 01 Rev G and LEAP Proposals GL1451 02 received by the Local Planning Authority on 25 August 2021 and Proposed Site Layout 2267/03/02 Rev S received by the Local Planning Authority on 30 September 2021 unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

2. Notwithstanding the external facing materials as shown on drawing Proposed Materials Layout 2267-07 Rev J as received by the Local Planning Authority on 25 August 2021, prior to the erection of any dwelling hereby approved, the external facing materials of hung tiles, shingles and feature stone work shall be submitted to and approved in writing by the Local Planning Authority. The details shall include material, texture, colour and where appropriate, sections. The external facing materials shall be installed in accordance with the approved details.

Reason: In the visual interest of the buildings and the character of the surrounding area.

3. Prior to their incorporation in to the dwellings hereby approved, details of the colour of doors, garage doors, window frames, fascias and meter boxes shall be submitted to and approved in writing by the Local Planning Authority. The door, window frame, fascia and meter box colours shall be installed in accordance with the approved details.

Reason: In the visual interest of the buildings and local distinctiveness.

4. Prior to their incorporation in to the dwellings hereby approved, details of the eaves, verges, cills and lintels shall be submitted to and approved in writing by the Local Planning Authority. The details shall include drawings to a minimum scale of 1:10. The eaves, verges, cills and lintels shall be constructed in accordance with the approved drawings.

Reason: In the visual interest of the buildings and local distinctiveness.

5. All verges shall be finished in a mortar finish. There shall be no use of dry verge (cloaking tile) systems.

Reason: In the visual interest of the buildings and local distinctiveness.

6. Gutters and downpipes shall have a black finish and be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.

Reason: In the visual interest of the buildings and local distinctiveness.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, the garages and parking spaces to be provided in connection with each dwelling erected shall not be used other than for the parking of vehicles except with the prior grant of planning permission pursuant to an application made to the Local Planning Authority in that regard.

Reason: To ensure adequate parking and turning provision, in the interests of highway safety and to protect amenity and local character.

8. Prior to the first occupation of the development hereby approved, a scheme for electric vehicle charging points including locations noted on a plan and specification of wall or stand style shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include 1 no. charging point per dwelling. Charging points should be provided with an IP65 rated domestic 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. This socket should be located where it can later be changed to a 32amp EVCP. The electric vehicle charging points shall be provided and available for first use on a prior to first occupation of the dwelling they are associated with basis and once installed, shall be maintained in good working order.

Reason: In the interests of promoting sustainable forms of transport and in the interests of pollution control and reducing and minimising emissions from vehicles.

9. Prior to the first occupation of any dwelling on site hereby approved, the Locally Equipped Area of Play (LEAP) shall be installed as per the details shown on drawing 'Play Area Proposals LEAP GL1451 02' as received by the Local Planning Authority on 25 August 2021. Once installed, the LEAP shall be retained in perpetuity and maintained in good working order for the lifetime of the development.

Reason: In the interests of promoting on-site recreation, community interaction, play and healthy lifestyles and in the interests of the landscape and overall character of the site.

10. The Landscape and Ecological Management Plan as per condition 21 attached to the Outline permission for the site shall follow on from the details provided within the Ecological Design Strategy November 2020 by FPCR as received by the Local Planning Authority on 25 January 2021 which supports this application, with the enhancements and design initiatives shown on the plan within this document updated accordingly to reflect the latest site and landscape layout.

Reason: In the interests of biodiversity and landscape character.

11. Prior to the occupation of any dwelling hereby approved, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall follow the principles of soft landscaping and species shown on drawing Landscape Masterplan GL1451 01G as received by the Local Planning Authority on 25 August 2021 but shall be enhanced to show the locations, numbers and sizes of the planting to be undertaken and the hard landscaping shall follow the principles as per the afore referenced drawing and that of drawing Surface Finishes Sheet 1 of 1 20_001_02_02 Rev E, with both updated to show the corrected placement of footpaths as per the Proposed Site Layout Plan and the locations and numbers of benches and bins to be provided. All hard landscaping shall be carried out in accordance with the approved details prior to occupation of each dwelling, whilst all planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of each respective dwelling or the completion of the development, whichever is the sooner; and any plants which within a period of five years (10

years in the case of trees) 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 and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area.

12. No dwelling shall be first occupied until further details of the south western bund (including dimensions) and acoustic fence in terms of noise mitigation specification and a timetable for their provision have been submitted to and approved in writing by the Local Planning Authority. The acoustic fencing and bund shall be completed in accordance with the agreed details and thereafter maintained as such.

Reason: In the interests of protecting the amenity of the area and prospective occupiers.

13. Notwithstanding the details as shown on the submitted drawings, no raised tables or ramps shall be included within the highway.

Reason: In the interests of highway safety and for the avoidance of doubt as such features are not acceptable methods of reducing vehicle speed.

14. Notwithstanding the submitted drawings, any road intended for adoption as highway maintainable at the public expense shall have a minimum carriageway width of 5m. Where a road is not intended for adoption, the extent of the highway shall be demarked and the access constructed as a dropped vehicular crossover.

Reason: In the interests of highway safety and for the avoidance of doubt.

15. Notwithstanding the submitted drawings, bin collection points shall be provided within private land at the entrance to shared private accesses, sufficient to accommodate two bins per dwelling served, in accordance with a scheme to be first submitted to and approved in writing by the Local Planning Authority. The bin collection points shall be provided prior to the first occupation of a dwelling to which they serve and shall be retained thereafter free from any impediment to their designated use as such.

Reason: In the interests of highway safety to ensure suitable provision for the collection of bins.

16. No dwelling shall be first occupied until such time as its access drive (and any turning space) has been surfaced with tarmacadam, or similar hard bound material (not loose aggregate) for a distance of at least 5 metres behind the highway boundary and, once provided, shall be so maintained in perpetuity.

Reason: In the interests of highway safety to ensure no loose material is carried onto the highway.

Informatives:

- a. This approval is the subject of an agreement under Section 106 of the Town and Country Planning Act 1990.
- b. Planning permission does not give you approval to work on the public highway. To carry out works associated with this planning permission, separate approval must first be obtained from Derbyshire County Council as Highway Authority - this will take the form of a section 184 licence (Highways Act 1980). It is recommended that you make contact with the County Council at the earliest opportunity to allow time for the process to be completed. Information and relevant application forms, regarding the undertaking of access works within highway limits, are available via the County Council's website www.derbyshire.gov.uk email highways.hub@derbyshire.gov.uk or telephone 01629 533190.
- c. If an adoption Agreement is not in place when the development is commenced, the Highway Authority is obliged to serve notice on the developer, under the provisions of the Advance Payments Code part of the Highways Act 1980 (section 219 / 220), to financially secure the cost of bringing up the estate streets to

adoptable standards at some future date. This takes the form of a cash deposit equal to the calculated construction costs and may be held indefinitely. The developer normally discharges his obligations under this Act by producing a layout suitable for adoption and entering into an Agreement under Section 38 of the Highways Act 1980.

- d. If the roads within the proposed development are to be offered for adoption by the Highway Authority, the Developer will be required to enter into an agreement under Section 38 of the Highways Act 1980. Detailed plans will need to be submitted and approved, the Agreement signed and all sureties and fees paid prior to the commencement of development. The Highway Authority reserve the right to charge commuted sums in respect of ongoing maintenance where the item in question is above and beyond what is required for the safe and satisfactory functioning of the highway. For further information please contact the County Council's Implementation team – email ete.devcontrol@derbyshire.gov.uk
- e. The layout of swales within the proposed highway limits do not comply with the Highway Authority's Design Guide and the design indicated on the application drawings has not been used elsewhere in the County. The applicant should be aware that their provision will attract a commuted sum for future maintenance purposes and possibly compromise the future adoption of the new estate streets.

Item No. 1.2

Ref. No. [DMPA/2021/0178](#)

Valid date: 22/03/2021

Applicant: R Neff

Agent: CSJ Planning Consultants

Proposal: The variation of condition no. 11 of permission ref. 9/2014/1137 'The Variation of condition 11 of planning permission 9/2013/0733 to facilitate the use of 80 further existing leisure moorings for unrestricted residential occupation (totalling 260 mooring)' to allow for an additional 100 unrestricted residential moorings to total 360 unrestricted residential moorings at Mercia Marina, Findern Lane, Willington, Derby, DE65 6DW

Ward: Willington and Findern

Reason for committee determination

This item is presented to the Committee at the discretion of the Head of Planning and Strategic Housing due to the previous approvals to which this variation of condition application relates and as the development is not in accordance with the Development Plan.

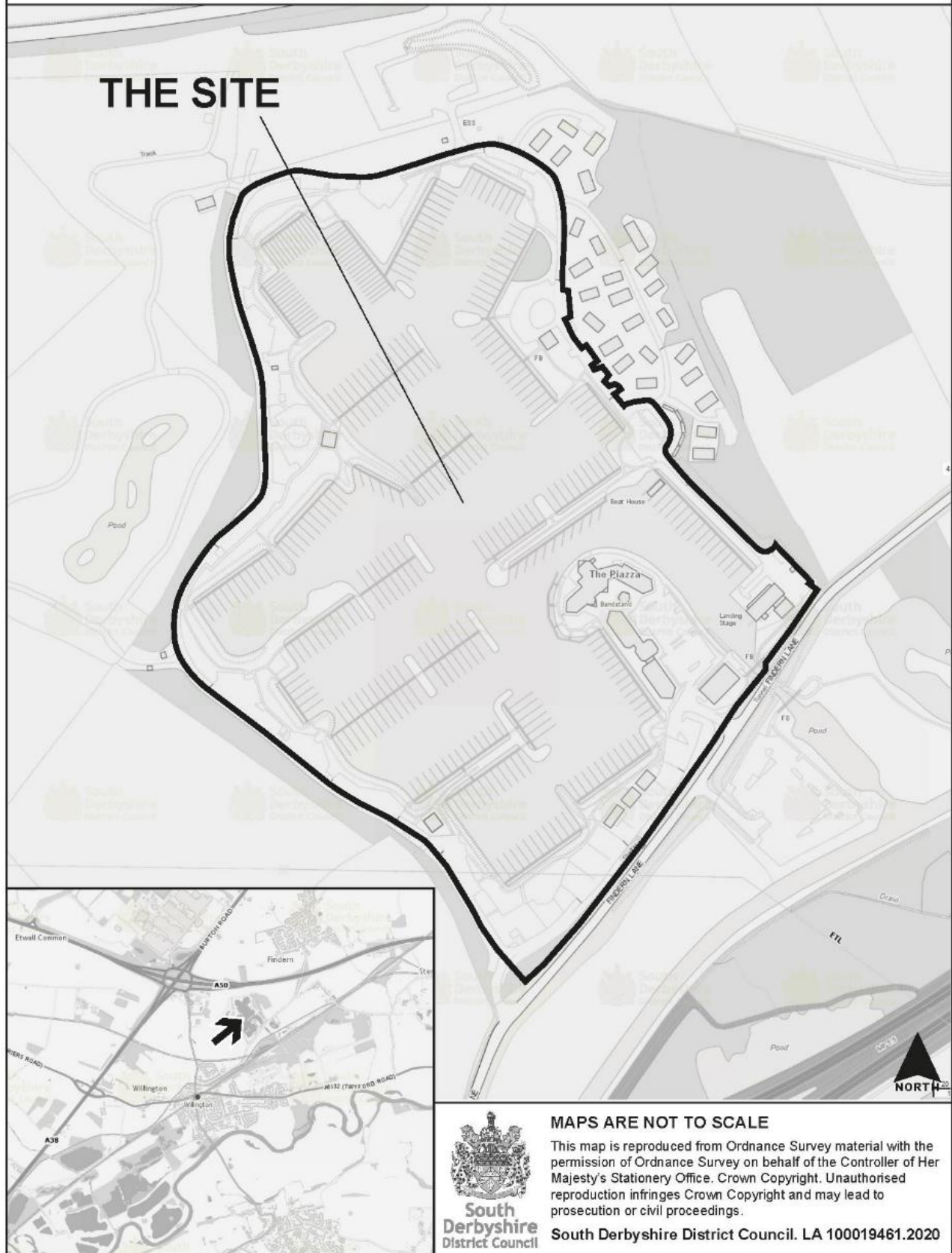
Site Description

Mercia Marina lies to the south of the A50, north-east of Willington and south-west of Findern in a rural area outside of defined settlement boundaries. The site is served and accessed by Findern Lane and a connection under the highway for boats from the Trent and Mersey Canal to the east forming an integral part of the national canal network. The railway line is nearby providing connections to Derby/Birmingham and Derby/Crewe. There are open fields to the north and west with a protected woodland to the east, with topography that rises gradually. To the southern edge of the Marina to the south of Findern Lane is a nature reserve which has a footpath crossing this providing a connection to the canal towpath via pedestrian bridge. The site has a free of charge (hours limited) customer car park at the active frontage of the Marina and private car parking spaces which include overflow and staff parking spread throughout the remainder of the site totalling over 900no. parking spaces with electric vehicle charging points throughout the site. There are 90no. cycle parking spaces, a 50no. strong cycle share scheme for residents, three private facilities block which include 12no. showers, 15no. toilets and three laundries, 16amp metered electric and water points to all berths, high speed open access wifi throughout, diesel/water pump out, picnic and bbq area, leisure lodge residents chandlery, shops, cafes, management office, restaurants, facilities including the Boardwalk development, wildlife lake, dog walking fields and resident storage sheds 122no. There are also several lodges utilised for tourism surrounding the banks of the site with further to be implemented as per recent planning approvals.

The proposal

It is proposed to allocate up to a further 100 unrestricted residential moorings, adding to the 260 already permitted, creating a total of 360 unrestricted residential moorings. Of the 587 existing moorings this would equate to 61% of them being permitted for use as primary residences with the rest of the moorings primarily for leisure purposes with around 7no. used as flexible commercial/leisure moorings. This would require the variation of condition 11 attached to 9/2014/1137. No physical amendments to the site are proposed.

**DMPA/2021/0178 - Mercia Marina, Findern Lane, Willington, Derby
DE65 6DW**



Applicant's supporting information

Planning Statement January 2021 by CSJ Planning – The applicant considers that the historical permissions for variations on the number of unrestricted residential moorings at the marina in comparison to the original permission for 585no. moorings with 12no. restricted residential moorings, has in part shown the historical demand for more flexibility within the marina for its boaters for both leisure and residential use to allow the marina to respond to changes in demand. The applicant reports that following the 9/2014/1137 approval the additional 80no. moorings were quickly filled upon implementation and that demand has remained high and outstripped supply since, with the marina operator identifying significant demand for its existing leisure customers seeking full residential contracts as well as from outside parties. The wait list for full residential contracts is around 90 customers. The applicant states that the number of vacant leisure moorings is 70no. out of the 321no. which equates 22%, which has been further impacted during the Covid-19 crisis, whilst the residential market has remained steady. The applicant considers that the situation with leisure moorings will continue or worsen when Government employment support is withdrawn and thus the stability of having the option of more unrestricted residential moorings will help secure marina income from a stable and reliable product. The applicant considers the variation will contribute towards meeting district housing targets and will also offer an affordable form of accommodation in a sustainable location and the increase in occupancy will also benefit the businesses that trade within the marina. The leisure and tourism function of the marina will not be undermined by the proposals due to the delivery of holiday lodges surrounding the site (34no. delivered with permission for 58no.) with 221no. minimum leisure moorings still retained. Whilst 100no. unrestricted moorings are applied for it is the operators intention to release residential contracts incrementally over the coming years. The applicant wishes to provide the following definitions for leisure moorings and residential moorings:

Leisure moorings: 'Moorings are in 'leisure' use when boats that occupy them are used for leisure purposes. At Mercia Marina, this includes visiting boats (who may stay from an hour to a few months, but both are rare) and leisure boaters taking a long-term mooring. Unlike caravans, narrow boats cannot be kept on the owners drive, the marina thus becoming a boat storage facility. Some leisure customers live abroad and visit for summer holidays. Some live close by and visit often, others hundreds of miles away rarely make an appearance. Leisure customers do not (and cannot) use their boats as their primary residence.'

