

# **REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES**

## **SECTION 1: Planning Applications**

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).

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## **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.**

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
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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 Director of Community and Planning Services' report or offered in explanation at the Committee meeting require further clarification by a demonstration of condition of site.
2. Further issues of principle, other than those specified in the report of the Director of Community and Planning Services, arise from a Member's personal knowledge of circumstances on the ground that lead to the need for clarification that may be achieved by a site visit.
3. Implications that may be demonstrated on site arise for consistency of decision making in other similar cases.

11/04/2017

Item 1.1

Ref. No. 9/2016/0931/OX

**Applicant:**  
**Mr G R Barnett**  
**17 Ladyfields**  
**Midway**  
**Swadlincote**  
**DE11 PZ**

**Agent:**  
**Mr David Raybould**  
**David Raybould & Associates Ltd**  
**23A West Street**  
**Swadlincote**  
**DE11 9DG**

**Proposal: OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR THE ERECTION OF 5 DWELLINGS (THREE TOWN HOUSES AND TWO APARTMENTS) WITH ASSOCIATED PARKING ON LAND TO THE REAR OF 61 HIGH STREET NEWHALL SWADLINCOTE**

**Ward: NEWHALL & STANTON**

**Valid Date 06/09/2016**

#### **Reason for committee determination**

Councillor Richards has requested this item be determined by the committee because local concern has been expressed about a particular issue.

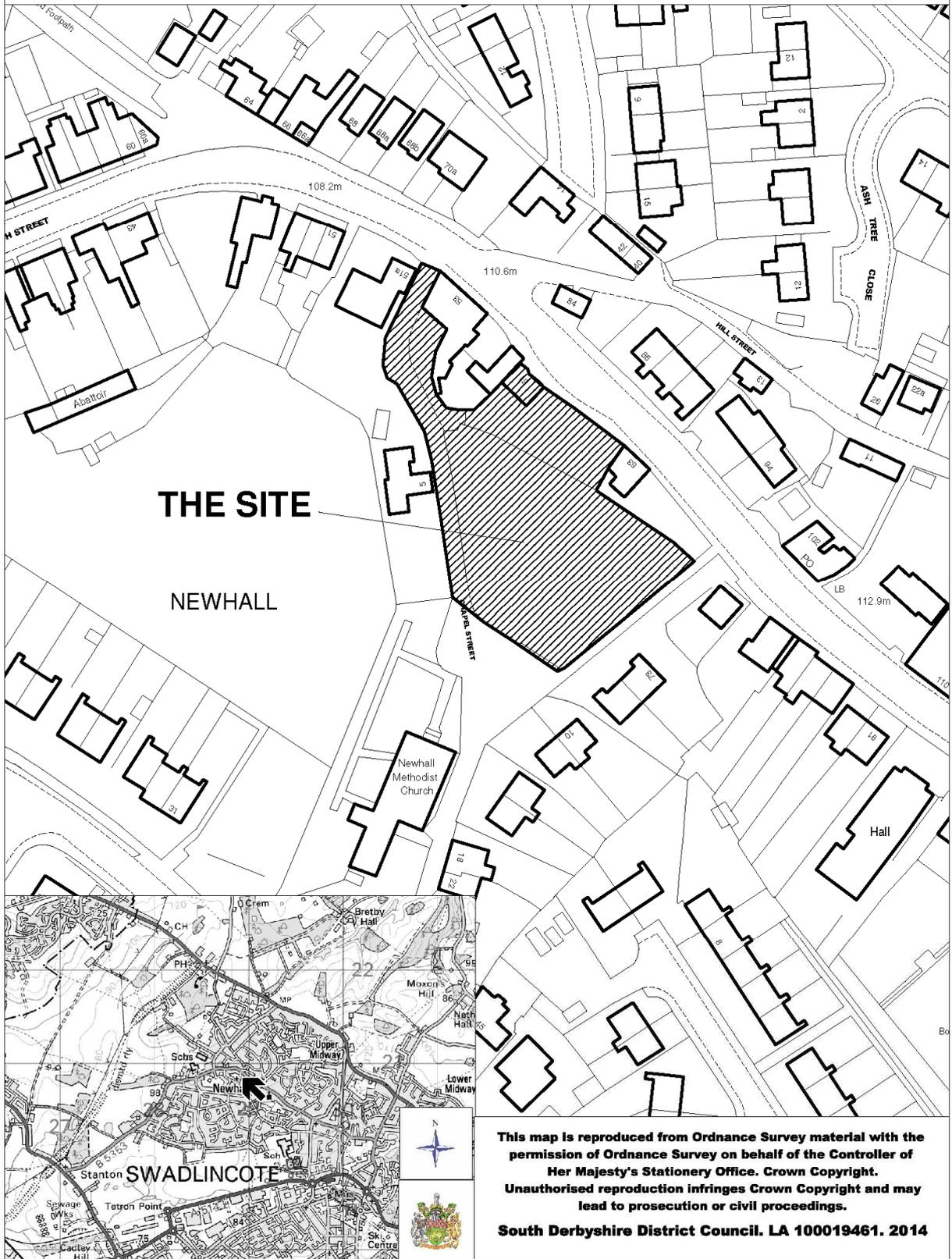
#### **Site Description**

This brownfield site to the rear of 61 High Street is accessed via Chapel St, an unmade road accessed between 51a and 53 High Street. The site extends to the east to the rear of 61 and 63 High Street and south towards, but stops short of, Newhall Methodist Chapel, a Grade II listed building. The site is relatively steep sloping south away from High Street and towards Orchard Street with the Church set down below High Street and also being served by Orchard Street where a parking area exists. The site had previously been the location of a row of terraced houses set back from High Street as indicated on the Historic mapping of 1923 included in the Design and Access Statement. To the east of the site lies a public right of way running between High Street and Chapel Street. The site slopes away from High Street and towards the Methodist Church to the south.