Residential moorings: 'Moorings are in 'residential' use when boats that occupy them can be used as a primary place of residence ie. for domestic use (365 days a year). Customers are residents of the marina, pay council tax and can register to vote, just as in bricks and mortar.'

The applicant considers that the previous two variations in the residential mooring number totals establishes a suitability of an unrestricted residential use at the marina, noting both those historical applications considered the development sustainable in highways and design terms and that despite its location outside settlement boundaries it was concluded that material considerations, namely the merits of the development and its minor impact, carried sufficient weight to allow the increase in residential use. The applicant therefore seeks permission for up to 100no. unrestricted residential moorings, to allow for the marina, as it does currently to be able to respond to market demand and allow up to 360no. residential moorers however if not required that these can still be used for leisure/tourism customer moorers. The applicant considers that the proposals still satisfy the tourism, leisure, design and highways policies and will support the provision of low-income housing without impacting local services beyond the marina that permanent unrestricted residential occupants may use.

Transport Statement (TS) by Transport Planning Associates January 2021 – The applicant considers in this statement: sustainability of the site in transport terms; access and parking arrangements and trip generation. The applicant states the site is 11km south west of Derby, 1.2 km to the south east of Findern village and 1.2km north west of Willington. It is located 2.4km from the A50 junction with the A38. The marina is otherwise located on the Trent and Mersey Canal halfway between Fradley Junction and Trent Lock/Sawley. The marina is accessed on the eastern edge of the site via a priority junction on Findern Lane which has a 40pmh speed limit and is a dual flow, single lane carriageway of around 6.5m wide. Findern Lane including carriageway and footpaths were improved as a result of the original marina permission with a traffic signalised junction at Findern Lane/Etwell Road junction also at Willington. The TS notes in the five years between 1st July 2015 and 20th June 2020 the Personal Injury Collision record along Findern Lane in the vicinity of the site records three incidents 2no. slightly

severe and 1no. severe and that this therefore does not represent a highway safety deficiency and that it can be concluded that the local highway network in the vicinity of the site is operating safely. The TS considers the marina has five types of boating customers comprising: holiday makers who hire a boat and take it out of the marina for a week less than 1% of total boats; short term visitors who may stay for a few hours or months around 5% of total boats; long term leisure moorers who sign up for a year at a time; commercial moorers granted planning permission June 2014; and residential moorers who have the marina as their permanent address 44% of total boats. Mooring points are either standard berth or superberth, the latter having a pontoon on either side of the boat with survey results from a 2013 resident survey and 2014 ANPR data from the marina car park. The site has 941no. parking spaces across the entire site including the overflow for residents, customers and staff with electric vehicle charging points and moped/motorbike parking in addition. Pedestrian access to the site is from Findern Lane separate to vehicular access with the footpath running within the site in part before re-joining the carriageway either end of the site frontage. The towpath to the east of the site provides pedestrian and cycle access to Willington. National Cycle Route (NCN 54) provides a cycle route from Stourport to Parsley via Kidderminster and Derby which is accessible from the marina via the A5132 and Egginton Road and provides a traffic free route towards Derby. The site has several cycle parking facilities and runs a 50no. cycle sharing scheme for its leisure lodge users and residential moorers which are regularly serviced and safety checked. The TS notes that there is a bus stop immediately adjacent the secondary access on Findern Lane at the marinas main entrance with additional stops along Findern Lane. The bus stop nearest to the site provides shelter and a timetable for northbound services with other stops having a flag and pole. The marina also has a free bus service operated by Tesco supermarket which takes passengers from the referenced stops to Mickleover Tesco two days per week. The bus services connect the site with Findern, John Port Spencer School, Derby, Willington, Repton and Burton upon Trent. The TS notes that Willington railway station is 16 minutes walk or four minute cycle from the site southwest along Findern Lane which has cycle parking and provides services to Derby (8mins), Burton on Trent, Tamworth, Beeston and Birmingham New Street (40 mins) with some services available during hours deemed suitable for commuting. In terms of vehicle trips noting the TRICs data (noting that a boat is not a normal type of dwelling ie. bricks and mortar. Affordable/LPA flat type chosen for data) supporting the previous 2014 application which concluded that a weekday increase of 14 no. two way trips per day from a 180no. unrestricted residential moorer change, the applicant considered therefore this will be similar to this proposal and that there would be no material impact on the operation or safety of the local highway network. In comparison to 100no. leisure berths the TS considers that for 100no. residential berths there would be 31 additional morning peak and 30 additional evening peak trips as a sensitivity test based on a worst-case scenario. The applicants conclude that the trip generation associated with the development will be low as there will be no material change in how the marina operates in transport terms noting also that narrowboats typically only have 1/2no. bedrooms used by singles/couples and generally those without children and local facilities and amenities used on a day-to-day basis are accessible by walking, cycling and public transport. The TS concludes that the proposed variation of condition 11 will not be associated with a material change in vehicular trips and these can be accommodated without detriment to the existing operational safety or capacity of the local highway network and that the proposals also provide measures to encourage sustainable travel. The applicant therefore concludes that there are no valid highway or transportation reasons which should prevent the proposed development.

Travel Plan dated January 2021 by Transport Planning Associates – The travel plan supporting this application is sought to replace the previous approved plan from January 2014. In this Travel Plan (TP) the applicants state that there will be a Travel Plan Co-ordinator (TPC) who will oversee the implementation of the TP for the marina and lead the strategy for meeting the objectives. The Travel Plan sets out the responsibilities of the TPC which covers items such as: on site engagement with residents; liaison between DCC, management and new residents; periodical questionnaires on travel arrangements for residents; monitoring and reporting back to DCC etc. with a budget set aside by the developer to ensure that the TP and TPC can be funded and secure sustainable transport progression. The initiatives and measures in the TP include: pedestrian route map provision physically on site, description on leaflets and on marina website; cycle travel routes, parking, bikeshare scheme and introduction of e bike hire; public transport information provision on site, information on leaflets and on marina website and promotion of discounts for residents offered by local bus operators; reducing car trips by promotion national and local travel events within the community such as walk to work week,

bike week and car free day and promotion of LiftShare all of these also communicated in Welcome Packs for moorers. Residents will be aware of the TP in place due to on-site marketing, involvement with TPC, welcome packs, notice boards, website updates etc and at moorers forums/meetings. The targets set in the TP are based on a review of baseline travel survey following six months of occupation based on a target of 10% point reduction in car driver (single occupancy) mode shift applied proportionally to alternative models based on existing travel behaviour over a five year period as follows:

Table 6.1 Interim Mode Share Targets

Mode	Interim Baseline Mode Share	Interim 5 Year Target
Public Transport	12%	14%
Car	45%	35%
Cycling	14%	17%
Walking	23%	28%
Other	6%	6%

The targets are stated as based on an interim baseline travel behaviour survey taken by existing marina residents undertaken in 2013 with results as follows:

Table 4.1 Interim Baseline Travel Behaviour

Mode	Interim Baseline Mode Share
Public Transport	12%
Car	45%
Cycling	14%
Walking	23%
Other	6%

From this the applicant proposes to monitor the resident travel behaviour to ensure the TP is effective and targets being achieved allowing the opportunity to review the implemented measures accordingly. Resident travel surveys will be taken on year one, three years and five years after the baseline survey with the TPC responsible for this with the surveys covering: where residents work; travel patterns; duration of travel; any barriers to particular modes of travel; willingness of residents to change their travel habits; and the popularity of the various measures and initiatives that have been implemented by the TPC executed in accordance with the Data Protection Act. Following this monitoring reports will be prepared following each survey which will allow amended targets and alternative measures to achieving travel goals to be undertaken.

Marketing Report – Leisure Moorings – 22nd March 2021 – This report likens the marina to a mixed use hub and tourist attraction due to its varied facilities offering leisure, tourism, commercial and residential opportunities. The leisure moorings are offered from a part day to 12 month basis, though it is stated leisure moorers usually book for 12 months. It is also noted that the leisure and residential moorings are indistinguishable from one another served by electric, fibre internet and water facilities. Residential moorings are where the boat is a principal private residence, leisure moorings are where the boat is for leisure use and not residential and visitor moorings are available for up to 6 months per year. The report states that there is a trend away from leisure moorings towards residential moorings

due to: affordability of brick/mortar housing; improvement in quality of narrowboats construction; easing of finance for residential boats, improved quality and infrastructure of marinas and increasing fitness of retired people looking for a better way of life. Leisure moorings are stated to have declined in demand due to cost of boats as quality improves; foreign holiday trends; decline in family holidays; increasing cost of marina berths; increasing cost of Canal and River Trust Licences and increasing cost of fuel etc. The report goes on to say that the Canal and River Trust (formerly British Waterways) anticipated that Mercia Marina would be full after 4 years, however due to poor leisure berth demand that has not been fulfilled in reality, with a knock-on effect from Covid 19 restrictions. The marketing procedure for leisure includes publications in magazines and local newspapers, the marina website and in the on-site marina office which has been undertaken since 2008 prior to the marina opening. In line with this and the requirements of the conditions a waiting list register and occupancy register has been kept for several years on an annual basis at the marina that states there have consistently been vacant leisure moorings which due to the use restriction for residential moorings could have otherwise been occupied, noting that vacant moorings represent a lost income for the marina operator. From the evidence in this report and the other supporting information the applicant concludes that there should be more flexibility to allow the marina to have up to the sought maximum unrestricted residential moorings so that in times of low leisure demand the moorings can be filled, allowing greater flexibility for the operation of moorings in the marina.

Letter in relation to s106 contributions – CSJ Planning – Following relay of the s106 contributions to the applicant they released this letter via their agent providing additional information. The letter notes that houseboats are generally small around 20sqm and much smaller than 1 bedroom flats (nationally described spatial standards 37sqm floorspace) and that houseboat life is not well suited to family occupation. The applicant provides evidence from nearby Sawley Marina which is said to have a more established base of residential moorings at the time showing only 4.8% of moorings were occupied by boats with children living on board; that survey data from Mercia Marina only shows one child of school age and provided specification of a typical narrow boat for residential purposes. The applicant points out that on the basis of this evidence as seen from the previous permissions and their associated Unilateral Undertakings that this has been accepted and the contributions adjusted/lowered accordingly. In respect of education contributions the applicants argue that on the basis that the amount has been calculated and that only 1no. child exists on site (not of school age) that seeking this would not meet the tests for planning obligations in the NPPF as they are not ‘necessary to make the development acceptable in planning terms’ and not ‘fairly and reasonably related in scale and kind to the development’ and perhaps should be removed altogether or adjusted to reflect the likely very small numbers of children that may live at the marina. The applicant concludes that they would be willing to compromise to contribute a proportionate amount towards education of £28,898.28 to be allocated at the discretion of the County Council. In respect of libraries contributions the applicant argues that the low floorspace for most boats in comparison to a 1 bedroom flat and that the estimated occupancy of 2.3 people for a boats householder is an overestimate and that the marina notes that they are typically occupied by couples or individuals. To this end the marina considers that the average household size for the site would be 1.3 and that the total number of residents on 100no. boats would approximately be 130no. and that this figure should be used to calculate the libraries contribution as otherwise the request fails the tests of the NPPF as it is not ‘fairly and reasonably related in scale and kind to the development’. To this end the applicant confirms they are willing to contribute a reduced sum to County Libraries in keeping with scale and nature of the development of £3980. The applicant also confirms they have no objection to the County monitoring fee of £70 per obligation.

The application is also supported by 3no. registers of Occupancy covering 2018-2020 inclusive and a Residential Mooring Waiting list which due to their contents cannot be made publicly available due to the information that they contain.

Relevant planning history

DMPA/2021/0906 – Change of use of land to Class E commercial berth – approved with conditions – August 2021

DMPA/2021/0652 - The erection of a single storey to the existing workshop previously approved under

9/2015/0428 at – approved – June 2021

DMPA/2020/0213 – The construction of storage cabins at – approved with conditions – December 2020

DMPA/2020/0211 – The erection of a pavilion building (Class E use) and all-weather sports field on – approved with conditions – s106 - December 2020

DMPA/2020/1338 – Change of use of sports fields and carparking to erect 13 Holiday cabins, extend existing earth bunds, relocate and add storage cabins and amend the car parking layout at – approved with conditions – May 2021

DMPN/2019/1397 - Certificate of Lawfulness for the existing siting of holiday cabins to fall within the definition of 'caravans' within the meaning of the definitions of The Caravan Sites and Control of Development Act 1960, as amended by the Caravan Sites Act 1968 and as identified and set out in planning approvals 9/2010/0045, 9/2015/0910 and 9/2016/0066 as described within the amended schedule of lodges on – positive for what has been implemented to date – February 2021

9/2017/1311 - the construction of storage cabins and amendments to the previously approved scheme of car parking and service yard at – refused – December 2016

9/2016/1132 – overflow carpark – approved with conditions

9/2016/1049 - proposed reconstruction of existing timber veranda with glass and timber infill to create internal floor space at – approved with conditions – December 2016

9/2016/0066 - the erection of 32 holiday lodges (use class c3) and associated landscaping, wildlife pond, car parking and access at – approved with conditions – December 2016

9/2016/0903 – the erection of a building for use within use classes a1 (shops), a3 (restaurants and cafes), a4 (drinking establishments) and/or b1(a) (offices), the creation of additional car parking spaces and alterations to the configuration and use of secondary vehicular access to allow access to be used by residents, staff and service vehicles on land at – approved with conditions – December 2016

9/2015/1170 - the creation of an extension to the existing earth mound noise screen and the installation of acoustic fencing at – approved with conditions - May 2016

9/2015/1168 - the variation of condition 3 and removal of conditions 4 & 5 of planning permission ref: 9/2015/0772 (relating to the construction of 18 storage cabins in 4 separate blocks adjoining existing dry dock) at – approved with conditions – February 2016

9/2015/1120 - change of use of, and alterations to, land to create all weather tennis court, various sports fields and activity areas and the erection of a building for use as a gym, the creation of additional car parking area, area for motorhomes and the creation of a service yard including the siting of storage containers at – approved with conditions – July 2016

9/2015/0910 – the erection of nine log cabins at – approved with conditions – November 2015

9/2015/0772 - the construction of 18 storage cabins in 4 separate blocks adjoining existing dry dock at – approved with conditions – October 2015

9/2015/0428 - single story extension to the existing workshop at - approved with conditions – July 2015

9/2014/1137 – The Variation of condition 11 of planning permission 9/2013/0733 to facilitate the use of 80 further existing leisure moorings for unrestricted residential occupation (totalling 260 mooring) at – approved with conditions @Planning Committee – s106 - 12th May 2015

9/2014/0409 – Installation of pontoon extension for two commercial moorings along with change of use of existing residential/leisure moorings to allow up to four further commercial moorings – Approved with conditions – June 2014.

9/2014/0353 – Proposed event stand with roof – Approved with conditions – June 2014.

9/2014/0324 – the display of signage to the front of – approved – 23rd May 2014

9/2014/0319 – the erection of new entrance walls at – approved with conditions – May 2014

9/2014/0316 – The variation of condition 4 of planning permission 9/2013/0597 to enable unit 2 to be occupied as a beauty salon and revert to A1 should the beauty salon use cease – Approved with conditions – June 2014.

9/2013/0733 – The variation of condition 40 and removal of condition 38 to facilitate the use of 30% (180) of existing residential/leisure moorings for unrestricted residential occupation – Approved with conditions – s106 -January 2014.

9/2013/0729 – The erection of nine log cabins – Approved with conditions – November 2013.

9/2013/0597 – The variation of condition 4 of planning permission 9/2013/0290 – Approved with conditions – September 2013.

9/2013/0290 – The erection of a building for mixed use (A1, A3 and B1(a)) – Approved with conditions – July 2013.

9/2012/0989 – Amended scheme to 9/2012/0560 for the erection of a public house and retail/commercial buildings comprising A1 (shop), A4 (drinking establishment), B1 (business and D1 (training use) to allow for the combining of units 1 and 2 in the piazza building and the mixed use of unit 7 for A1 (shop)/A3 (restaurants & cafes) – Approved with conditions – January 2013.

9/2012/0859 – the variation of condition 19 of planning permission 9/2012/0560 to allow units 1 and 2 in the piazza building to be combined to form a single unit at – approved with conditions

9/2012/0560 – The erection of a public house and retail/commercial buildings for mixed use (A1, A4, B1 (offices) and D1 (training) use) – Approved with conditions – August 2012.

9/2012/0095 – The erection of a gastro pub/retail complex and associated car parking (revised scheme for previously approved application 9/2010/0445) – Approved with conditions – May 2012.

9/2011/0564 – The erection of retail building including modifications to the approved peninsula parking scheme and extension and alteration to the main car parking – Approved with conditions – September 2011.

9/2010/0759 – The construction of 28 storage cabins built in 5 separate blocks and associated landscaping – Approved with conditions – October 2010.

9/2010/0445 – The erection of a building to accommodate gastro pub with guest accommodation, fitness pool, gymnasium, spa and beauty salon – Approved with conditions – October 2010.

9/2010/0045 – The erection of 18 log cabins – Approved with conditions – April 2010.

9/2008/0672 – The variance of condition 4 on outline planning 9/2007/0550/M at – approved with conditions – August 2008

9/2008/0824 – New chandlery building and associated works – approved with conditions – October 2008.

9/2008/1133 – Retrospective application for two signs with up lighters at – approved with conditions – January 2009

9/2008/0323 – Amend overhead power line on wooden poles in order to provide high voltage underground cabling supplying the – no further details required – May 2008

9/2007/0551 – Outline application (all matters to be reserved) for the erection of a gastro public house at the proposed Mercia Marina at – approved with conditions – October 2007

9/2007/0550 – Outline application (all matters to be reserved) for the erection of 18 log cabin holiday lets at – approved with conditions – October 2007

9/2007/0470 – The creation of a 585 berth marina including a boatyard, chandlery and manager's office, tearooms, toilet blocks, boat hire and brokerage facilities and double dry dock. The erection of 18 log cabins to provide family group overnight tourist accommodation and the erection of a public house – approved – October 2007 – approved with conditions and s106 agreement – 29th October 2007

Responses to consultations and publicity

Licencing Officer – no objections or comments to make.

Conservation Officer – no objections.

Environmental Health Officer – no objections.

Network Rail – no objections or comments to make.

Canal and River Trust – no comments to make.

County Highways Authority (CHA) – no objection – whilst they consider the applicant has not conclusively demonstrated that the proposed change of use would have little impact on existing highway conditions, CHA has no definitive evidence to suggest that any negative impact is such that an objection could be justified. For the avoidance of doubt and to inform future application for development on site a condition should be included in any consent requiring automatic traffic county (ATC) equipment to be installed at the accesses to the site and to be operational for one week prior to the change of use of the 100 moorings commencing and again once the residential occupancy of the additional moorings has taken place. The traffic counts shall take place at times to be agreed in writing with, and results submitted to the Local Planning Authority. Comments on Travel Plan and £5133.95 total (1,026.79 pa x 5 years) for monitoring and should be referred to in conditions and in any legal agreement as per comments from 12th and 13th April.

Landscape Officer – no objection subject to conditions covering planting plan showing proposed tree planting in mitigation for increased footfall and vehicles related to the increase of residential moorings.

Lead Local Flood Authority Officer – no objection.

Derbyshire County Council Planning Policy Officer – 4th May 2021 - no objection subject to use of planning conditions and legal agreement to ensure the following commuted sums for planning obligations towards:

-Education - £223,295.67 towards the provision of 13 Primary places at Willington Primary School and additional education facilities, £742,193.48 towards the provision of 20 secondary places at John Port Spencer Academy and additional education facilities and £67,342.09 towards SEND places.

-Advisory note for Broadband.

-Libraries - £7,040.00 @ £70.40 per dwelling for 230no. people.

-Cumulative monitoring @ £70 per trigger.

Derbyshire County Council Planning Policy Officer – 11th June 2021 – no objection – following receipt of applicants additional information dated 9th June 2021 amended commuted sums have been requested as follows:

-Education – amended as for 100 permanent residential moorings only 4.8 moorings would be occupied with families with children so at this level it would generate 1 primary pupil which can be accommodated at Willington Primary School without seeking commuted sums as pupil place requirements expected to decrease over next five years. For Secondary places with the closest being John Port Spencer Academy, the pupil numbers on roll area expected to increase in the next five years and based on a generated need from the development of 1no. secondary pupil (with post 16) the school would not have capacity to accommodate and as such £26,506.91 towards the provision of additional educational facilities for 1no. place is sought. No SEND places generated based on the applicants additional information.

-Libraries – Etwall Library is the closest and whilst no capital improvements are requested, stock items are requested with a contribution based on 100 dwellings x 1.3 average residential mooring size of 130 people x 1.532 stock level per person of 199 stock items, 352 stock items x £20 stock item cost equals £3,980, based on a National Library Standard upper threshold recommended stock level of 1,532 items per 1,000 population.

- Cumulative monitoring @ £70 per trigger.

NHS Estates – 28th June 2021 – no objection subject to financial contribution directed towards increasing clinical capacity at Willington Surgery (primary and community care services) as an expected increase in number of patients registered with them from the Marina is expected due to the increase in permanent moorings with south-west of Derby a priority area for the CCG as a result of house building and population growth. Contribution requested at £48,000 based on 100 new dwellings creating 250 new patients on 0.08sqm at £2400 per sqm extension cost.

NHS Estates - 9th August 2021 – no objection - following applicants submission of additional information, revised financial contribution request produced based on 100 new dwellings creating 150 new patients directing spend towards Willington Surgery primary and community care to increase clinical capacity of 0.08sqm per person, £2400 per sqm extension cost resulting in a revised contribution figure of £28,800.

5no. of objections were received from members of the public which raised issue as follows:

- a) Additional residential moorings will lead to higher pollution in the marina as the extra residential boats will be burning coal or diesel to keep their boats warm as well as extra cars being used locally.
- b) Existing marina residents struggle to park after work and this continued throughout the Covid lockdown when only residents and not leisure/tourists were using the site.
- c) Parking spaces in the marina have been grossly overestimated with those adjacent to the marina is for people who work at the buildings in the boardwalk.
- d) Increase in residents but no additional marina facility blocks planned, like laundry, showers etc.
- e) Travel Plan ANPR results based on 2013 year as such base results are out of date.
- f) Due to the traffic pressures on site the security gates break weekly due to the amount of vehicle movements in and out of the site.
- g) Increase in residents would result in an increase in parking demand.
- h) Lack of increase to refuse/waste facilities to support the development with the existing facilities overflowing, which would be worsened by additional permanent residents.
- i) What about arrangements for post for the residents, the current collection point in the office is always overflowing.
- j) Previous arrangements to create a village hall or meeting space on site involving a collection of a levy was executed but returned in vouchers to residents when the plans did not materialise, what about recreation needs for residents. Where the village hall was proposed lodges are now proposed.
- k) The character of the marina is changing from a rural site to a housing estate in the countryside and as such would not meet the objectives of the local development plan.
- l) Leisure boaters do not have the same impacts on the marina as residential moorers in respect of the environment and on its facilities overall.

- m) In winter the smoke from fires on the boats causes fog to develop over the marina causing ill health in residents even if 'smokeless' varieties are used from the multi-burner stoves/fires on the boats. With more permanent residential moorings this will increase, particularly in winter when they are used more frequently.
- n) The shops in the marina are 'tourist' shops and the general store is inadequate to service food and household requirements of existing residents and therefore making it inevitable that new residents would need to travel into local villages or towns for their shopping pushing more vehicles onto local country roads and through the villages, where Willington already suffering from traffic congestion.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), H21 (Affordable Housing), E7 (Rural Development), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF5 (East Midlands Airport), INF6 (Community Facilities), INF7 (Green Infrastructure), INF9 (Open space, sport and recreation), INF10 (Tourism Development)

Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE5 (Development in Rural Areas), BNE10 (Heritage)

The relevant local guidance is:

- Affordable Housing SPD
- Section 106 Agreements – A Guide for Developers
- Trees and Development SPD
- Landscape Character of Derbyshire
- Open Space Sport Community Facilities Strategy SPD
- Strategic Housing Market Assessment Executive Summary and Full Report January 2020
- Housing Position Paper January 2021
- Trent and Mersey Canal CA Character Statement 2014

The relevant emerging policies are:

Willington Neighbourhood Plan regulation 14 area designation reached – no weight applied.

The relevant national policy and guidance is:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

The relevant legislation:

- Town and Country Planning Act 1990
- The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Planning considerations

This application seeks to vary condition 11 attached to approval ref:9/2014/1137 to allow for the unrestricted residential use of (up to) an additional 100 moorings at Mercia Marina. The following assessment takes into account only the matters which are relevant to the conditions concerned. Taking this into account along with the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- The principle of the development – 100 additional unrestricted residential moorings.
- The impact of the development on infrastructure, services and facilities.
- The impact of the development on local character and landscape including designated heritage asset

- The impact of the development on highways safety.
- The impact of the development on amenity, pollution and air quality.

Planning assessment

The principle of the development – 100 additional unrestricted residential moorings:

The most applicable policies and guidance to consider are S1, S2, S4, H1, H20, H21 and INF10 of the LP1 and SDT1 and BNE5 of the LP2.

At present there are currently 587 no. total moorings at the marina comprising the following mix:

- Up to 260no. residential moorings.
- Up to 6 no. commercial moorings (1no. additional E Class mooring approved DMPA/2021/0906)
- Minimum 321no. leisure moorings, including some brokerage and workshop berths.

It is said that the marina operates on a flexible basis where if the residential or commercial mooring quota is not fully occupied, the shortfall can be taken up by leisure customers (assuming there is demand). The above current mixture is derived from the following planning history for the site. The original permission was subject to conditions limiting the total number of moorings to be used for residential purposes to 12, and requiring that these be occupied by marina employees only. Following this permission 9/2013/0733 varied the original permission granting the total residential mooring availability to 180no. total removing the marina staff occupancy restriction condition also. Following the 2013 variation, 9/2014/1137 was permitted which further allowed additional 80no. change from leisure to residential mooring to a total of 260no. Therefore, should this application be approved to allow an additional 100no. of the existing 587no. moorings to have unrestricted residential mooring use the new unrestricted residential mooring total would be 360no. In percentages this would mean of a total 587no. moorings (not including the recently approved E class mooring) a split of residential moorings comparing the 9/2014/1137 permission and this application as follows:

9/2014/1137:

Residential moorings – 260no. @ 44%

Commercial moorings – 6no. @ 1%

Leisure moorings – 321no. @ 55%

DMPA/2021/0178:

Residential moorings – 360no. @ 61%

Commercial moorings – 6no. @ 1%

Leisure moorings – 226no. @ 38%

The marina was originally granted planning permission on the basis that it would be at its heart, a tourism and leisure facility and destination, which would lend support to boosting tourism of the British canal system alongside its location close to the National Forest. When considering policy INF10 whilst this policy does not expressly protect existing tourism and leisure facilities from changes of use and was not the policy upon which the original permission was determined, the decision made by members clearly was based on the site predominantly being for leisure and tourism use and as such deviation from this could be seen as a material change in the overall development which is sought for variation. From reviewing the applicants evidence submitted supporting this application in regards to occupancy of moorings across the site, days of stay and mooring type (visitor, leisure, commercial and residential types) also considering that supporting the previous applications it would appear that at least for leisure moorings there has been a consistent vacancy of this type across the site for several years, notwithstanding evidence submitted for 2020 which may be somewhat askew due to the Covid 19 global pandemic. The applicant has provided a residential mooring waiting list spanning several years for those interested in uptake but cannot due to the current wording of condition 11 sought for variation. Looking at the aforementioned break down of figures showing the proportionality of mooring types comparing this with the most recent variation of residential moorings uplift we are clearly at a point where at least for the moorings that leisure would not be the predominant use on the marina waterbody from the proposals sought when lamenting the original permission. While this may be the case, throughout the years, as evidenced by the planning history for this site, piecemeal additional leisure and tourism development has been approved with most either implemented, under construction or key conditions discharged (still extant permissions) in place for land-side leisure/tourism. For example, there are permissions in place for the erection of 58no. lodges of which 34no. have been constructed,

alongside the boardwalk and piazza development hosting a deli, restaurants, cafes, tearooms gift shops, nature walks etc. following on from the original permission. To this end it seems reasonable to conclude that should a change of use of moorings be accepted that this would not be detrimental to the original vision and permission of the site being principally a leisure and tourism destination, albeit this would now be pushed onto solid ground rather than floating on the water, though still possible on the water albeit with more flexibility to interchange between residential and leisure mooring as demand ebbs and peaks.

Turning to considering the principle of creation of further permanent unrestricted residential mooring /barges these are considered to be a type of housing or rather capable of permanent residence, albeit with regard to the Use Class Order to be a Sui-Generis, as opposed to C3 use of traditional fixed position, land mounted dwellinghouses, the notion that whilst permanently occupied as a sole residence, they are capable due to motor power to change their location. Whilst residential mooring points for narrowboats/barges are not explicitly covered within in local or national policy, as per the applicants submission the intention is that potential residents can occupy them on an unrestricted basis as a primary residence, with residents paying council tax and having the marina as their fixed address and as such is considered on balance to amount to being a type of housing.

Policy SDT1 of the LP2 states 'Settlement boundaries define the built limits of a settlement. Within settlement boundaries as defined on the policies map and in Appendix A, development will be permitted where it accords with the development plan. Outside of settlement boundaries and allocated sites, within the Rural Areas as defined in Policy H1, development will be limited to that considered acceptable inter alia by Policy BNE5. Settlement boundaries will be applied in the following settlements: Key Service Villages: Willington; Local Service Villages: Findern.'

The site is located between Willington and Findern in a rural area, outside of the defined settlement boundaries in the appendices of the plan. As such policy BNE5 is relevant.

Policy BNE5 of the LP2 states 'Outside of settlement boundaries (as defined in policy SDT1) within the Rural Areas of the district planning permission will be granted where the development is:

- i) allowed for by policies H1, H22, E7, INF10, H24, H25, H26, H27 or H28; or
- ii) otherwise essential to a rural based activity;
- iii) unavoidable outside settlement boundaries; or
- iv) considered to be infill that is in keeping with the character of the locality and represents the infilling of a small gap for not normally more than two dwellings, within small groups of housing; and
- v) will not unduly impact on: landscape character and quality, biodiversity, best and most versatile agricultural, and heritage assets.'

Policy H1 of the LP1 states 'The Settlement Hierarchy is based on the range of services and facilities that are offered by each settlement. The level of development for each settlement will be of a scale appropriate to the size and role of that settlement. As planning applications are received the merits of each individual site will be assessed through the Development Management process.

5. Rural Areas – areas outside of the defined settlements listed above. Due to the lack of services and facilities and defined settlements boundaries, only development of limited infill and conversions of existing buildings will be acceptable.'

Taking into account these policies, the proposals, as with the previous variation applications, are not strictly in accordance with the development plan as it involves the creation of 100no. permanent unrestricted residential moorings (100 residences/housing) in a rural area, which does not involve limited infilling or conversions as it does not strictly involve buildings. Given that the barges/boats would be by their very nature water dependent in which to move and to moor them therefore it can be considered that the development would fall into the category of being a little of both 'ii. Otherwise essential to a rural based activity' and ' iii. Unavoidable outside settlement boundaries' in respect on policy BNE5. In addition to facilitate the change of use no further physical development is proposed in respect of these policies. To this end whilst the development would result in further permanent places of residence outside of a defined settlement location they by their very nature are dependent on in this instance a location unavoidable outside of settlement boundaries.

Whilst the applicants may argue that the additional unrestricted residential moorings would help support the Councils five-year housing land supply and provide a type of affordable housing, as the housing land specifically covers the demands and supply for bricks and mortar style housing, the development cannot be considered as contributing to the formal and traditional housing land supply the Council can presently demonstrate. The Council has not conducted a survey for objectively assessed need of this type (though this is planned in Local Plan review and work on Gypsy and Traveller SPD) for the demand and current provision of alternative residential accommodation for its population such as on boats and barges to calculate a supply and future needs for that type, which is separate to traditional housing land supply, which for example, the Broads Authority has. With this said and with the previous application the question is again what harm arises from allowing additional residential moorings at the marina, where what is sought would be the maximum number of unrestricted moorings noting that the applicant still seeks the flexibility that where the demand in residential moorings may fall that they can still be used for leisure and tourism. The focus is therefore whether the change in tenure would create unacceptable pressures on existing services, facilities and infrastructure which could not be mitigated for; and whether the wider environment would suffer as a result and ultimately whether the development is considered as sustainable, as whilst they may not be traditional fixed bricks/mortar housing, residents will still require and utilise these aspects and does not make them exempt from these considerations due to them being less conventional residential accommodation.