#### **Proposal**

This application seeks outline consent for the erection of five dwellings on the site. All matters except for access are reserved. The main effect of the scheme in

9/2016/0931 - Land to the rear of 61 High Street, Newhall, Swadlincote  
DE11 0HT



highway safety terms is the proposed closing of Chapel Street at its junction with High Street and a new junction where it fronts High Street further to the south east with much improved visibility with a new access road over the application site. The application also includes an indicative plan and elevations showing a scheme which includes three townhouses and two apartments with associated car parking.

### **Applicant's supporting information**

The application is supported by a Design and Access Statement which sets out the context of the proposal including historic background in relation to the site, concluding that development would comply with relevant policies in the adopted plan and the NPPF.

A Coal Mining Risk Assessment concludes that there are negligible risks associated with the site subject to complying with the reports recommends.

An Ecology Report has also been prepared by Solum Environmental concludes that development of this site may have the potential to affect habitats. However, it sets out recommendations to avoid, mitigate and compensate for the predicted loss of habitats.

### **Planning History**

9/2000/0035 - The residential development (all matters other than access reserved) of approximately 0.18 hectares of land at the rear of – granted 16 November 2000.

9/2003/1091 - The renewal of planning permission 9/2000/0035/O for the residential development (all matters other than access reserved) of approximately 0.18 hectares of land - granted 24 October 2003.

9/2006/0826 - The renewal of planning permission 9/2003/1091/R for the residential development (all matters other than access reserved) of 0.18 hectares of land – granted 04 October 2006.

9/2009/0817 - Application for approval of details reserved by condition (9/2006/0826/B) for the residential development of 0.18 hectares of land – withdrawn 26 November 2009.

9/2010/0614 - Outline application (all matters except for access to be reserved) for the erection of five dwellings with associated parking – granted 13<sup>th</sup> September 2010.

9/2010/778 - The felling, pruning and removal of deadwood of trees covered by South Derbyshire District Council Tree Preservation Order Number 319 – granted 13<sup>th</sup> September 2010.

9/2013/0639 – Application to replace extant permission 9/2010/0614 - Outline application (all matters except for access to be reserved) for the erection of five dwellings with associated parking – granted 4<sup>th</sup> October 2013.

## **Responses to Consultations**

The Highway Authority has no objections subject to the inclusion of conditions relating to visibility, relocation of bus stop and parking.

Derbyshire County Council Flood Risk Team – No objections in principle but suggest a condition relating to the preparation of a management and maintenance plan of surface water drainage of the site.

Environmental Health has no objection in principle but suggest conditions relating to the use of generators on site, bonfires and hours of working.

The Contaminated Land Officer has no objection subject to condition.

The Coal Authority has no objection subject to condition.

Severn Trent Water has no objection subject to the inclusion of a condition requiring drainage details to be provided prior to commencement.

Derbyshire Wildlife Trust has no objection subject to conditions relating to clearance of site, safeguarding of protected species and lighting strategy.

## **Responses to Publicity**

Councillor Richards (ward member) states that the application has been previously refused on issues relating to the entrance and exit onto the Newhall Main/High Street and cannot see if there is a revised plan for access to the highway.

Three objections have been received, raising the following concerns:

- a) The main access to Chapel St should not be touched
- b) Other residents' needs must be considered.
- c) Parking for no 53 at the rear would be an access issue.
- d) Residents who have caravans or horse boxes.
- e) Surface water run-off will have an adverse impact on the integrity of 5 Chapel St due to no effective drainage.
- f) Access for residents in Chapel Street will be restricted if the bollards shown in the indicative plan were in place.
- g) New development would be an invasion of privacy to 5 Chapel St.
- h) Parking provision for new houses will impact on existing residents.
- i) The Chapel requires access up Chapel St for funerals and weddings and vehicles could struggle to get down Chapel St with revised layout and possible damage to the boundary fence of no 5 Chapel St.
- j) Chapel St needs to be widened to 5.5m and each property should have a gate incorporated.
- k) Maintaining an effective road will enable council refuse lorries to use the bottom of end of Chapel St.
- l) Proposed bollards appear to be in an odd location.
- m) Damage to existing properties during construction. The council should arbitrate in such circumstances.

- n) Whose responsibility will the maintenance of the new and existing road be?
- o) Temporary access roads will be required during construction.
- p) The design and Access Statement makes no mention of the inclusion of the area behind 53 High St.
- q) Boundary treatments have not been proposed for the landscaped area to the Chapel car park and public footpath, currently flexible and should not continue as such.

Further representations have been received on behalf of Newhall Methodist Church which can be summarised as follows:

- a) The Chapel should have been notified of the application.
- b) Potential impact of development on the setting of the listed building (Methodist Chapel) built to be a prominent building in the area.
- c) The proposed access is over engineered and formalises an informal open space.
- d) Without knowing where the development will be it is impossible to know whether the development will have a harmful impact.
- e) If there is harm to the setting of this listed building then this should be outweighed by public benefits, of which there is no mention.
- f) The proposed location of the dwellings appears awkward and is not of a sufficient quality to be sitting so close to a building of national significance.
- g) Alien layout and poor and confused design detailing insufficient in quality for this location.
- h) Insufficient information submitted to be able to determine whether substantial harm caused to the setting of the listed building.
- i) Inadequate parking and access.
- j) The development will lead to access to the chapel being restricted to all patrons.
- k) Concern over the lack of access to patrons, including the disabled, during the construction of the dwellings.
- l) As a grade II listed building the Chapel should be afforded the protection offered under adopted policy BNE2. The application does not specify how the developer is going to achieve such protection.
- m) Para 128 of the NPPF requires the applicant to describe the significance of any heritage assets which is not done in this instance.
- n) The Council has failed to consult the owners of the chapel and have therefore failed to correctly notify adjoining land owners.
- o) Whilst the application is said to be in outline with all matters reserved except for access, insufficient detail is provided in respect of the access from High Street.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1, S2, H1, SD3, SD4, BNE1, BNE2, BNE3, BNE4, INF2, INF8
- 1998 Local Plan (saved policies): EV9, EV13

## **Emerging Development Plan Policies**

The relevant policies are:

- Submission Local Plan Part 2: SDT1, BNE7 and BNE10

## **National Guidance**

- National Planning Policy Framework (NPPF) 6-10, 14, 17, 32, 49, 56, 64, 109, 118, 131, 132, 186, 187, 203 and 206
- Planning Practice Guidance (PPG) ID21 - Design

## **Local Guidance**

- Housing Design and Layout Supplementary Planning Guidance (SPG)

## **Planning Considerations**

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

- Principle of development
- Heritage
- Residential amenity
- Ecology
- Other matters

## **Planning Assessment**

### Principle of Development

The fact that a very similar scheme for the site was recently approved and has only recently lapsed is a material consideration in this case which carries substantial weight. The test therefore is to examine whether there has been any material change in circumstances (e.g. policy considerations) that would suggest an alternative outcome this time.