The impact of the development on infrastructure, services and facilities:

The most applicable policies to consider are S1, S2, S3, S6, INF1, INF6, INF7, INF9 and INF10 of the LP1 and the S106 SPD. The NPPF sets out that sustainable development has three dimensions: economic, social and environmental and that these dimensions should be sought jointly and simultaneously. The positioning of the development in relation to accessing services and facilities at Willington and Findern settlements, the closest settlements to the marina remain largely unchanged, if somewhat enhanced by increased bus services and provision of a bus stop outside the site with connections beyond to rail services and otherwise to Derby and Burton with footways connecting to these centres directly from the site also, with cycling down the canal away from traffic also possible. To this regard, as with the previous variation economic and social aspects of sustainable development are largely satisfied also noting the increased provision of on-site facilities in that time following erection of the Boardwalk, Piazza and surrounding buildings providing shops, meeting facilities etc. though not of a scale or completeness of the other settlement such as pharmacies, doctors or education facilities. In respect of economy in allowing for up to 100no. more unrestricted residential moorings this would offer further financial stability and income in the instances of changing demand for leisure/residential during different periods of the year also noting again the increase offer of facilities on site.

Consideration also needs to be given as to if the existing infrastructure and services beyond the site in surrounding settlements are sufficient to cope with an uplift in permanent residential population at the site, noting that as what is sought as up to the maximum amount that could reside at one time would be considered. Policy INF1 Infrastructure and Developer Contributions is a key consideration. The Derbyshire County Council policy teams and NHS estates teams were consulted on the proposals to this regard to understand if the proposals would generate an increased demand on the provision of services such as education, NHS facilities, libraries etc. Originally DCC Policy sought financial contributions as follows: £223,295.67 towards the provision of 13no. Primary places at Willington Primary School and additional education facilities; £742,193.48 towards the provision of 20 secondary places at John Port Spencer Academy and additional education facilities and; £67,342.09 towards SEND places (one person dwelling yields omitted from consideration). This was calculated on the basis of the following:

	Places per 100 dwellings	Cost per pupil place	Cost per 1 dwelling	Cost per 10 dwellings	Cost per 100 dwellings
Primary phase	24 places	£17,176.59	£4,122.38	£41,223.82	£412,238.17
Secondary phase (without Post16)	20 places	£25,881.90	£5,176.38	£51,763.80	£517,638.00
Secondary phase (with Post 16)	28 places	£26,506.91	£7,264.50	£7,421.94	£74,219.35
SEND	0.7 places	£96,202.99	£673.42	£6,734.20	£67,342.00

In respect of the primary school provision Willington Primary School is the catchment and normal area for this site and has a capacity of 210 pupils with 214 pupils on roll expected to decline over the next five years to 199, which results in having only sufficient capacity to accommodate 11 out of 24 primary pupils resulting from the development, using the above calculations as such 13no. places would be required to be funded. In respect of secondary school provision the site falls within and directly relates to the normal area of John Port Spencer Academy, which has a capacity of 2070 pupils with 1885 pupils currently on roll expected to increase to 1918 over the next five years. It was noted that from recently approved major residential developments within the normal area of the school of 2038 dwellings that this would amount to an additional 408 secondary and 163 post-16 pupils. Taking into account the analysis of current and future projected number of pupils on roll, together with the impact of approved planning applications shows that the school would not have sufficient capacity to accommodate the 20no. secondary and 8no. post 16 pupils arising from the proposed development. In regards to SEND infrastructure this is requested for development of 100no. dwellings or more and is not subject to an analysis of capacity within a given geographic area as to where the development is located. Regarding Libraries DCC requested £7,040.00 @ £70.40 per dwelling for 230no. people towards the provision of stock for Etwell Library which is the nearest library to the site. Library contributions are sought at a 50no. dwelling or above basis and calculated based on the National Library Standard recommended stock level of 1532 items per 1000 population at an average of £20 per item thus 100 dwellings x 2.3 (average household size) =230 people, 230 people x 1.532 (stock level per person) = 352 items, 352 x £20 (cost per stock item = £7040. DCC Policy also requested a £70 per trigger based on a cumulative number of triggers to be monitored towards the monitoring and reporting of s106 County Council obligations/contributions in line with the revised Community Infrastructure Levy Regulations 2010 (as amended) Regulation 122 2(a). SDDC Policy also requested a one off payment of £500 to monitor the Council sole trigger in this instance. NHS Estates sought financial contribution to increase clinical capacity at Willington Surgery (primary and community care services) as an expected increase in number of patients registered with them from the Marina is expected due to the increase in permanent moorings with south-west of Derby a priority area for the CCG as a result of house building and population growth. The NHS contribution requested at £48,000 based on 100 new dwellings creating 250 new patients on 0.08sqm at £2400 per sqm extension cost. Given the ample on-site outdoor space, pathways, nature conservation areas, recreation equipment (on-site wood gym, benches, bbq points etc.) and meeting facilities under the applicants control, contributions towards open space, outdoor facilities and built facilities towards facilities beyond the site are not appropriate and are therefore not sought.

Following receipt of the financial contributions sought the applicants provided a rebuttal to the requested sums (other than the monitoring fees which were accepted) on the basis of provision of occupancy data of residential moorers at the site; information to show the type of population inhabiting the site is generally that of single people or couples, mostly retired with only 1no. child on site at present (Sawley Marina occupancy and resident type also referred to as a precedent) and that boats

are generally small scale 20sqm and one bedroom much smaller than one bedroom Nationally Described Spatial Standards flats of 37sqm. This is summarised in the previous section 'Applicants Supporting Information' of this report. This was then provided back to DCC Policy and NHS Estates for further negotiations. Following review based on the additional information and clarification of the population demographics and accommodation types/sizes DCC Policy accepted the arguments advanced by the applicant and agent and revised the contributions sought. The education requirement has been amended to reflect that for 100 permanent residential moorings only 4.8 moorings would be occupied with families with children (using Sawley Marina Inspectorate decision) so at this level it would generate 1 primary pupil, which can be accommodated at Willington Primary School without seeking commuted sums, as pupil place requirements are expected to decrease over next five years. For Secondary places at John Port Spencer Academy, the pupil numbers on roll area expected to increase in the next five years and based on a generated need from the development of 1no. secondary pupil (with post 16) the school would not have capacity to accommodate and as such £26,506.91 towards the provision of additional educational facilities for 1no. place is sought. No SEND places generated based on the applicants additional information. For libraries with Etwall Library is the closest and whilst no capital improvements are requested, stock items are requested with a contribution based on 100 dwellings x 1.3 average residential mooring size (based on Mercia Marina occupancy rates) of 130 people x 1.532 stock level per person of 199 stock items, 352 stock items x £20 stock item cost equals £3,980, based on a National Library Standard upper threshold recommended stock level of 1,532 items per 1,000 population. The applicants have confirmed that they are agreeable to the reduced contributions for services, facilities and infrastructure above. As such, subject to a legal agreement to secure these contributions, the proposals may be considered as sustainable as the requirements on infrastructure, facilities and services can be adequately addressed through the requested financial contributions and direction of spend towards facilities, places or other items in line with National Planning Policy Guidance covering these elements.

The impact of the development on local character and landscape including designated heritage asset:

The site is located nearby to the Trent and Mersey Canal Conservation Area to the south and Willington Hill Farm (GII listed building) to the west both deemed to be designated heritage assets. The site is also located within the Trent Valley Washlands Landscape Character Area. The most applicable policies to consider are S1, BNE1, BNE2 and BNE4 of the LP1, BNE5 and BNE10 of the LP2 and the Design SPD and Trent and Mersey Canal Conservation Area Appraisal.

The application has also been reviewed by the Conservation Officer who did not raise objection to the development. They consider that as these are existing moorings and in terms of physical character of the site there is no difference between the permanent residential and leisure berths, with perhaps the only perceivable change to be that permanently occupied boats may result in less change and movement, though there would still be 40% of berths of leisure users. When considering the closest designated heritage assets nearby as aforementioned the distance from these in comparison to the site in question is considered to have no impact on the assets as a result of the proposals. The Conservation Officer concluded that the proposals would not impact upon the significance of nearby heritage assets via their settings, and the special significance of the listed building and special character and appearance of the conservation area will be 'preserved' as is described as a 'desirable' objective within sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Following on from the above as there are no physical changes or alterations to the marina as a result of the development it is not considered there will be any impacts on the local character, landscape character or on designated heritage assets and as such it would be in accordance with the relevant policies and guidance. Notwithstanding the Landscape Officers comments as a landscaping scheme was approved alongside a landscaping management plan historically which will be appended again as an in accordance with style condition in the event this application is recommended for approval it would be unreasonable on this occasion to seek further additional planting noting this is for change of use rather than additional physical development altering the physical characteristics of the marina.

The impact of the development on highways safety:

The most applicable policies to consider are S1, S2, S3, S6, BNE1, INF1 and INF2 of the LP1.

Between them these policies seek to support development where: travel generated by a development,

including goods vehicle movement, will have no undue detrimental impact upon local amenity, the environment, highway safety, the efficiency of transport infrastructure and the efficiency and availability of public transport services; and appropriate provision is made for safe and convenient access to and within the development for pedestrians, cyclists public transport users and the private car; and car travel generated by the development is minimised relative to the needs of the development. As per these policies to ensure development is sustainable and to achieve the above the Council will secure, through negotiation, the provision by developers of contributions towards off-site works where needed. The fact that more remote rural areas may have less scope to minimise journey lengths and for the use of non-car modes, will be taken into consideration. These policies also seek that where an application could lead to significant transport implications they should be accompanied by a Transport Assessment and Travel Plan identifying the transport impacts of the proposal and measures needed to meet the criteria set out in Part 1 of policy INF2. It is expected that Travel Plan measures should be funded by the developer contributions appropriate to the impacts on the transport network caused by the development. For development that is expected to have less significant transport implications planning applications shall be accompanied by a Transport Statement.

This application is supported by a Transport Statement. This has been reviewed by the County Highways Authority (CHA). The CHA originally raised some queries in respect of the contents and survey base which provided the trip rates for the proposed change of use for the additional 100no. unrestricted residential moorings. The concerns raised were that perhaps due to the many additional facilities and physical developments such as the marina offices, shops, café and restaurant area etc. that a full Transport Assessment with updated TRICS data covering all of the uses within the Mercia Marina site should be provided to inform whether the existing parking, accesses and highways infrastructure including public transport, cycles and walking would be impacted from the proposals. They also raised queries about comparison of the trip rate generation of solely 100no. leisure compared with 100no. residential and why the entire proportionate break down of the total number of various existing mooring types had not been compared with the proposed mooring proportions for the whole marina. CHA questioned the TRICS data areas chosen of 'North-West' and also sought an updated Site Plan for the whole site showing where the various types of parking, cycle, motorcycle and charging points etc were located and locations or barriers and methods of parking/access security given the amount of development that has occurred and applications approved at the site since 2008.

On receipt of this feedback the applicants provided additional information via the Transport Technical Note (TTN) July 2021 by Transport Planning Associates 2011-014/TN/01. Within this note an updated car parking provision map showing the various locations for parking throughout the site with a revised total of 975no. parking spaces including some lodge, staff and long stay storage parking beyond the 941no. spaces quoted elsewhere in the submission, also showing the cycle parking, bikeshare sheds, EV changing and security gate positions which form the barriers for leisure/tourism parking to the front of the site around the boardwalk, cafes, piazza and convenience store area with the residential moorers/lodges areas. With the TTN it is stated that the TRICS database does not contain recent weekday marina surveys with only a limited number of weekend surveys available and as such is why as the change of mooring is to residential, why the chosen local authority/affordable flats was chosen as a comparable type. They also argue that given the application only concerns the residential use of up to 100 existing leisure berths with all other land uses at the marina remaining unchanged and therefore for these reasons it is not considered appropriate to assess the level of trip generation associated with other marina uses. The applicants point out that the existing leisure berths can be occupied year-round and therefore the change to residential use will not necessarily result in an increase in users or number of trips generated with the change to residential status simply allowing marina users to have a permanent address etc amongst the other reasons given. With the TN the applicants state that they utilised the 2014 ANPR data from the marinas car park for trip generation survey data again here as the methodology had previously been accepted by Derbyshire County Councils CHA as this data is site specific rather than TRICS data which is not. Based on this the applicants argue that given the variation sought is for 100no. residential berths that it will result in lesser intensification in trip generation than was previously shown by the ANPR data, and is therefore not forecast to have any material impact on the operation of the highway network noting the sensitivity testing done between the TRICS (based on Yorkshire, Lincolnshire and North West and North which is standard locations for the type of development survey chosen outside of London) and the 2014 ANPR

data. The applicants note that the TS results in 12 two-way trips in the AM peak, 5no. two-way trips in the PM peak and 16 daily two-way trips in comparison to the existing leisure berth trips calculated from the 2014 data there is no change in the AM and PM peak hours with an increase of 4no. vehicle trips across an entire weekday. They note that the sensitivity test demonstrates that the proposed 100no. residential berths could be associated with 31 and 30 additional vehicle trips in AM and PM respectively when compared with the existing leisure berths and as this is a worst-case scenario generation forecast it is considered that the proposed change to residential based on the ANPR data shows the proposals will not result in a material intensification in vehicle trips.

The CHA have reviewed the additional information and justification within the TTN and consider that whilst they do not consider that the applicant has conclusively demonstrated that the proposed change of use would have little impact on existing highway conditions, the CHA has no definitive evidence to suggest that any negative impact would result, as such an objection cannot be justified. CHA also reviewed the Travel Plan provided and seek that a number of amendments are made to its aims. It is noted that the Travel Plan appears to miss the 9/2014/1137 additional 80no. residential moorings from consideration and from comparing the Travel Plans supporting 9/2013/0733 and 9/2014/1137 it would appear the 2015 existing residents survey to follow on from those undertaken in 2013 was not undertaken as seen from the Travel Plan supporting the 9/2014/1137 application and this application. To this end given the rural, outside of settlement location of the site to ensure modal shift towards sustainable transport methods at a proportionate level to the modes of transport used by the site and its residents that an amended Travel Plan is submitted at a later date via the use of planning condition. The Travel Plan condition recommended will be a prior to first occupation of the additional 100no. unrestricted residential moorings that an updated plan is submitted for approval that is based on an existing residents transport survey, ANPR from the marina car park and Automatic Traffic Counting (operational for one week) data undertaken prior to the change of use to better inform the aims for the Travel Plan for its five year periods and to set more accurate objectives to move towards more sustainable methods of transport. Once agreed the Travel Plan will be monitored by Derbyshire County Council facilitated via the use of financial contribution towards the fees for monitoring the submissions to them by the applicants to show progress of the Travel Plan of £5133.95 total (1,026.79 pa x 5 years) which the applicant is agreeable to. Subject to the use of planning conditions and legal agreement to secure the commuted sums for Travel Plan monitoring it is considered that the proposals are in compliance with the aforelisted highways policies, as the accesses, parking and transport arrangements for the site are acceptable subject to further monitoring and adherence to objectives in respect of moving towards sustainable transport uptake.

The impact of the development on amenity, pollution and air quality:

The most applicable policies to consider are BNE1 and SD1 of the LP1. As stated within these policies the Council will support development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments. Policy SD1 reads 'B. The Council will take into consideration the following:

- i)the potential for development to affect surface and ground water quality and its potential to affect the long term delivery of water quality standards set out in the Water Framework Directive;
- ii)the potential for development to affect designated Air Quality Management Areas (AQMAs).
- iii)the need for a strategic buffer between conflicting land uses such that they do not disadvantage each other in respect of amenity issues, such as odours, fumes, or dust and other disturbance such as noise, vibration, light or shadow flicker.'

In respect of this application whilst we are dealing with a change of use of type from leisure to residential this is with regards to overall tenure/occupancy of mooring points that already exist. To this end in respect of noise and light from the boats themselves in respect of amenity and character of the wider area there would be no visible change as visibly one cannot deduce a residential moored boat from a leisure mooring. In addition due to the type of residence the minimal distance standards for space, light and amenity as prescribed in policy BNE1 and the Design SPD do not come into play as they deal with fixed bricks and mortar housing and not water based vessels capable of manoeuvring into different positions or to other marinas/mooring points etc. Following the public consultation period it was noted from marina residents feedback that air quality issues were reported from the burning of wood/coal on the boats themselves, which is the typical method of heating narrowboats/barges and

that in wet or damp weather the smoke can accumulate over the water creating a dense smoke fog stated to cause breathing issues. Originally the Environmental Health officer sought that a site based Air Quality Assessment (AQA) be undertaken, also noting the cumulative development at the marina over time given the fuel types and potential increase in permanent moorings. The applicants noted however that they consider this type of assessment unnecessary noting that the marina has a set of community rules only allowing smokeless fuels and kiln dried or seasoned wood at the marina championing the switch to electric heating on boats. They also note that if the management is aware of the burning of coal/wet or other types that creates smoke/fumes they seek that this use ceases immediately. In addition the applicants wished to point out that whilst an Air Quality Assessment was sought the SDDC local validation checklist only requires Air Quality Assessments for 'development likely to generate notable traffic movements and/or emissions within influencing distance of an Air Quality Management Area (AQMA) and that both leisure/residential moorers use the same methods of heating so there would actually be no change to this regard and no reason to seek an AQA. Following on from the submission of this information the Environmental Health Officer has been in exchanges with the Local Air Quality Management Helpdesk (LAQMH) and they note that there have been no other historical detailed assessments for air quality undertaken for marina locations and more importantly it does not appear that any AQMAs have been declared as a result of canal boat emissions. The LAQMH note also they are not aware of any other issues emerged elsewhere in the UK as a result of the cumulative impact of small emissions sources on narrow/canal boats. Taking this into consideration the Environmental Health officer is satisfied that on this occasion it would not be proportionate to require the developer to submit an air quality assessment. With this said they wished to make the developer aware that they must ensure that they meet the national Air Quality objectives contained in the Air Quality Regulations at the marina noting this may be revised in the immediate future due to the Environment Bill being close to enactment. Whilst air quality does not require assessment as part of this application any further development at the marina should be mindful of this noting the large scale of development that has occurred since the original permission, as such an informative will be attached to any approval to note that the Environmental Health team have air quality monitoring equipment that they would be willing to deploy and operate for a 3-6 month period free of charge, working alongside the developer/marina operator. To this end it is considered that the development is in compliance with the listed policies.

Conclusion:

It is considered that whilst the proposals would encompass residential development in a rural area outside of defined settlement boundaries, it would be within an established marina setting, not requiring additional physical on-site infrastructure or works to facilitate the change of use within what can be considered as development that is unavoidable outside of settlement boundaries due to its very nature of requiring the presence of a large body of water. Whilst the proposed change of use is for up to 100no. unrestricted residential moorings on top of the 260no. already permitted out of the 587no. total moorings available, with the rest, aside from 6no. commercial moorings being leisure/tourism moorings, and therefore this would result in a higher proportion of residential mooring berths than leisure as originally consented and as following the previous 2no. variations, that overall the site would continue to offer a predominant leisure/tourism destination noting the many various elements of incremental development on site in the interim years such as the Boardwalk. It is considered that subject to financial contributions towards pupil places, NHS service improvements and library stock items that services relied upon by residents off-site in neighbouring settlements would not be adversely impacted by the potential additional 100no. permanent and unrestricted residential occupants based on a worst-case scenario subject to legal agreement. In addition it is considered that the site accesses, footpaths, parking and electric vehicle charging points are of an acceptable number/standard and that the surrounding highways network would not experience significant additional loading and as such highways infrastructure already in place would not be implicated by the development. To encourage sustainable transport uptake by residential moorers a Travel Plan submission will be sought by condition and monitored by the County and SDDC for adherence subject to inclusion in a legal agreement and subject to the fee. It is also considered that there would be no change to the character of the marina itself and to this regard no detrimental impacts on the setting of the Trent and Dove Canal Conservation Area designated heritage asset. Further to this no impacts on the amenity of residential, leisure moorers or visitors are anticipated as a result of the proposed change of use. On balance whilst the principle of residential development in this location outside of settlement is not in compliance with

policy the development is otherwise found to be sustainable, or can be made to be sustainable via the use of planning conditions, financial contribution and legal agreement. It is therefore not considered there are any adverse impacts arising which would significantly and demonstrably outweigh the benefits. Other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

A. Grant delegated authority to the Head of Planning and Strategic Housing to complete an S106 agreement/ Unilateral Undertaking to secure financial contributions towards education provision, travel plan monitoring, NHS Estates facilities clinical capacity expansion, DCC Libraries stock provision, DCC cumulative financial contribution monitoring fees and SDDC cumulative financial contribution monitoring fees.

B. Subject to A, GRANT permission subject to the following conditions:

1. Any tanks for the storage of oils, fuels or chemicals, hereby approved, shall be sited on impervious bases and surrounded by impervious walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks plus 10%. All filling points, vents or gauges and site glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and be protected from accidental damage. All filling points and tank overflow pipe outlets shall be designed to discharge downwards into the bund.

Reason: In the interests of pollution control.

2. The areas shown on the approved plan under planning permission ref: 9/2007/0470 for the parking and manoeuvring of vehicles shall remain unobstructed for their designated use (unless otherwise permitted by an express planning permission granted upon application to the Local Planning Authority).

Reason: To ensure that all the activities associated with the development are contained within the curtilage of the site, so as to avoid parking and manoeuvring on the highway to the detriment of highway safety.

3. A landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be carried out as approved under condition attached to planning permission ref: 9/2007/0470.

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

4. 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.

5. The accesses to Findern Lane shall be maintained in accordance with the following criteria:-
 - (i) Minimum width of 5.5m and radii of 10m.
 - (ii) Visibility sightlines extending from a point 4.5m back from the carriageway edge, measured along the centreline of the access, for a distance of 160m in each direction measured along the nearside carriageway edge. The land in advance of the sightlines shall be free of all obstructions exceeding 600mm in height above ground level.
 - (iii) Surfaced with a solid bound material for a minimum distance of 20m from the proposed highway boundary.
 - (iv) Unless otherwise agreed in writing by the Local Planning Authority there shall be no gates within 20m of the proposed highway boundary.

Reason: In the interests of highway safety.

6. The access at the south-western end of the Findern Lane frontage shall be used as indicated in line with the relevant conditions 15 to 18 attached to 9/2016/0903 relating to the western access.

Reason: In the interests of highway safety.

7. Associated vehicle parking, manoeuvring space, vehicular access routes and secure cycle storage facilities shall be maintained free of any impediment to their designated use.

Reason: In the interests of highway safety.

8. No external lighting shall be installed on the site without the express planning permission granted upon application to the Local Planning Authority.

Reason: In the interests of visual amenity and dark skies in this rural location.

9. The workshops shall be used solely for the maintenance and repair of canal craft.

Reason: General industrial use of the site in this location would not normally comply with the provisions of the development plan.

10. All footpaths for public use as shown on the landscaping plans approved under condition 11 of planning permission ref: 9/2007/0470 shall be available for public use in perpetuity.

Reason: To ensure that public access is available to walkers.

11. With the exception of the use of up to 360no. unrestricted residential moorings of the total moorings available on site, no other moorings hereby permitted shall be occupied by any vessel that is a principal private residence.

Reason: In order that the Local Planning Authority may retain control over the future use of the premises, in the interests of the amenity of the area and to ensure that the development remains sustainable in all other regards with consideration to impacts on local services that support primary residential moorings.

12. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) or any other order revoking and re-enacting that Order, with or without modification and Article 3 and Part 3 of the Town and Country Planning (General Permitted Development) Order 2015, as amended, or any order revoking and re-enacting that Order with or without modification, the use of the buildings on the marina shall remain as described in application ref:9/2007/0470 and for no other purpose, unless otherwise permitted by an express planning permission granted upon application to the Local Planning Authority.

Reason: In order that the Local Planning Authority may retain control over the future use of the premises and in the interests of the amenity of the area, including the residential amenity of unrestricted residential moorers.

13. The footpath link from the proposed path on the south site to the canal footpath network to the south shall be retained in perpetuity.

Reason: To ensure that public access is available to walkers.

14. The owner/operator shall maintain a register of occupiers who contract for a continuous mooring period of 6 months or more for both residential and leisure moorings at the marina for each calendar year, which shall be made available for inspection by the Local Planning Authority at any time and a copy of the register shall be supplied to the Local Planning Authority at the end of each calendar year. This register shall include:
- i a plan of all moorings at the marina, with each assigned a reference number;
 - ii. the names of the occupier(s) of each mooring;
 - iii. the date first occupied;
 - iv. the date last occupied;
 - v. whether occupation is for residential or leisure purposes, and in the case of the latter the occupants' primary address of residence.

Where the same mooring number is used by multiple persons throughout the calendar year, the register should contain multiple entries to this effect.

Reason: To ensure that the Local Planning Authority is able to monitor the use of moorings at the marina to ensure that the requirements of condition 11 of this permission are not breached.

15. Prior to the first occupation of the additional 100no. unrestricted residential moorings an updated Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan should be based on an existing residential moorers site survey of transport usage, ANPR data from the marina car park and Automatic Traffic Counting (operational for one week) data undertaken on a prior to first occupation basis to provide an up to date version of transport modes for the targets of the Travel Plan and adjustments in transport usage to be taken from, noting that the 2013 data supporting the 9/2013/0733 permission needs updating given the 2no. uplifts in unrestricted residential moorings approved at the site and that the existing residents survey scheduled in the Travel Plan supporting the 9/2014/1137 permission was not undertaken. The Travel Plan should also reflect the consultation advice provided by the County Highways Authority in April 2021. The Travel Plan shall set out proposals (including a timetable and methods of monitoring the performance of the Plan) to promote travel by sustainable modes and shall be implemented in accordance with the timetable set out therein. On each anniversary of the date of the first occupation, a report demonstrating progress in promoting sustainable transport measures along with measures to address any failure to achieve the aims and objectives of the Plan, shall be submitted to the Local Planning Authority. Such reports shall be submitted on each anniversary for a period of five years inclusive from the date of first occupation.

Reason: In the interests of encouraging sustainable modes of transport.

Informatives:

- f. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.
- g. The developer is encouraged to install recharge points for electric vehicles to comply with the following criteria:
 - Residential: 1 charging per unit (dwellinghouse with dedicated parking) or 1 charging point per 10 spaces (or part thereof) where individual units have shared or courtyard parking;
 - Commercial/Retail: 1 charging point for every 10 parking spaces;
 - Industrial: 1 charging point for every 10 parking spaces;To prepare for increased demand in future years, appropriate cable provision should be included in scheme

design and development. Residential charging points should be provided with an IP65 rated domestic 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. This socket should be located where it can later be changed to a 32amp EVCP. Non-residential charging points should be supplied by an independent 32 amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2 (or equivalent standard that may replace it). Measures should be taken to prevent subsequent occupiers of the premises from removing the charging points.

- h. The Environmental Health team are willing to deploy and operate for a 3-6 month period with consent from the marina operator air quality monitoring equipment at a suitable location with power supply to ascertain the air quality of the marina for the use towards future development proposals.

Item No. 1.3

Ref. No. [DMPA/2020/1358](#)

Valid date: 21/06/2021

Applicant: Sue Eames

Agent: Dunwoody Developments

Proposal: Outline application (matters of layout and scale to be considered now with matters of access, appearance and landscaping reserved for later consideration) for the erection of 2no. dwellings on land adjacent to 6 Church Street, Swadlincote, DE11 8LE

Ward: Swadlincote

Reason for committee determination

This item is presented to the Committee as the application fails to comply with the minimum distance requirements as set out in the Council's Design SPD and therefore cannot be determined under delegated officer powers.

Site Description

The application site is a rectangular piece of undeveloped land located to the south of No.6 Church Street, which is a large two storey detached dwelling, although it should be noted that the land proposed for dwellings is not used by No.6, although it appears that way when viewed along Church Street. The site is located within the Swadlincote Conservation Area and is undeveloped and is currently used only to store several vehicles and also a small portacabin, which appears to be used for secure storage. There is an existing vehicle access to the site from the rear, off East End Drive. The front boundary of the site along Church Street is a 2m high blockwork wall in a street otherwise made up primarily of built frontage at or near the pavement edge. The buildings along Church Street are a mix of residential and retail units, with the buildings all being two storey and constructed from red brick or white render with small clay tiled roofs and traditional features throughout. The built character is therefore very similar and provides a strong sense of traditional character.

The proposal

Outline permission for the erection of two semi-detached dwellings is sought. Matters of layout and scale are to be considered now with matters of access, appearance and landscaping reserved for later consideration via a reserved matters application. One shared access point is proposed to East End Drive, with off street parking provided for each dwelling.

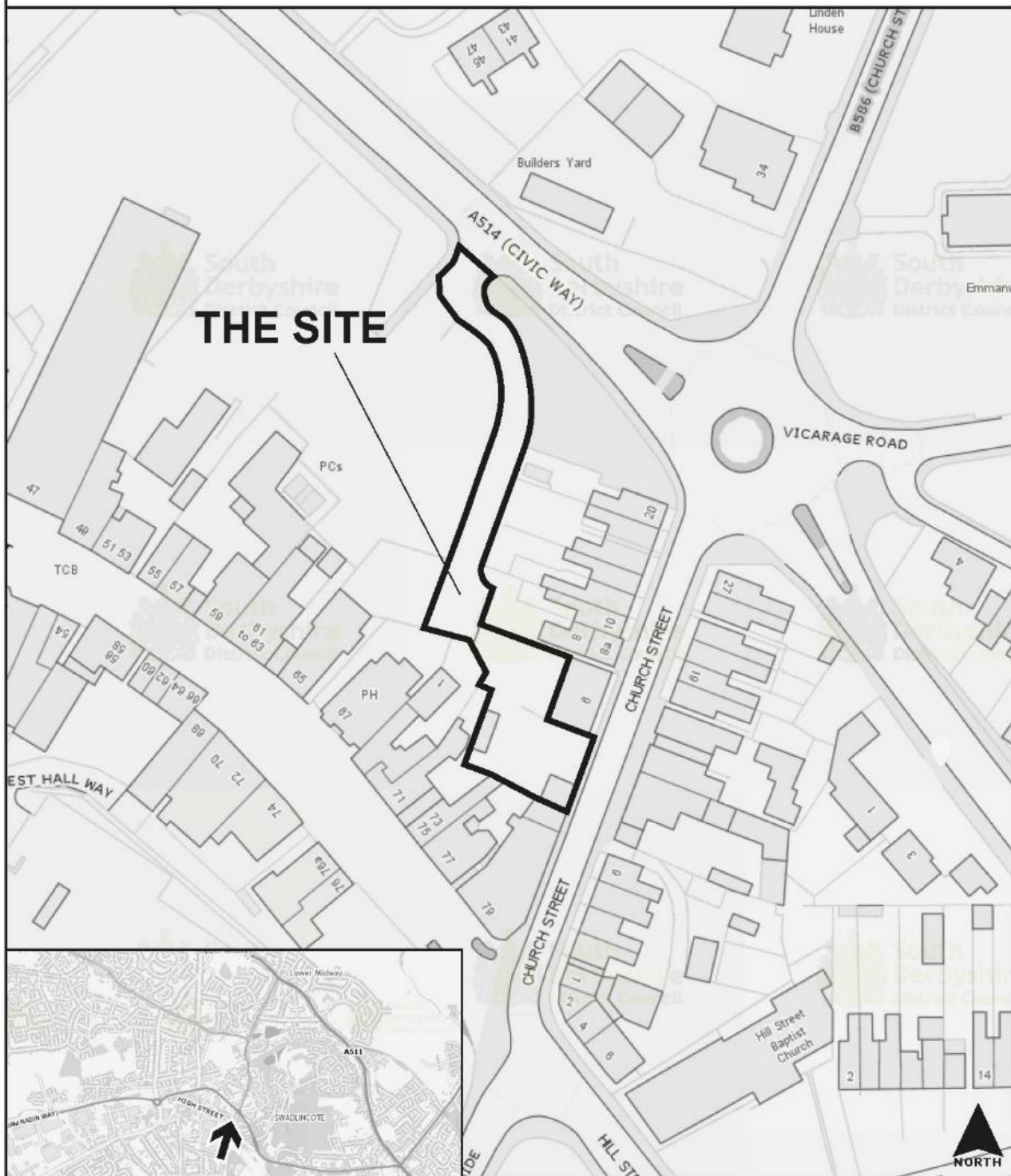
Applicant's supporting information

A Coal Mining Risk Assessment (CMRA) has concluded that the proposed development is possibly underlain by 1 or 2 levels of very shallow and shallow coal seams and mine workings with the potential to significantly impact surface ground stability within the proposed building area. Whether it will impact the development depends on drift/bedrock depth, mine working depth and rock cover thickness. Intrusive ground investigation is therefore required to establish these parameters within the site. Notwithstanding, on the basis of the CMRA work to date, they are of the opinion that the mining stability and mine gas risks posed by the strata beneath this site from coal mining legacy can be mitigated by routinely adopted measures and should not preclude planning permission being registered in the interim with regard to coal mining legacy issues conditional upon the work being carried out at a later date.