Whilst the Council has formally adopted a new Local Plan since the determination of the last application, the policy context has changed little in terms of the principle of development in this location. The site is within the confines of the urban area of Swadlincote and Newhall where new development is considered acceptable in principle. The settlement has a wide range of services and facilities, and regular bus services making this a sustainable site in general terms consistent with Local Plan policy H1 and emerging policy STD1. The proposal is also consistent with National Planning Policy Framework paragraph 14 being a sustainable location and proposals that accord with the development plan should be approved without delay.

### Heritage

The application site lies to the north of the Grade II Listed Newhall Methodist Church the main aspect of which faces northwest. The Conservation Officer raised no

objections in his comments to the 2010 application and notes that the access arrangements avoid conflict with the setting of the listed building. Whilst this application is submitted in outline and the plans submitted are therefore only indicative, the proposed dwellings front directly onto the listed building and the widened Chapel Street and this approach ensures a high quality scheme will be developed. It should also be noted that the historical context of the Design and Access statement indicates that the Church has not always been set in such spacious surroundings the proposal is therefore considered to reflect the character of the area and protect, conserve and enhance the heritage asset of the Methodist Church.

An objection made on behalf of the Church by a conservation specialist states that there would be less than substantial harm to the listed building. Notwithstanding the fact that the Conservation Officer previously considered the proposal acceptable and that no harm would be caused by the proposal, if this is the case the NPPF states at paragraph 134 that the harm should be weighed against the public benefits of the proposal. Apart from the benefits that would ensue from an extra five dwellings towards the District housing supply and the ensuing increase in Council tax revenue, the new access that would be created for the development would be a significant benefit in addition to the widening of Church Street which would benefit the church itself in terms of access for funeral cars and their congregation. Chapel Street at its junction with High Street would be closed off with bollards leading to significant highway improvements through the use of the new access leading to Chapel Street adjacent to the site. In addition, the new access would lead to significant improvements in terms of improved surface water drainage from the newly constructed access. These public benefits are considered to outweigh any harm that may be caused by the proposal.

### Residential Amenity

As the application is in outline with all matters reserved except for access, there is little detail in terms of potential impact on the residential amenity on existing neighbours. However, it is clear that the site is of sufficient size to be able to accommodate five dwellings without compromising existing neighbour's residential amenity.

### Ecology

The proposal seeks to utilise an area of scrubland comprising vacant buildings, hardstanding, trees, hedgerow and scrub of which all except for the trees are to be removed to facilitate the development. The site has been virtually abandoned for many years creating an urban haven for wildlife. Derbyshire Wildlife Trust requested an ecology survey which was duly submitted, the results of which led to recommendations for compensation and enhancement measures as part of the development. This approach is in accordance with Policy BNE3 and para 109 of the NPPF. Conditions have been added to the recommendation to ensure compliance.

### Other Matters

Previous applications have included a condition seeking a contribution through a Unilateral Undertaking towards public open space. However, since the clarification in a ministerial statement in 2015 and confirmation in the PPG that financial contributions should not be sought on proposals of less than 10 dwellings or proposals of a combined floorspace of 1000 sq m this condition has been removed.

The issue of flooding has been raised as an objection to the proposal. The Lead Local Flood Authority was consulted and raised no objections, subject to the inclusion of a condition relating to the submission of details for surface water drainage. The proposal is likely to improve the situation for neighbours on Chapel Street with the introduction of enhanced surface water drainage as part of the development as a whole.

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

### **Recommendation**

**GRANT** permission subject to the following conditions:

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

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

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

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

3. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.  
  
B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the

requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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.

4. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.

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.

5. Prior to the occupation of the first new dwelling, space shall be provided within the site curtilage for the parking and turning of 2 vehicles for each of the existing and proposed houses and on the basis of 1.5 spaces per apartment. The spaces shall be laid out in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interest of highway safety.

6. Notwithstanding the submitted details, prior to the commencement of building operations on adjoining areas, the boundary with the area of protected trees (Tree Preservation Order 319) shall be fenced with steel mesh fencing to 2.3m high supported by steel scaffold poles staked at 3 metre centres. The fencing shall be retained in position until all building works on adjoining areas have been completed unless otherwise agreed in writing with the Local Planning Authority.

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

7. Prior to any works commencing, an Order for the stopping - up of the first 30m of Chapel street from High Street in a manner to be agreed in writing by the Local Planning Authority, to be carried out under Section 247 of the Town and Country Planning Act 1990, shall have been confirmed by the Department of Transport.

Reason: In the interest of highway safety.

8. Prior to any other works commencing and notwithstanding the submitted drawing, the existing bus stop shall be relocated in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority in consultation with Derbyshire County Council's Public Transport Unit.

Reason: In the interest of highway safety.

9. Before any other operations are commenced, space shall be provided within the site curtilage for storage of plant and materials/site accommodation/loading and unloading of goods vehicles/parking and manoeuvring of site operatives' and visitors' vehicles, laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority and maintained throughout the contract period in accordance with the approved designs free from any impediment to its designated use.

Reason: In the interest of highway safety.