Relevant planning history

None

DMPA/2020/1358 - 6 Church Street, Swadlincote DE11 8LE



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Responses to consultations and publicity

Environmental Health confirms that they have no objection to the proposals in principle. Owing to the previous use of neighbouring land and the proximity of neighbouring residential property, they have recommended conditions.

The County Highway Authority have raised no objections to the proposal from the highway point of view subject to a condition being included in any consent requiring the provision of two car parking spaces within each plot curtilage to be provided prior to occupation and maintained throughout the lifetime of the development free from any impediment to their designated use.

Derbyshire Wildlife Trust do not anticipate any ecological issues or impacts arising with this application. The proposed development does however provide opportunities to achieve a net gain for biodiversity in accordance with the objectives of the National Planning Policy Framework and policy BNE3 of the South Derbyshire Local Plan through the incorporation of bat and bird boxes in the new buildings.

The Coal Authority concurs with the recommendations of the Coal Mining Risk Assessment (23 February 2021, prepared by Geoinvestigate Ltd) that coal mining legacy potentially poses a risk to the proposed development and that intrusive site investigation works should be undertaken prior to development in order to establish the exact situation regarding coal mining legacy issues on the site.

The County Archaeologist noted that proposal site has an entry on Derbyshire HER (MDR13095) for a former United Methodist Free Chapel active during the late 19th century and since demolished. The below-ground remains of the chapel would not however be of archaeological significance and there is no burial ground shown on historic maps. No archaeological input is therefore required under the NPPF policies.

The Conservation Officer considers that the proposal enhances the special architectural and historic character and appearance of the conservation area so achieves the higher objective, described as 'desirable' within section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Whilst noting design/appearance is a reserved matter, some attention should be given to the scale of glazed openings on the front elevations.

1 representation has been received, raising the following comments:

a) Considered that it would be better to move the properties back from Church Street to allow parking of vehicles on the front of the properties rather than access from East End Drive. The proposed vehicular access to the rear of the properties to facilitate off street parking is very small and would see vehicles needing to cross over an already shared access point of the neighbour with 1 East End Drive, which could severely affect neighbouring privacy.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport).
- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development) and BNE10 (Heritage).

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)
- Swadlincote Conservation Area Character Statement (CACS)

The relevant national policy and guidance is:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

Planning considerations

Taking into account the application made, the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- Principle of development;
- Highway safety and parking;
- Heritage and design matters; and
- Neighbouring amenity.

Planning assessment

Principle of development

The site is located within the settlement boundary of the Swadlincote urban area, as identified by Policies H1 and SDT1. The site is within a built-up residential area, with neighbouring dwellings at the side and rear. The principle of the proposed development for the erection of two dwellings on undeveloped land adjacent to No.6 Church Street is considered to be acceptable, appropriate development as it is compliant with Policies H1 and SDT1 (i.e. new development within the settlement boundary, where development of all sizes within the settlement boundary is considered appropriate).

Highway safety and parking

It is noted that matters of access are considered for approval at reserved matters stage, however it is important that the proposal can still be accessed safely and any permission implemented. Therefore the proposed site plan indicates the intended access into the site and the area for vehicle parking for each of the dwellings. Vehicular access for the site is proposed using the existing shared driveway for No.6 Church Street and the site which is currently used to store vehicles. The County Highway Authority has raised no objections to the proposal from a highway safety perspective. The proposed layout shows that sufficient space can be provided within the site to ensure adequate parking for at least two vehicles for each of the proposed dwellings which is compliant with the parking guidance as set out in the Design Guide SPD and the level of parking for the existing dwelling would not be reduced as a result of the development. Vehicle movements generated by the proposal are unlikely to have a noticeably negative impact on the capacity of the wider highway network, with the proposal being for two dwellings only and within a built up residential area with good connectivity. As such, the access and parking proposed is considered suitable to facilitate two new dwellings on the site and would not adversely impact on highway safety to a point where it would reasonably justify refusal of the application. As such, the proposal complies with the requirements of Policy INF2 and the NPPF.

Heritage and design matters

It is noted that matters of appearance and landscaping are reserved for later consideration. Policy BNE1 expects all new development to be well designed, embrace the principles of sustainable development, encourage healthy lifestyles and enhance people's quality of life; the SPD supports this policy with further detail.

The site is located within the Swadlincote Conservation Area, however there are no listed buildings nearby, although all of the neighbouring and nearby buildings are identified as buildings which make a positive contribution to the conservation area (where properties are part of short terraces or semi-

detached pairs, the identification as positive contributors is taken to represent the group – hence entire terrace rows are identified as positive even where one property in the row has been extensively altered and is likely not positive in isolation).

The site is that of the former Methodist Church, which is still present on 1980's OS mapping but appears to have long since been demolished. This has left a noticeable gap in the street frontage. The site boundary along Church Street is a large blockwork wall in a street otherwise made up primarily of built frontage at or near the pavement edge. The site is therefore a good example of a negative gap site where the character of the conservation area could be enhanced by infill development to reinstate enclosure to the streetscene. As detailed above, Church Street has a very consistent character, defined by the scale and appearance of the buildings. The indicative elevations submitted indicate a pair of two storey semi-detached dwellings, reflecting the character of buildings along Church Street. The overall scale and height of the proposed building matches that of the neighbouring dwelling No.6, with the elevations showing a matching ridge height and would therefore fit with the street scene, as would their close relationship with the pavement edge.

The reserved matters stage would control the finer design detailing and appropriate materials, as well as hard and soft landscaping to improve integration and a high quality design, the scale of the dwellings as currently shown would have to remain the same. Although the appearance of the dwellings is not to be considered at outline the elevations show bay windows on the front elevation at ground floor level, this would provide good integration with other dwellings on Church Street as it is a consistent feature along the street and should also be proposed at reserved matters stage. The proposal is thus considered to comply with Policy BNE1 and the SPD in relation to its design and impact on the street scene. The conservation officer has considered that the proposal would enhance, not simply preserve the special architectural and historic character and appearance of the conservation area and achieve the higher objective, described as 'desirable' within section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. As such, the proposal complies with the requirements of policies BNE1, BNE2 and BNE10 and the SPD in relation to its design and heritage impact.

Neighbouring amenity

Policy SD1 supports development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers. Policy BNE1 requires development to not cause demonstrable harm to neighbouring amenity. Although only layout and scale is to be considered at this stage, it is important to consider whether two dwellings on this site can be accommodated without negatively impacting on neighbours.

When assessing the impact on neighbouring buildings that surround the site, there are two residential properties potentially impacted, with all other neighbouring buildings having a non-residential commercial use and therefore are not assessed. When assessing the impact on No.6 Church Street to the north side of the site, when drawing a 45 degree sector view from the closest ground floor rear windows on both the front and rear elevations, the proposed dwellings would lie outside of the sectors and therefore comply with the requirements of the SPD.

When assessing the impact on No.1 East End Drive at the rear of the site, when drawing a 45 degree sector view from the closest ground floor primary window on the side elevation to the proposed first floor windows on the rear elevation, it would measure approximately 18m at the closest point. In order to comply with the minimum distance requirements of the SPD, the separation distance must be a minimum of 21m from a proposed first floor bedroom to an existing lounge or kitchen window. Therefore, based on measurements alone, the siting of two dwellings on this site as proposed would fail to comply with the minimum distance requirements. Currently, this potential view from the rear of the proposed dwellings is being obscured by a portacabin which has been erected on the application site, the applicant has confirmed that this is a temporary structure which will be removed.

It is important to consider that No.1 has an unusual change in levels to that of the application site and has been built into the ground by several metres, therefore its first floor windows are at ground floor level. The dwelling has also been built directly onto the rear of the retail units (which front High Street to

the south west of the property) at a later date, therefore whilst the front of the dwelling is on East End Drive, there is no typical rear elevation, instead all other windows are on the south eastern side of the building which faces the rear of the application site and that of the proposed dwellings. Windows on the side of buildings are typically considered to be secondary windows only and therefore their protection is not considered. In this case, given the unusual configuration and appearance of the dwelling, they must still be considered primary windows as they are the only windows which serve the habitable rooms. No.1 is also located within Swadlincote's town centre and in close proximity to retail units and a public car park to the north. In such a built up location, there is expected to be less separation between buildings and much smaller outdoor amenity spaces. As such, given the site's location and unusual configuration, it is considered that whilst the minimum distance requirements set out in the SPD cannot be achieved, the site would still comply with Policies SD1 and BNE1 as the amenity of No.1 would not be demonstrably impacted to a point where it would warrant refusal.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve subject to the following condition(s):

1. (a) Application for approval of the reserved matters listed at condition 2 shall be made to the Local Planning Authority before the expiration of three years from the date of this permission; and
(b) The development hereby permitted shall be commenced 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 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. Before any development is commenced the further approval of the Local Planning Authority is required with respect to the following matters (herein referred to as the reserved matters) on an application made in that regard:
 - (a) access,
 - (b) appearance and
 - (c) landscaping.

Reason: This permission is granted in outline under the provisions of Article 5(1) of the Town & Country Planning (Development Management Procedure) (England) Order 2015 and section 92 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

3. The matters of layout and scale shall be carried out in accordance with the Proposed Site Plan received 29 September 2021, the Existing Block Plan and Location Plan received 21 June 2021 and the Existing and Proposed Street Elevations and the Proposed Rear and Side Elevations received 29 September 2021; and unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

4. No development shall commence until a scheme of intrusive site investigation for coal mining legacy has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in accordance with the approved details and a report of the findings arising from the intrusive site investigations, along with any remedial works required (including a timetable for the carrying out of such works), shall be submitted to and approved in writing by the

Local Planning Authority prior to any construction works commencing. The approved remedial works shall thereafter be implemented in accordance with the approved timetable.

Reason: To protect the health of the public and the environment from hazards arising from past coal mining which might be brought to light by development of the site, recognising that failure to address such matters prior to development commencing could lead to unacceptable impacts even at the initial stages of works on site.

5. Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

Reason: To protect the health of the public and the environment from hazards arising from past coal mining which might be brought to light by development of the site.

6. Sufficient measures to protect the development from the risks posed by any ground gases or vapours shall be incorporated into the development hereby approved. The measures shall accord with the requirements of sections 3 and 6 of Building Research Establishment 414 (2001) 'Protective Measures for Housing on Gas Contaminated Land construction methods', or any equivalent guidance that may revise or replace it. Alternatively, proposed measures which achieve an equivalent level of protection shall be first submitted to and approved in writing by the Local Planning Authority prior to the construction of any floorspace. A verification report confirming the detail and date of the measures installed shall be submitted to the Local Planning Authority prior to first occupation of the premises concerned, with all measures thereafter maintained throughout the lifetime of the development.

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.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, no less than 2 of the parking spaces to be provided in connection with each dwelling provided by way of garage accommodation, parking bays or private driveway shall be used other than for the parking of vehicles except with the prior grant of planning permission pursuant to an application made to the Local Planning Authority in that regard.

Reason: To ensure adequate parking and turning provision, in the interests of highway safety.

8. As part of the reserved matters, a scheme of biodiversity enhancement to include, as a minimum, the incorporation of integrated features within the new buildings for roosting bats and nesting swifts, shall be submitted to and approved in writing by the Local Planning Authority. The enhancement scheme shall be implemented in accordance with the agreed details as construction proceeds and completed prior to the first occupation of the development and retained as such thereafter.

Reason: In order to safeguard and enhance habitat on or adjacent to the site in order to secure an overall biodiversity gain.

9. During the period of construction, no ground, construction or fitting out works shall take place and no deliveries shall be taken at or dispatched from the site other than between 0800 and 1800 hours Monday to Friday and 0800 and 1300 hours on Saturdays. There shall be no construction works (except for works to address an emergency) or deliveries on Sundays or Bank Holidays.

Reason: To safeguard the amenities of nearby occupiers.

10. Recharge points for electric vehicles shall be provided within the development to comply with the following criteria:

- 1 charging point per dwelling
- charging points shall be provided with an IP65 rated domestic socket 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. This socket shall be located where it can later be changed to a 32amp EVCP. Alternative provision to this specification must be first submitted to and approved in writing by the Local Planning Authority. To prepare for increased demand in future years, suitable and appropriate cable provision shall be included in the scheme design in accordance with details first submitted to and approved in writing by the Local Planning Authority.

The electric vehicle charging points shall be provided in accordance with the stated criteria and approved details prior to the first occupation of the respective dwelling and shall thereafter be maintained in working order and remain available for use throughout the life of the development.

Reason: In the interests of protecting and enhancing air quality through reducing and minimising emissions from vehicles.

11. Each dwelling shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the dwelling will not exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations (2015). The developer must inform the building control body that this optional requirement applies.

Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan.

Informatives:

- i. The applicant/developer is advised to liaise with the Local Planning Authority prior to submitting details of reserved matters for approval. It is strongly encouraged that, in addition to the requirements set out in any conditions, adequate details are supplied so to negate the need for further conditions upon approval. For example, details and locations of boundary treatments and species and size for soft landscaping should be provided pursuant to matters of landscaping, whilst details and/or samples of facing and surfacing materials and details of porches, rooflights, verges, eaves, cills and lintels should be provided pursuant to matters of appearance. For all matters, attention should be given to the Council's Design Guide Supplementary Planning Document - in particular the relationship with surrounding properties and the quality of materials and finishes expected.

Item No. 1.4

Ref. No. [DMPA/2021/1045](#)

Valid date: 30/06/2021

Applicant: Stephen Corbin

Agent: Twenty Six Architects

Proposal: The erection of a ground floor extension at Corbin House, Hilton Road, Egginton, Derby, DE65 6GU

Ward: Etwall

Reason for committee determination

The application is reported to Planning Committee as the applicant is related to an elected Councillor (Councillor Corbin).

Site Description

This is a large residential property set in equally large grounds, situated well outside of the Hilton village boundary. There is one other residential property to the north and a school to the east, the school occupying a listed building. The site is flat and affords a level of privacy, screened from the public realm by the trees and hedging that bound the site.

The proposal

The proposal is to add some ground floor mass (by way of extension) to the south eastern corner of the property.

Applicant's supporting information

The submitted [Planning Statement](#) considers the proposals against the relevant policy framework, concluding that the development enhances the house in terms of usability and yet maintains its strong architectural presence.

Relevant planning history

2002/0136* The erection of replacement dwelling - approved May 2002.

2007/1460: Erection of an extension - approved February 2008.

2018/1360 Installation of new window - approved March 2019.

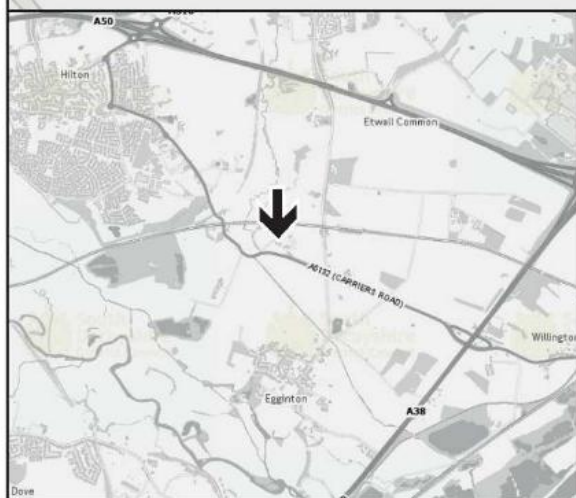
2019/0780 Kitchen extension and flue - approved September 2019.

DMPA/2020/1150 Erection of a cantilevered roof top glass walled extension - approved October 2020

*It should be noted permitted development rights were removed here from the outset to maintain control over subsequent extensions, in the interest of the character and amenity of the area, having regard to the setting.

Responses to consultations and publicity

The [Council's Conservation Officer](#) was consulted, given the adjacent listed building. It was concluded however that the proposal would not harm the setting of the listed building and as such would achieve the 'desirable' objective described within section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.



**South
Derbyshire
District Council**

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South Derbyshire District Council. LA 100019461.2020

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- South Derbyshire Local Plan Part 1 (LP1): SD1: Amenity and Environmental Quality, BNE1: Design Excellence and BNE2: Heritage Assets
- South Derbyshire Local Plan Part 2 (LP2): H27 Residential Extension and other Householder Development and BNE10: Heritage

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD) November 2017

The relevant national policy and guidance is:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

Planning considerations

Taking into account the application made, the documents submitted (amended where relevant) and the site and its environs; the main issue(s) central to the determination of this application are:

- The effect of the proposal on the setting given the proximity to a Listed Building;
- The effect of the proposal on the residential amenity of nearby occupiers; and
- Design impacts.

Planning assessment

The effect of the proposal on the setting, given the proximity to a Listed Building

It is considered there are no negative impacts to the setting of the Listed Building, the proposal well assimilated with the characteristics in play here., the modernity of this property complementing the setting instead of competing adversely (by way of mimicry) with the more traditional forms found at Park Hill. The proposal as such is compliant with the requirements of Policies BNE2 and BNE10.

The effect of the proposal on the residential amenity of nearby occupiers

Given the separation distances involved to the neighbours, any impacts (in terms of overbearing, overshadowing or loss of privacy) are deemed to be inconsequential.

Design impacts

The proposal is considered to build on the high level architectural values here, where large areas of glass can be found punctuating the larger, more prominent areas of stone and render. This new, mainly glass finished space, would sit subserviently below an existing 1st floor overhang but not to the level where the value of that overhang would be totally lost, the see-through nature of the glass, not as solid as the rendered walls over so would arguably still read as a void. Any change to the built silhouette therefore is deemed modest.

The proposal, as such is found to be in-keeping with the existing house, not detracting from the original design principles, rather building on/maintaining its strong architectural presence, aligning with the basic requirements of Policy H27.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and

Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with drawing(s) ref. P(00)-01, P(00)-09, P(00)-10, P(00)-11 and P(00)-12; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

3. Other than where specified on the approved plans/drawings and/or detailed on the submitted application form, all external materials used in the development shall match those used in the existing building in colour, coursing and texture unless, prior to their incorporation into the development hereby approved, alternative details are first submitted to and approved in writing by the Local Planning Authority pursuant to an application made in that regard, whereafter the approved alternative details shall be incorporated into the development.

Reason: In the visual interest of the building(s) and local distinctiveness.

2. Planning and Other Appeals

(References beginning with a DMPA, DMPN, DMOT or 9 are planning appeals and references beginning with an ENF or E are enforcement appeals)

Reference	Place	Ward	Outcome	Decision level
DMPA/2019/1430	Bretby	Repton	Dismissed	Delegated
DMPA/2020/0910	Newhall	Midway	Dismissed	Committee
DMPA/2020/1136	Woodville	Woodville	Dismissed	Delegated



Appeal Decision

Site visit made on 19 January 2021

by **M Cryan BA(Hons) DipTP MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 September 2021

Appeal Ref: APP/F1040/W/20/3258632

95 Bretby Lane, Bretby, Burton-on-Trent DE15 0QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs Brian and Jean Mears against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2019/1430, dated 12 December 2019, was refused by notice dated 2 April 2020.
 - The development proposed is described as "outline development of an entry-level exception site for six wholly affordable starter homes for first time buyers (all matters to be reserved except for access) on land at SK2823 3536 (rear of 101 to 119) Bretby Lane, Bretby".
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs Brian and Jean Mears against South Derbyshire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The description of development in the banner heading above is taken from the planning application form, although I have omitted additional wording which related to a previous refused planning application as this was not descriptive of the proposed development.
4. The application was submitted in outline, with only access to be determined at this stage. Appearance, landscaping, layout and scale are reserved matters. I have consequently treated the submitted drawings as being for illustrative purposes only, insofar as they imply matters other than access arrangements.
5. A signed and dated Unilateral Undertaking ("UU") relating to the provision of affordable housing, dated 15 December 2020, was submitted by the appellant during the course of the appeal, and commented on by the Council. I return to this matter below.
6. A Written Ministerial Statement ("WMS") made by the Minister of State for Housing on 24 May 2021 set out an update on the Government's approach to

affordable housing and introduced the First Homes scheme¹. The Planning Practice Guidance ("PPG") was updated at the same time to reflect the WMS. I sought both main parties' views on the relevance of the WMS to this appeal, and their comments have been taken into account in my reasons below.

7. The Government published a revised National Planning Policy Framework ("the Framework") on 20 July 2021, replacing the version published in February 2019. Those parts of the Framework most relevant to this appeal have not been significantly amended. As a result I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach. Where I have referred in my decision to specific paragraphs of the Framework, the numbering used is that of the July 2021 version.

Main Issues

8. The main issues are:

- Whether or not the site is an appropriate and sustainable location for the proposed residential development, having regard to the Council's housing strategy, and local and national planning policies in respect of affordable housing; and
- The effect of the proposed development on the character and appearance of the area.

Reasons

The location of residential development

9. The appeal site is part of a grassed paddock lying to the rear of Nos 101 to 119 Bretby Lane, with an access way between Nos 111 and 119 (there are no Nos 113 or 115). The site lies within the larger parcel of land attached to the appellants' dwelling No 95 Bretby Lane; this is a detached house with an assortment of sheds and small outbuildings (which I understand from the appellants' evidence includes dog breeding kennels) set some way behind the other dwellings on Bretby Lane and accessed by a driveway between Nos 93D and 97.
10. The site lies some 850m or so west of what might reasonably be considered to be the heart of Bretby around St Wystan's Church. In fact, Bretby is a somewhat dispersed settlement principally consisting of small groups of dwellings, with little in the way of day-to-day community or commercial services. The appeal site lies to the rear of a ribbon of residential development extending north-eastwards along Bretby Lane into the countryside from Winshall, a neighbourhood of Burton-on-Trent within the neighbouring borough of East Staffordshire.
11. The proposal is the development of six affordable dwellings for first time buyers, shown as three pairs of semi-detached houses in the indicative drawings provided.

¹ <https://questions-statements.parliament.uk/written-statements/detail/2021-05-24/hcws50>

Relevant local and national planning policies

12. Policy S1 of the 2016 South Derbyshire Local Plan Part 1 ("the LP1") sets out the Council's "sustainable growth" strategy, which in respect of housing indicates that at least 12,618 dwellings will be developed over the 2011–2028 plan period. It recognises that a mix of brownfield and greenfield sites will be used to accommodate this housing, but seeks to "encourage" the reuse of previously developed land.
13. Policy H1 of the LP1 sets out the district's settlement hierarchy, based on the range of services and facilities each settlement offers. The fourth (and lowest) tier of defined settlement is "Rural Villages", and Bretby falls into this category. In these places development of a limited nature will be allowed either within a settlement boundary, or on sites adjacent to the settlement boundary for "exceptions or cross subsidy" developments of no more than 15 dwellings. In rural areas outside the defined settlement boundaries, H1 states that "only development of limited infill and conversions of existing buildings will be acceptable".
14. Policy SDT1 of the 2017 South Derbyshire Local Plan Part 2 ("the LP2") identifies those settlements – not including Bretby – for which a settlement boundary is defined, while Policy BNE5 of the LP2 indicates the circumstances in which development outside defined settlement boundaries will be permitted. These include it is allowed by specified other policies, one of which is Policy H1 of the LP1.
15. Policy H21 of the LP1 sets out the approach to affordable housing development, and as well as seeking to secure affordable housing as part of developments of more than 15 dwellings, it also permits rural exception sites adjoining existing Key Service Villages, Local Service Villages and Rural Villages, subject to their being kept in perpetuity as affordable housing for local people (depending on the nature of the affordable product being proposed). For a rural exception site, proposals must meet a clearly identified local need, provide a majority of affordable homes, address a need which cannot reasonably be met within the development limits of the village concerned or the submarket area the site falls within as detailed in the Strategic Housing Market Assessment ("the SHMA"), and should be of a scale relative to the settlement size and facilities available particularly public transport.
16. National planning policy is primarily set out in the Framework, which states at Paragraph 72² that:

"Local planning authorities should support the development of entry-level exception sites, suitable for first time buyers (or those looking to rent their first home), unless the need for such homes is already being met within the authority's area. These sites should be on land which is not already allocated for housing and should:

 - a) comprise of entry-level homes that offer one or more types of affordable housing as defined in Annex 2 of this Framework; and*
 - b) be adjacent to existing settlements, proportionate in size to them, not compromise the protection given to areas or assets of particular importance in this Framework, and comply with any local design policies and standards."*

² This was Paragraph 71 prior to the July 2021 update of the Framework.

17. The glossary at Annex 2 of the Framework includes in its definition of affordable housing Starter Homes, which it defines as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The Framework is a material consideration which carries significant weight in determining this appeal.
18. The WMS made in May 2021 in respect of First Homes is also a statement of Government planning policy, and like the Framework carries significant weight. The PPG indicates that First Homes are the government's preferred discounted market tenure³, and the WMS set out criteria for First Homes exception sites which are essentially the same as those for entry-level exception sites set out in Paragraph 72 of the Framework.

Exceptions sites development

19. The appellants contend that LP1 Policy H1 is out of date, as it pre-dates the reference to entry-level exception sites introduced in the 2018 revision of the Framework and is thus inconsistent with national planning policy. However, H1 refers to "exceptions or cross-subsidy sites", and the Glossary to LP1 defines an affordable housing exception site (or rural exception site) as being one which "would not normally secure planning permission for housing due to being adjacent to a settlement boundary but is allowed for development solely for affordable housing". To my mind, the broad "exceptions sites" provision in Policy H1 to support the delivery of affordable housing can, and sensibly should, be read to include entry-level exception sites. Although it does not include the specific phrase "entry-level", Policy H1 provides for that type of affordable housing exception site and establishes the policy framework for assessing the locational aspects of such proposals. I therefore find Policy H1 to be consistent with the Framework, and I give it full weight in determining this appeal. Accordingly, I reject the appellants' argument that "primacy should be given to [the Framework] above the Local Plan".
20. Neither the older "core" of Bretby village or the ribbon development extending north-eastwards out of Winshill which includes the appeal site has a defined settlement boundary. In the development plan's terms, the appeal site is therefore in the rural area, and only development of limited infill and conversions of existing buildings will be permitted by LP1 Policy H1. The development of six new dwellings would not, on a site protruding into the countryside, represent limited infilling. I therefore consider that the proposed development is not supported by Policy H1.
21. Unlike the broadly-written Policy H1, LP1 Policy H21 is specifically concerned with rural exception sites. There is no evidence before me that the proposal would meet the very localised housing need which is usually at the heart of rural exception sites proposals, and which is described in the definition in Annex 2 of the Framework. Furthermore, the appellants' evidence makes quite clear at several points that the application was made as an entry level exception site and not as a rural exception site, and that it is "not tied to a narrowly-defined [...] local need or evidence base". As the proposal is not for a rural exception site, by definition it could not be permitted by the relevant part of Policy H21.

³ Paragraph: 001 Reference ID: 70-001-20210524

Accessibility of services

22. Bretby itself has very limited services, and any future occupiers of the appeal site would, in common with existing residents of that part of Bretby Lane, be likely to rely on services either within Winhill or further afield. The appellants have referred to the Institute of Highways and Transportation's *Guidelines for Providing for Journeys on Foot* ("the IHT guidance"), and suggest that facilities in Winhill including a primary school, nursery school, medical centre and convenience shop all lie between within 1,300m and 2,000m of the appeal site, and thus within the "acceptable" and "preferred maximum" walking distance ranges set out in the guidance. In fact, the extract of the IHT guidance submitted by the appellants suggests that for schools the "acceptable" walking distance is around 1,000m with a "preferred maximum" of around 2,000m, and for other services in a non-town centre location the "acceptable" distance is around 800m and the "preferred maximum" around 1,200m.
23. The evidence before me and my observations in the area at the time of my site visit suggest that the Esso petrol station on Ashby Road (which also sells a limited range of groceries and other goods) is the nearest of the services mentioned in Winhill to the appeal site. The appellants state that it is approximately 1,300m from the appeal site. I found the round trip from the proposed site entrance on Bretby Lane to the garage and back to be approximately a half hour walk, and it seems to me unlikely that future occupiers of dwellings on the appeal site would regularly choose to make this journey on foot to pick up day-to-day purchases. Other shops and services in Winhill are further away still, with correspondingly greater walking times. The appellants indicate that the nearest primary and nursery school is around 1,800m from the appeal site, but while this is within the IHT Guidance's "preferred maximum" distance for a school it seems unlikely that, for example, any parent who happened to be at home during the school day would choose as a matter of course to make the 3.6km round trip on foot twice a day to escort a young child to and from school.
24. The appellants have also referred to the "extensive retail, restaurant and commercial services" at Planters Bretby Garden Centre to the east of the appeal site, but while this is a shorter distance away than the facilities in Winhill it seems extremely unlikely that a garden centre would meet local residents' typical day-to-day shopping needs.
25. No information has been provided to me about bus services which serve the appeal site or bus stops nearby. However, based on all of the evidence available it seems likely to me that any future occupiers of the proposed dwellings would be highly likely to be reliant on having use of a private car for access to most services and facilities. On this basis, I consider that the site has limited accessibility to services and facilities by a range of transport options, and in this respect would not represent a sustainable form of development.

Affordable housing need and provision

26. The proposed development would provide six Starter Homes for first time buyers. Both main parties referred in their evidence to the January 2020 Strategic Housing Market Assessment ("the SHMA") prepared for the Council by

GL Hearn⁴. The appeal site lies within the "Derby Fringe" sub-market area identified in the SHMA.

27. In terms of the need for affordable housing, and as the appellants have pointed out, the SHMA identifies a net affordable home ownership need of 25 dwellings within the Derby Fringe area. However, because of a surplus in the Swadlincote and South sub-area the district as a whole has an annual surplus of 22 dwellings⁵. The SHMA suggests that there is therefore not a requirement for the Council to seek any more than the Government recommended 10% delivery in the form of affordable home ownership properties⁶. However, it also suggests that any delivery of low-cost home ownership products should be focussed on the Derby Fringe sub-area because of its identified need⁷, and that while it *should* [my emphasis] focus on shared ownership in light of reduced deposits and the subsidised rent provided⁸, it *could* [my emphasis again] also focus on those offering a straight discount on the open market value of the affordable home⁹.
28. The Council stated that in 2018-19 225 affordable homes were delivered throughout the District, of which 43 (28 within the Derby Fringe sub-area) were affordable home ownership dwellings as defined in Annex 2 of the Framework. In 2019-20 there were 271 affordable homes delivered in South Derbyshire as a whole, of which 66 (31 within the Derby Fringe sub-area) were affordable home ownership dwellings. The appellants comment that the delivery of affordable housing is "almost wholly shared ownership with no Starter Homes and therefore not being representative of the spectrum of NPPF Annex 2 products and neglecting [...] households excluded from the owner-occupied sector". Neither party has provided me with a more detailed breakdown of the type of affordable home ownership products which have been delivered. However, given the relatively limited need for affordable home ownership in the Derby Fringe sub-area identified by the SHMA, the over-delivery of affordable home ownership dwellings in both the sub-area and the district, as well as the lukewarm support which the SHMA offers for affordable home ownership products other than shared ownership, in my view there is no substantive evidence that the proposal would meet a need which is not already being met either within the local housing market sub-area or in the district as a whole.