10. Prior to any other works commencing, the new street junction shall be formed with High Street. Notwithstanding the submitted drawings, the access shall have a width of 5.5m, 2 x 1.8m footways, 8m radii on each side, constructed to base level and provided with visibility sightlines extending from a distance of 2.4m back from the carriageway edge to the extremities of the site frontage abutting the highway in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority. The area in advance of the sightlines shall be levelled, constructed as footway and not form part of any plot or other subdivision of the site.

Reason: In the interest of highway safety.

11. Prior to any works commencing on the new dwellings, the new street shall be laid out, constructed to base level, drained and lit in accordance with Derbyshire County Council's specifications for adoptable roads.

Reason: In the interest of highway safety.

12. The gradient of the access shall not exceed 1 in 14 for the first 5m into the site from the existing highway boundary.

Reason: In the interest of highway safety.

13. Prior to any other works commencing, details of a means of highway surface water drainage disposal via a positive, gravity-fed means to an approved outfall (highway drain, public sewer or watercourse sanctioned by the Highway Authority, Water Authority or Environment Agency respectively) shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interest of highway safety.

14. Within 28 days of the new road being taken into use, the existing means of access along Chapel Street onto High Street shall be permanently stopped-up in accordance with the confirmed Stopping up Order.

Reason: In the interest of highway safety.

15. Prior to any works commencing on the new dwellings, the section of Chapel Street adjacent to the development site shall be widened to provide a 4.25m

carriageway and a 1.8m footway on the north-eastern side, laid out and constructed, lit and drained in accordance with Derbyshire County Council's specifications for adoptable highways, in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interest of highway safety.

16. Prior to any works commencing on the new dwellings, the access shall be formed from the new road into the residential site. The access shall be laid out in accordance with the application drawing, constructed as a splayed vehicular crossover with the entire site frontage onto the new road cleared and maintained thereafter clear of any obstruction exceeding 1m in height (600mm in the case of vegetation) relative to the nearside carriageway edge for a distance 2m back from the new highway boundary in order to maximise visibility for emerging drivers.

Reason: In the interest of highway safety.

17. 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.

18. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

19. Prior to the development hereby approved commencing, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).

Reason: To protect the amenities of adjoining properties and the locality generally.

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

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

21. Prior to the commencement of development site intrusive investigations must be undertaken in accordance with the recommendations contained within the Coal Mining Risk Assessment produced by GRM Development Solutions dated 8th August 2013 which accompanied the application, the results of which shall be submitted to and agreed in writing by the Local Planning Authority. Should the site intrusive investigations confirm the need for remedial works to treat any areas of shallow mine workings and/or any other mitigation measures (e.g. gas protection) to ensure the safety and stability of the proposed development, details of these works shall be submitted to and agreed in writing by the Local Planning Authority. The development shall only be implemented in accordance with the agreed remedial works as well as the other recommendations contained within the Coal Mining Risk Assessment produced by GRM Development Solutions dated 8th August 2013 which accompanied the application unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the development is adequately protected from the dangers of unstable land resulting from former coal mining activity.

22. No vegetation clearance or works to the site shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of the site for active birds' nests immediately before work is commenced and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the local planning authority for their approval.

Reason: To protect local ecology and biodiversity.

23. In order to safeguard any hedgehogs, a Species of Principal importance under the provisions of the NERC Act 2006 that may be present on site, the site should be cleared under the supervision of an experienced ecologist in a systematic fashion and any hedgehog discovered should be moved to an area of safety within retained habitat on site.

Reason: To protect ecology and biodiversity.

24. No development shall take place until a lighting strategy has been submitted to and approved in writing by the LPA. The approved scheme must be implemented in full and retained for the life of the development.

Reason: In the interest of highway safety and in accordance with the requirements of Derbyshire Wildlife Trust.

25. Prior to the development hereby commencing, an ecological enhancement plan (detailing measures for replacement hedgerow, bats, birds and native planting) should be submitted to and approved in writing by the LPA. Such approved measures must be implemented in full.

Reason: To protect ecology and biodiversity.

26. During the period of construction of any phase of the development, no work including deliveries shall take place outside the following times: 0800 - 1800 hours Monday to Friday and 0800 - 1300 hours on Saturdays and any time on Sundays, Bank and Public holidays (other than emergency works).

Reason: To protect the amenity of existing neighbours.

27. During the construction phase of the development no portable generators should be used on site without prior written consent from the LPA.

Reason: To protect the amenity of existing neighbours.

Informatives:

1. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to resolve planning objections and issues suggesting amendments to improve the quality of the proposal. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

2. The footpath must remain open, unobstructed and on its legal alignment at all times.

3. There should be no disturbance to the path surface without prior authorisation from the Rights of Way Inspector for the area.

4. Consideration should be given to the safety of members of the public using the path during the works. A temporary closure of the route may be granted but prior approval must be sought from the Rights of Way Section.

5. There should be no encroachment of the path and no fencing should be installed without consulting the Rights of Way Section.

6. The phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance referenced in footnotes 1-4, to the relevant conditions attached to this permission.

For further assistance in complying with planning conditions and other legal requirements applicants should consult ""Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated"".

This document has been produced by local authorities in Derbyshire to assist developers, and is available from [http://www.south-derbys.gov.uk/business/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp)

Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: [pollution.control@south-derbys.gov.uk](mailto:pollution.control@south-derbys.gov.uk).

7. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 12 weeks prior notification should be given to the Environmental Services Department of Derbyshire County Council before any works commence on the vehicular access within

highway limits; please contact 01629 538537 for further information.

8. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

9. Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Strategic Director of the Economy, Transport and Environment Department at County Hall, Matlock (Tel: 01629 533190). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 38 Agreement.

10. Highway surface water shall be disposed of via a positive, gravity-fed system (i.e. not pumped) discharging to an approved point of outfall (eg existing public sewer, highway drain or watercourse) to be sanctioned by the Water Authority (or their agent), Highway Authority or Environment Agency respectively. The use of soakaways for highway purposes is generally not sanctioned.