Other appeal decisions

29. Both main parties have drawn my attention to several previous appeal decisions where Inspectors considered the interpretation of the development plan in respect of affordable housing, exception sites, and settlement boundaries.
30. The appellant referred me to cases elsewhere in South Derbyshire, adjacent to the settlements of Melbourne¹⁰ and Repton¹¹, in which both Inspectors found that there was a degree of ambiguity about exception sites in the wording of LP1 Policy H1. Those appeals related to proposals for market housing on the

⁴ The original planning application referred to an earlier, now superseded, version of the SHMA published in 2013.

⁵ Paragraphs 5.106 and 5.107

⁶ Paragraph 5.112

⁷ Paragraph 5.117

⁸ Paragraph 5.119

⁹ Paragraph 5.120

¹⁰ PINS Ref APP/F1040/W/17/3171029

¹¹ PINS Ref APP/F1040/W/17/3191604

edge of settlements designated "Key Service Villages" in H1, with defined settlement boundaries applied by LP2 Policy SDT1; neither is therefore directly analogous to the facts of this case. In any event, in relation to the development of sites which are neither within nor adjacent to defined settlement boundaries – as in this appeal – there is no ambiguity within Policy H1.

31. The Council directed me towards other appeal decisions in respect of sites adjacent to the settlements of Hartshorne¹² and Linton¹³, although again neither of these related to a proposal for affordable housing. The Inspector in the Hartshorne appeal followed a similar approach to interpreting Policy H1 to that of the Inspectors in the Melbourne and Repton cases, but in quashing that appeal decision the High Court found that he had erred in his interpretation of policy.
32. In the Linton decision, the Inspector explained why, having regard to the development plan as a whole, he found the approach to affordable housing permitted by Policy H1 (including the requirement for there to be a relationship with a defined settlement boundary, with limits specified for various tiers of settlement, and reinforced by other policies including H21 of LP1 and Policies SDT1 and BNE5 of LP2) to be consistent with the balanced approach to rural development set out in the Framework. The Inspector addressed the perceived policy ambiguities identified in the Melbourne and Repton decisions in a manner which I found compelling. My reasoning set out above is consistent with the Inspector's decision in the Linton appeal, as well as with the decision of the High Court in respect of the Hartshorne appeal.
33. The appellants also drew my attention to an appeal decision in Wiltshire, which was issued after this appeal was lodged¹⁴, and which granted outline planning permission for a proposed development of up to 20 entry-level affordable dwellings, which would be starter homes for first-time buyers. This decision was provided in response to the Council's assertion in their appeal statement that as the secondary legislation required to enable the delivery of Starter Homes as an affordable housing product has not been enacted, an application for Starter Homes could not be considered as a valid means of delivering affordable housing in the District. However, the evidence before me suggests that the overall circumstances of that appeal differ considerably from this one – not least because Wiltshire Council could not demonstrate a five year supply of deliverable housing sites, there was an unmet affordable housing need within the local planning authority area, and the main parties agreed that the proposal met the policy tests for entry level exception sites. I have no reason to disagree with the conclusions of the Inspector in the Wiltshire appeal, but given the very different circumstances that decision does not lend more than very limited weight in support of the appellants' case in this appeal.

Findings in respect of the location of residential development

34. The appeal site is neither within, nor adjacent to, a defined settlement boundary, and therefore is not in a location where exception sites for affordable housing are supported by LP1 Policy H1. The proposed development is for an entry level exception site, and as such would not be permitted by LP1 Policy H21 which specifically addresses rural exception sites.

¹² PINS Ref APP/F1040/W/19/3232081 – decision quashed by High Court on 3 June 2020

¹³ PINS Ref APP/F1040/W/19/3223811

¹⁴ PINS Ref APP/Y3940/W/20/3253180

35. If I had come to a different view and considered that the proposal should be assessed against the provisions of Part C of Policy H21, this would not have altered my overall decision. Although the scheme would consist entirely of affordable homes (and thus would comply with criterion ii), there is no substantive evidence that the development would either meet a clearly identified local need (criterion i) or that any need cannot reasonably be met, or is not already being met) within the housing market sub-area (criterion iii). Furthermore, while a proposed development of six dwellings would be of a scale proportionate to the settlement size (whether this is taken as Bretby village or the ribbon development extending out of Winshill), the site is in an area which has relatively poor access to facilities other than by reliance on private transport (criterion iv).
36. However it is approached, I consider that the site does not represent an appropriate and sustainable location for the proposed development. I therefore conclude that the proposal conflicts with Policies S1, H1 and H21 of the LP Pt1, and with Policies SDT1 and BNE5 of the LP Pt2, which together set out the spatial strategy and settlement hierarchy for the district, seek to preserve and protect the countryside, and which are supportive of the development of affordable housing (including exception sites) where this is of an appropriate size and location in respect of existing settlements. For the reasons set out in paragraphs 19 to 21 above I also conclude that the proposal is not supported by the provisions of paragraph 72 of the Framework in respect of entry level exception sites.

Character and appearance

37. As I have already described above, the appeal site lies to the rear of housing forming a ribbon of development extending from the nearby settlement of Winshill along Bretby Lane into the countryside. The land falls approximately from south to north across Bretby Lane, with a south-west to north-east fall across the appeal site itself. This means that the appeal site is in a relatively open and exposed position relative to the open countryside to the north. Many of the neighbouring rear gardens have tall and mature evergreen trees to their boundaries with the appeal site, which serve to close the appeal site off from some of the nearest housing. The gap created by the appeal site also has the effect of separating No 95 from the other housing on Bretby Lane, so that in many close views it appears to be much more an integral part of the rural area than other housing nearby.
38. The proposed development would fill much of the gap between No 95 and the other dwellings on the north side of Bretby Lane, and would represent an encroachment of built development into the countryside. The appellant has drawn my attention to other housing developments off Bretby Lane (Oldicote Lane and another short private cul-de-sac), but while these break up the general linear pattern of ribbon development they are on the south side of the road and in positions where the lie of the land makes them relatively visually unobtrusive. I acknowledge that, as the appellants suggest, in certain middle-distance views, including from the footpath running from Bretby Lane to Hawfield Lane some way east of the appeal site, the proposed dwellings would be seen against a backdrop of existing housing, and so in these views they would not be especially visually intrusive. However, from other places, including other parts of Hawfield Lane, and from the footpath connecting Bretby Lane to Calgary Crescent some way west of the appeal site, the

topography is such that the proposal would be visible as an intrusion of built development into the countryside.

39. The appellants drew my attention to other appeals in Linton¹⁵ and Hartshorne¹⁶ where Inspectors found that residential developments on the edge of settlements would not be harmful to the character and appearance of the countryside, in particular because they would be seen against a backdrop of existing housing in middle-distance views. However, I do not know the full details of those other cases, while my conclusions in this appeal have been drawn on a detailed site visit and appreciation of the local landscape and topography. I have no reason to dispute the views of my colleagues in those other appeals, but have reached my decision based on the specific facts and situation of this appeal site and its surroundings.
40. I therefore conclude that the proposed development would be harmful to the character and appearance of the area. While the suburban-style development which already stretches into the countryside along Bretby Lane means that the additional harm would not be on a grand scale, there would nevertheless be harm caused by a further intrusion into the countryside. The proposal consequently conflicts with Policies H20, H21, BNE1 and BNE4 of the LP Pt1, and Policy BNE5 of the LP Pt2, which together seek to protect the character of the countryside, and ensure that development is well-designed and respects and responds to the local landscape and built character.
41. The Council's decision notice also stated that the proposal conflicted with paragraph 72 of the Framework in this respect. As the officer report suggests that this relates to the proposed scale of the development, and as I have described in paragraph 35 above I consider that the proposal is acceptable in this regard, I find no further conflict with this provision of the Framework. However, this does not outweigh the other harm I have found.

Other matters

42. A certified copy of a completed unilateral undertaking ("the UU") in respect of affordable housing, signed and dated 15 December 2020, was submitted by the appellants on 22 December 2020. This includes a requirement for an 'Affordable Housing Scheme' to be submitted to the Council for approval to define the affordable housing mix to be delivered on site.
43. While the UU may secure the provision of an affordable housing scheme, I note the Council's concerns about the form of the undertaking, and in particular whether or not it would secure the required discount, whether it would secure the housing as affordable in perpetuity, how eligibility criteria for the housing would be established, and whether there would be a provision for covering the Council's ongoing monitoring costs. However, as I am dismissing the appeal for the substantive reasons described above, it has not been necessary for me to pursue the Council's concerns in this respect further.
44. The appellants indicated they considered that the recent WMS in respect of First Homes had "significant positive implications" in respect of this appeal. They suggested that, if the appeal were to be allowed, the proposal could be amended from Starter Homes to First Homes by imposition of an appropriate condition. The transitional arrangements announced within the WMS indicate

¹⁵ PINS Ref APP/F1040/A/14/2214428

¹⁶ PINS Ref APP/F1040/W/17/3167838

that sites (including entry-level exception sites) with full or outline planning permissions already in place or determined before 28 December 2021 do not need to comply with the First Homes requirements. While the WMS also indicates that local authorities (and presumably therefore, by implication, other decision makers) should allow developers to introduce First Homes to the tenure mix if they wish to do so, this is not a condition which, had the proposal been acceptable in all other respects, would have been necessary.

Conclusion

45. The proposal would result in some benefits, including the provision of six affordable housing units, and potential (though limited) benefits to the local economy which would arise from the construction and occupation of the proposed units. However, these benefits would not overcome the harm in respect of the relatively poor access to services and facilities and the expansion of built development into the countryside, including effects on the character and appearance of the area. Furthermore, the proposal would undermine the plan-led approach to development, which includes provision for affordable housing exception sites, and there would be conflict with the development plan taken as a whole.
46. There are no material considerations, including those of the Framework, which indicate that the decision should be made other than in accordance with the development plan.
47. For the reasons given above, the appeal is therefore dismissed.

M Cryan

Inspector

Appeal Decision

Site Visit made on 23 August 2021

by Jameson Bridgwater PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2021.

Appeal Ref: APP/F1040/D/21/3275969

7 Cavendish Close, Newhall, Swadlincote DE11 0NE

- 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 Hallberg against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2020/0910, dated 21 August 2020, was refused by notice dated 8 March 2021.
 - The development proposed is described as 'First Floor Side + Two Storey Rear Extension'.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in the appeal is the effect of the proposal on the living conditions of the occupiers of No 5 Cavendish Close (No 5), with particular regard to outlook.

Reasons

3. The appeal relates to one of 6 two-storey detached dwellings forming a small cul-de-sac fronting onto an area of open space. The property has an adjoining garage and existing single storey projection to the rear of the garage and to the northern side elevation of the dwelling. The properties follow the geometry of the road with a staggered layout.

Living conditions

4. I have some sympathy for the appellant, in that their proposed extension could potentially be acceptable in a street with a uniform linear alignment. Therefore, I have carefully considered their representations and in particular Appendix 7 of their statement that sets out the inter-relationships between the properties in Cavendish Close.
5. Based on the evidence before me and my on-site observations I consider that the proposal would significantly increase the projection at first floor level beyond the rear elevation of the neighbouring property No 5. The effect of this is magnified by the existing staggered layout of the properties in Cavendish Close. The increase in height by way of the first floor side extension and two-storey rear extension combined with the

close proximity to the shared boundary would mean that the rear garden of No 5 would be visually dominated and enclosed by the proposal. Accordingly, the projection, length and height of the gable wall of the proposed development would appear unduly overbearing and oppressive. Therefore, the proposal would materially harm the living conditions of the occupiers of No 5 by way of loss of outlook.

6. Having reached the conclusions above the proposal would conflict with Policy SD1 of the South Derbyshire Local Plan Part 1 and Policy H27 of the South Derbyshire Local Plan Part 2 which seek amongst other things to ensure that that extensions to dwellings will not be unduly detrimental to the living conditions of adjoining properties. In reaching my conclusions I have also taken into account the South Derbyshire Design Guide - Design Supplementary Planning Document (November 2017).

Other matters

7. The appellant has drawn attention to the existing first floor side extension at No 9 Cavendish Close, however, I have limited information about its history, but due to its more modest scale at first floor its context differs to that of the scheme before me, and so it does not lead me to a different view in this case.
8. With regard to overlooking and privacy, I accept that the proposed positioning of windows would not materially increase a sense of overlooking for the occupiers of neighbouring dwellings when compared to the existing situation.

Conclusion

9. For the above reasons, and having carefully considered all other matters raised, I conclude that the appeal should be dismissed.

Jameson Bridgwater

INSPECTOR

Appeal Decision

Site Visit made on 11 August 2021

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

an Inspector appointed by the Secretary of State

Decision date: 13 September 2021

Appeal Ref: APP/F1040/W/21/3274307

Garage adj. 37 Frederick Street, Woodville, Swadlincote, DE11 8DB

- 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 Mrs Mandy Elton of Elton Properties against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2020/1136, dated 20 November 2020, was refused by notice dated 15 April 2021.
 - The development proposed is demolish the existing brick built garage, and replace with a 1 bed 2 person dwelling with terrace garden.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on the character and appearance of the area and on the living conditions of the occupiers of the neighbouring property at Abbie House in respect of their outlook.

Reasons

Character and appearance

3. The existing single garage on site is a flat roofed structure positioned between a garage to the north and the car park serving Abbie House to the south. Frederick Street is populated by houses of varying designs and forms including some narrow terraced and semi-detached properties of considerable age, some more modern housing further north along the road, and some detached houses on the opposite side of the road from the appeal site. As a result there is no unifying characteristic. Nonetheless, the differing designs are all commonly found in the wider area. Also red brick is a regular finishing material.
4. Although attached to the adjacent garage, the dwelling would appear as a detached house. From the front, the proposal would have a very unusual design incorporating a tall narrow front window stretching from ground floor to first floor, and split level eaves to accommodate a small flat roof section. Both these design features are not found anywhere else in the area. Moreover, the dwelling would have an abnormally narrow width which would be markedly less than even the narrowest existing properties on Frederick Street. Indeed the nearest other detached properties are generally the wider properties on the road. Consequently, the development would appear excessively cramped, with the tall narrow front window emphasising the tall narrow shape of the house.

In addition, the use of composite pre-fabricated panels would contrast with the predominantly brick finished houses nearby.

5. Although I accept the dwelling is deliberately designed to contrast with the street as a traditionally designed house could not fit onto the site, the contrast with its context is so great that instead of appearing as a pleasing departure from surrounding built form, it would appear as an incongruous and contrived development.
6. For all these reasons, the proposal would appear starkly incongruous in its setting and would be unacceptably harmful to the character and appearance of the area. It would therefore fail to accord with policy BNE1 of the 2016 South Derbyshire Local Plan (SDLP) which expects development to be well designed and relate to its context.

Living conditions

7. Abbie House, to the south of the site, is a large building converted into flats. There are windows at ground, first and roof level facing the site. From these windows, particularly those at ground floor, the two-storey side wall of the development, plus its gable end roof, would appear oppressively tall. This height, along with its depth, would result in a large mass of development which would appear overbearing and harm the outlook from Abbie House. It would be considerably closer to Abbie House than the existing flank wall of No. 37 and not provide any material improvement in the attractiveness of the view.
8. It therefore would cause harm to the living conditions of the occupiers of Abbie House, especially those at ground floor. Consequently it would conflict with SDLP policies BNE1 and SD1 which both aim to ensure that development does not have an adverse impact on the amenity of existing occupiers around proposed developments.

Other Matters

9. Although the appellant suggests the dwelling would be affordable, there is no mechanism before me to ensure that the house would meet the definition of affordable housing as set out in Annex 2 of the Framework. I cannot therefore give this matter any weight.

Conclusion

10. The development does not accord with the development plan taken as a whole and there are no other material considerations to suggest the decision should be made other than in accordance with the development plan. Therefore, for the reasons given above and having had regard to all other matters raised, the appeal is dismissed.

Andrew Owen

INSPECTOR