11. The proposed development works, the subject of condition 14, entail the use of land, which currently forms part of the public highway. No works may commence until the land in question has been stopped-up. Pursuant to Section 247 of the Town and Country Planning Act 1990, a stopping-up application should be made to the Department of Transport at the earliest opportunity. As part of the consultation process associated with such applications, the Highway Authority and other interested parties will be given the opportunity to object to the proposed stopping-up. It should be noted that the Highway Authority's acceptance of the proposals for planning purposes does not preclude an objection being raised by the Authority at this stage.

12. The applicant is required to contact Derbyshire County Council's Public Transport Unit (01629 580000) with regards to the relocation of the High Street bus stop, which fronts the site.

13. Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from The Coal Authority's website at:

<http://coal.decc.gov.uk/en/coal/cms/services/permits/permits.aspx>

14. Where development is proposed over areas of coal and past coal workings at shallow depth, The Coal Authority is of the opinion that applicants should consider wherever possible removing the remnant shallow coal. This will enable the land to be stabilised and treated by a more sustainable method; rather than by attempting to grout fill any voids and consequently unnecessarily sterilising the nation's asset.

Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from the Coal Authority's website at: [www.coal.gov.uk/services/permissions/index.cfm](http://www.coal.gov.uk/services/permissions/index.cfm).

15. The applicant is advised to seriously consider the installation of a sprinkler system to reduce the risk of danger from fire to future occupants and property.

11/04/2017

**Item** 1.2

**Ref. No.** 9/2016/1070/SSA

**Applicant:**  
**Mr Neil Terrett**  
**C/O Agent**

**Agent:**  
**Mr Steve Lewis-Roberts**  
**Pegasus Group**  
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**Proposal:** CHANGE OF USE OF VACANT LAND TO A COUNTRY PARK AND THE CREATION OF FOOTPATHS, CYCLEWAYS AND OTHER ASSOCIATED WORKS AT LAND TO THE NORTH OF WILLIAM NADIN WAY SWADLINCOTE

**Ward:** SWADLINCOTE

**Valid Date** 14/10/2016

**Reason for committee determination**

The item is presented to Committee at the discretion of the Planning Services Manager as it is a major application of local interest.

**Site Description**

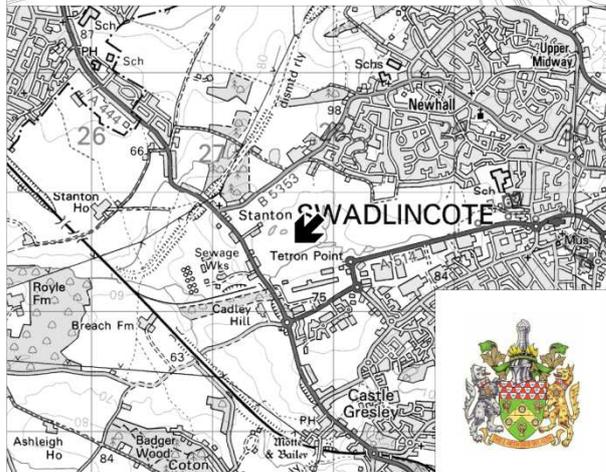
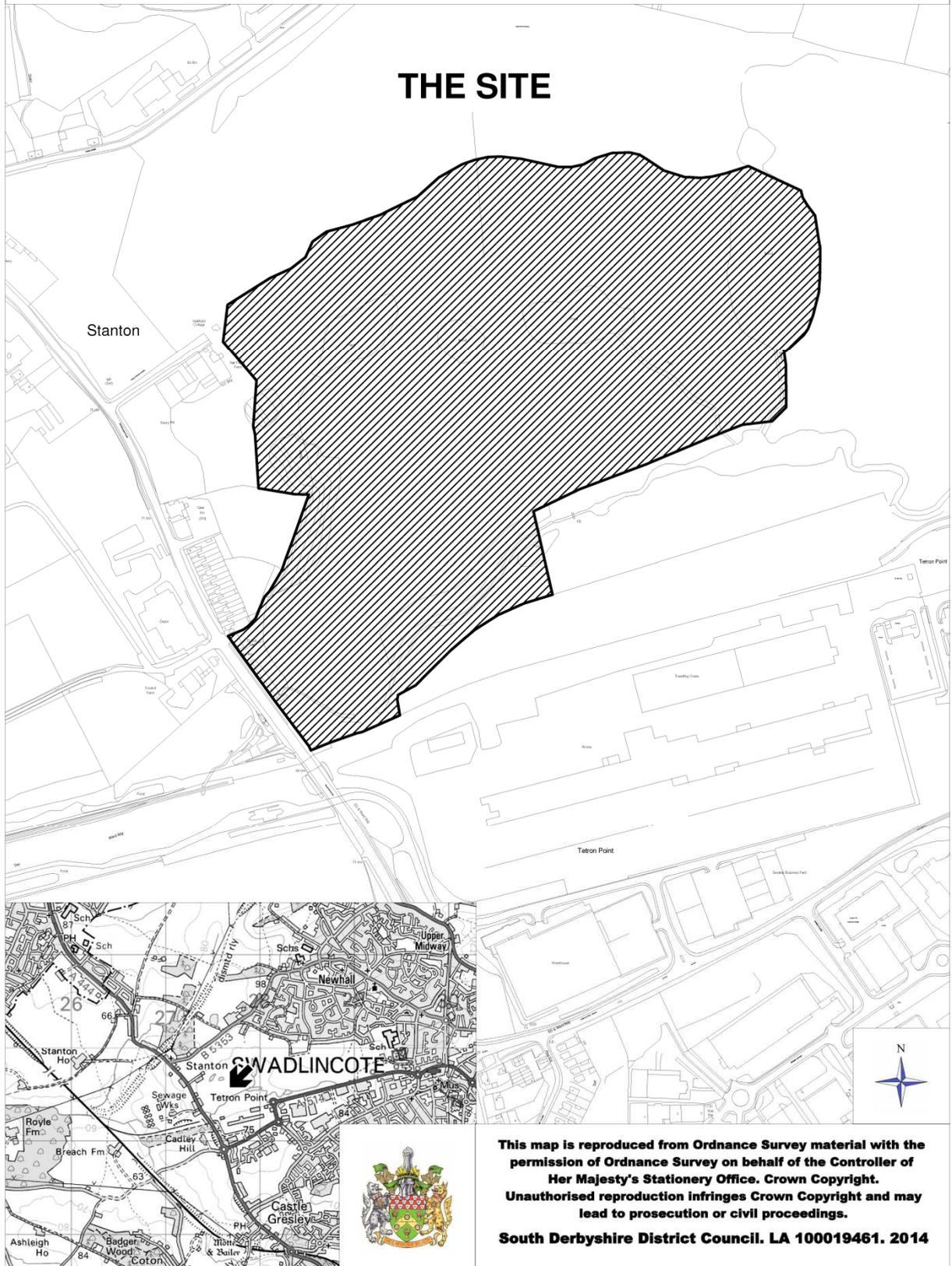
This 24 Ha site is located on the former Nadins opencast coal site to the north west of William Nadin Way and to the north of the Bison Concrete complex. The land is undulating and there are four ponds / water bodies on site that link to the tributaries of Darklands Brook that runs to the south. There are small areas of juvenile woodland on the edge of the largest pond and in the northern part of the site. The existing driving range lies to the east. Public Footpath 44 follows a north south route through the middle of the central pond and footpath 46 runs along the northern part of the site.

**Proposal**

A change of use is sought from vacant land to country park. The land was included in the previous permissions for an 18 hole golf. Changes to the golf course will be dealt with by a further application to be submitted shortly. A country park is proposed retaining the existing water bodies with significant ecological enhancements such as creation of habitat for birds, amphibians and reptiles. Public access along footpaths

**9/2016/1070 - Land to the North of William Nadin Way, Swadlincote  
(DE11 0BB)**

**THE SITE**



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and cycleways which link to the wider area are proposed with benches, bins and a viewing platform provided.

The linked application for the gateway commercial area would complement the use of the country park by the provision of cafes / restaurants to serve the park users. A combination of the golf uses, country park and commercial area would serve to provide a leisure / tourist destination within the National Forest.

### **Applicant's supporting information**

The Supporting Statement confirms the commitment of the applicant's in provision of a landscape led destination within the heart of the National Forest. The proposals were developed following pre-application discussions with officers and the Wildlife Trust. The new country park would be on land previously included within the golf course applications, however, an 18 hole golf course is no longer viable. Instead, two 9 hole golf courses are proposed. It is considered that the remaining land would be more appropriately used as a country park, offering significant leisure, recreational and ecological benefits of the residents and visitors of Swadlincote.

The Coal Mining Risk Assessment states the site was worked for coal by opencast methods on two occasions. Opencast operations from the Nadins site was completed in 1998, and workings were backfilled to present site levels. The risk from underground workings impacting the proposed development is deemed negligible. No mineshafts are recorded on or within 20m of the site. The risk of ground gas impacting the site from opencast backfill is considered low to moderate. Site investigation works are recommended to investigate the depth to the base of opencast workings, and the state and composition of the backfilled material.

The Flood Risk Assessment and Drainage Strategy states the site is within Flood Zones 1, 2 and 3. Darklands Brook runs along the southern boundary of the site and existing bodies of attenuated water drain into the Brook. The surface water discharge would discharge into the Brook via onsite drainage works and limited to greenfield runoff rates. The proposed surface water drainage system should be designed to accommodate the 1:30 year rainfall event without any surface water flooding and should be capable of retaining the 1:100 year plus 40% climate change storm event on site without flooding any buildings. Foul flows would need to cross the Darklands Brook to reach the existing sewer and Severn Trent has confirmed a connection.

The Ecological Appraisal states the site comprises a renovated former colliery site, which has been colonised by a mix of grassland (improved, semi-improved, marshy), plantation, scrub, tall herb/ruderal, trees, waterbodies, hardstanding and small areas of other habitat. The Country Park Area is dominated by a mosaic of species-poor semi-improved grassland interspersed with areas of bare ground. A series of large semi-natural waterbodies are present throughout the area with a small area of mixed plantation woodland adjacent the watercourse to the south and, to the west, a patch of dense scrub and tall ruderal adjacent the western boundary. The habitats on site are of some value for commuting and foraging bats due to the presence of features, such as plantation woodland, ponds and edge habitats, which are likely to attract invertebrate prey items, however, the proposals will not remove these habitats but will rather enhance them which will negate any potential impacts. During the

surveys, a medium population of great crested newt was recorded within P2-5 and a small population of grass snake was recorded to the south in association with the watercourse. Mitigation recommended would be any planting scheme to the use of locally native woody species, with an emphasis on species bearing nectar, berries, fruit and nuts, as these enhance the foraging opportunities for local wild fauna including birds and invertebrates. In addition, where possible it is recommended that faunal habitat measures be incorporated into the redevelopment. These could include features such as hedgehog houses and insect tubes/boxes.

The Bird Breeding Survey recorded a total of 64 bird species, of which 26 were considered 'notable' species. Of the species recorded, 8 were confirmed as breeding on site. The site was considered to be of County nature conservation value for its Cetti's warbler (*Cettia cetti*) population. The impacts of the proposed development were considered against the unique ecological requirements of each species considered to be the most vulnerable. Negligible or positive impacts were expected for all species. Mitigation measures should include minimising disturbance impacts associated with minor construction practices and increased public use of the site during the life of the scheme. A range of enhancement opportunities have been suggested based on the habitats and bird species recorded in order to achieve biodiversity gains. These include grassland management and planting, scrub and woodland planting designs and the creation of further wetland habitats.

Herpetofauna Report and Method Statement states that a medium population size-class of GCN (peak count 22 adults) was recorded in the centre/north of the Country Park Area suitable terrestrial habitat for amphibian use was recorded in the form of a mosaic of tussocky grassland, tall herb/ruderal, scrub and plantation woodland. Overall, given the localised nature and low intensity of much of the work and the survey results above, the impacts to amphibians from works to site are considered to be negligible. Survey data confirmed a low population of grass snake (peak count 2) within the wider Survey Area with the majority of records outside the Country Park Area. Mitigation recommended was minimising risk to amphibians (including great crested newts) and reptiles from the habitat clearance, preventing herpetofauna entering affected areas during ongoing works, and providing suitable replacement for herpetofauna habitat as part of the operations.

The Water Vole Survey found no evidence of active water vole identified during surveys which were undertaken during times of the year that are considered sufficient. An otter spraint was found during survey two which would suggest that the watercourse is occasionally used by otters to commute and potentially feed within the watercourse pools and potentially the waterbodies. Mitigation recommended would be that all retained aquatic habitats are protected during construction and best practice is followed to ensure the risk of any potential impacts from pollution events are minimised.

## **Planning History**

9/2013/0671 – The amendment of conditions 3 and 4 of planning permission 9/2009/0355 for commencement of development before details of external materials have been approved and the amendment of approved drawings in relation to the driving range building and car park, Granted 18/10/13

9/2012/0154 – The variation of condition 11 of previously approved planning permission 9/2009/0527 for a revised landscaping layout – approved 17/07/2012

9/2009/0527 – Variation of condition 11 of planning permission 9/2006/0329 for a revised landscaping layout – approved 10/09/2009

9/2009/0355 – Approval of reserved matters for the approval of reserved matters for the siting, design and external appearance of golf clubhouse, administration building and driving range, associated leisure building and hotel, together with associated parking, access and landscaping – approved 25/08/2009

9/2006/0329 – Variation of conditions 2, 3, 6, 7, 10, 13, 14, 17 and 18 of 9/2000/0415 – approved 12/05/2009

9/2005/0586 - The variation of condition 1 of planning permission 9/2000/0415/O in order to extend the time period in which to submit reserved matters, Granted 1/7/05

9/2004/0718 – The formation of a driving range bund, Granted 28/7/04

9/2000/0415 – Outline (and Environmental Impact Assessment) with all matters reserved other than means of access, for the use of land for Business (B1) Industrial (B2), Storage and Distribution (B8) and Leisure Use (Hotel, Drive-through restaurant, Golf Course (including ancillary facilities) – approved 31/01/2002

## **Responses to Consultations**

The Council's Community Facilities Manager considers that the creation of a large expanse of publicly accessible open space, together with a formal sports offer (i.e. 2x 9-hole golf courses) is an excellent use of the available space. The opportunity to capitalise on the current natural assets of the site in terms of wetland, meadow and woodland has also been maximised, with co-ordinated input from colleagues at Derbyshire Wildlife Trust and National Forest Company. The provision of land for public access, recreation and biodiversity fits well within the Open Space, Sports & Community Facilities Strategy and officers have worked hard with the developer to enhance the connectivity through the site to new and existing housing areas with provision of footpath and cycle links which link into the wider strategic network.

Natural England has no comments to make.

The Council's Drainage Officer requests confirmation of the responsibility for maintenance of the Tetron Point Balancing Pond.

The Council's Contamination has no comments to make.

Peak and Northern Footpaths state that if the definitive public rights of way which cross the site do not follow their current lines then they must be formally diverted. Any new routes should be dedicated as public rights of way. There is a concern that the paths running north of the country park through the golf course would be

safeguarded as there appears to be conflicts between users of the footpath and players.

The Coal Authority has no objection and recommends an informative regarding unrecorded coal mining related hazards.

The Police Crime Prevention Design Advisor has no objections in principle, however, a condition requiring provision to restrict access by off road vehicles is recommended.

The County Archaeologist confirms the site retains no archaeology potential.

The Environmental Health Officer has no objections.

The County Highway Authority has no objection in principle, however, the application site does not extend to the public highway and right of access should be satisfied. Therefore, there are no objections subject to conditions regarding a construction management plan and an informative regarding the public rights of way FP44, 46 and 98.

Severn Trent Water has no objection subject to an informative in relation to connections to sewers.

The Environment Agency has no objections and recommends a condition regarding contamination and informatives regarding groundwater protection, waste, contaminated soil, flood risk and works affecting a watercourse.

Derbyshire Wildlife Trust states that the breeding bird survey confirmed the presence of priority species ground nesting birds and the mitigation measures to limit public access to the grassland habitat and enhancement measures are welcomed. Conditions requiring securing the mitigation measures and a Landscape and Ecological Management Plan (LEMP) are recommended.

The County Minerals Authority has confirmed that the proposal would not adversely affect the Mineral Planning interest.

The National Forest Company welcomes the creation of the Country Park and the proposed woodland species mix is acceptable, signs should be used to limit public access to the grassland habitat. Details of ground works and long-term management are requested.

The County Flood Team has no objection subject to conditions.

## **Responses to Publicity**

One objection has been received, raising the concerns regarding the existing public rights of way shown on the Landscape Masterplan which do not correspond to the footpaths on the definitive map; specifically FP44 that crosses in a north-south direction nor FP46 which crosses east to west.

One letter of support was received which stated that a country park will enhance the lifestyles of Newhall residents and will provide an opportunity for residents of Newhall and Swadlincote to partake in exercise free of traffic, breathing fresh air and be able to achieve better physical health at no cost other than council tax etc. Our area deserves a country park where families can get out and exercise to reduce our dependency on social care.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1:

S1 (Sustainable Growth Strategy)

S2 (Presumption in Favour of Sustainable Development)

S6 (Sustainable Access)

SD1 (Amenity and Environmental Quality)

SD2 (Flood Risk)

SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure)

SD4 (Contaminated Land and Mining Legacy Issues)

BNE1 (Design Excellence)

BNE3 (Biodiversity)

BNE4 (Landscape Character and Local Distinctiveness)

INF2 (Sustainable Transport)

INF8 (The National Forest)

INF 9 (Open Space, Sport and Recreation)

- 1998 Local Plan (saved policies):

Environment 7 (Open Land, Swadlincote)

Recreation and Tourism 2 (New Recreation Provision, Swadlincote)

## **Emerging Development Plan Policies**

The relevant policies are:

- Submission Local Plan Part 2:

SDT1 (Settlement Boundaries and Development)

## **National Guidance**

- National Planning Policy Framework (NPPF) Paragraphs 6-10 (Achieving sustainable development), paragraphs 11-14 (The presumption in favour of sustainable development), paragraph 17 (Core principles) and paragraphs 32-34 (Promoting sustainable transport), chapter 7 (Requiring good design), Chapter 8 (Promoting Healthy Communities), Chapter 10 (Flooding), Chapter 11 (Conserving and Enhancing the Natural Environment).

- Planning Practice Guidance (PPG) Flood Risk and Coastal Change, Land affected by Contamination and Natural Environment.

### **Local Guidance**

- None relevant

### **Planning Considerations**

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

- Principle of development
- Ecological impacts and enhancements
- Highway Issues
- Future management

### **Planning Assessment**

#### The Principle of Development

The principle of development was established by the granting of the outline consent in February 2002. That permission encompassed the golf course and associated buildings, industrial floorspace to the south of William Nadin Way, a drive through restaurant, 100 bed hotel and office floorspace. Subsequent applications have been granted in 2009 and 2012 to amend the landscaping for the golf course. To the north of the site a 9 hole golf course is planned and a further 9 hole family course is proposed to the north east. These essentially are a reworking of the 18 hole golf course which itself is no longer viable due to changes in the sport where time constraints restrict use and smaller courses are increasingly more viable. Therefore, the overall vision for the site has had to change accordingly and creation of a country park to complement the golf use is considered compatible with the previous permissions on site and the relevant local plan policies. A further application showing changes to the landscape to facilitate the relocation of holes, fairways etc. is currently being drawn up.

Relevant policies for the site are the saved policies EV7 and RT2. EV7 states that open land which makes a valuable contribution to the character and environmental quality of Swadlincote will be safeguarded from development. RT2 states that a community recreation area including playing fields, nature trails and golf course is proposed on land between Meadow View Road and Newhall and the former Cadley Hill Railway. LPP1 Policy INF8 relates to the National Forest and requires the Council to provide opportunities for tourism and leisure for local communities and visitors. The National Forest Company welcomes the creation of the country park as it would allow public access to the former colliery site which was not created under previous permissions. They were involved in pre-application discussions and the levels and species of woodland planting have been increased accordingly. The ecological enhancements proposed are supported and woodland planting details should be controlled by condition. These comments are complimented by the

Council's Community Facilities Manger confirming that the approach would fit well with the Council's Open Space, Sports & Community Facilities Strategy.

Landscaping should be woodland planting but can also include the creation and management of other appropriate habitats along with new recreational facilities with a woodland character. LLP1 Policy INF9 states that current open space, sport and recreation is not sufficient to meet local need and to address this, the Council will seek to provide sufficient high quality green space and recreation facilities to both meet the needs of new residential development and the existing population.

The proposal is considered to comply with the above mentioned policies as it would secure the creation of a country park for the residents and visitors of Swadlincote together with significant ecological enhancements. It would potentially greatly increase the public use of the site thereby increasing the viability of the overall leisure and tourist scheme within the National Forest in a sustainable location close to Swadlincote town centre.

### Ecological impacts and enhancements

Policy BNE3 states that planning proposals that could have a direct or indirect effect on sites with potential or actual ecological or geological importance including sites of County importance (such as Local Wildlife sites), ancient woodlands, veteran trees and hedgerows and priority habitats and species shall be accompanied by appropriate surveys to assess impacts and the mitigation proposed. Where mitigation measures cannot sufficiently offset the significant harm resulting from the development, planning permission will be refused. NPPF paragraph 109 requires impacts on biodiversity to be minimised and net gains provided and paragraph 118 states that Local Planning Authorities should aim to conserve and enhance biodiversity and if significant harm resulting from development cannot be avoided, adequately mitigated or as a last resort, compensated for, then planning permission should be refused.

The Wildlife Trust has reviewed the extensive ecological survey work undertaken. The breeding bird survey confirmed the presence of a number of ground nesting bird species on the site including the priority species skylark and lapwing. Meadow Pipit was also confirmed as breeding. Open land is retained for their habitat, however, public access needs to be restricted in order to keep the level of disturbance to a minimum. The mitigation measures proposed are supported in respect of minimising disturbance and a balance has to be struck between allowing public access and creation of habitat for ground nesting birds. The landscape masterplan proposes to limit access to nature conservation areas through the installation of fencing alongside the paths in order to maintain the suitability of these sensitive areas by ground nesting birds.

A medium population of great crested newts were recorded within four ponds on the site with other amphibians including common frog, common toad and smooth newt recorded in association with a number of ponds. In addition, a small population of grass snake was recorded to the south in association with the watercourse. The mitigation proposed for these species is considered acceptable and mitigation and

enhancement measures recommended within the reports can be controlled by condition.

In terms of ecology impacts, the proposal is considered to create habitats and retain existing water features and as such involves a higher net gain in biodiversity compared to previous permissions. Ecological enhancements and creation of habitat are thus supported and considered to be in accordance with LPP1 Policy BNE3 and paragraphs 109 and 118 of the NPPF.

### Highways Issues

Policy INF2 states that planning permission will be granted for development where travel generated by development should have no undue detrimental impact upon local amenity, the environment, highway safety and the efficiency of the transport infrastructure and availability of public transport services. It requires that appropriate provision is made for safe and convenient access to and within the development and car travel generated is minimised. NPPF paragraph 32 requires decisions to take account of whether the opportunities for sustainable transport modes have been taken up to reduce the need for major transport infrastructure; safe and suitable access to the site can be achieved for all people.

The access to the site would be included in the linked application for the commercial area (9/2016/1071). The site access to William Nadin Way is complete and is within the control of the applicant. A car parking area for the county park is included within this application with the indicative provision of 44 spaces. Footpaths 44 and 46 are affected by the development and diversion routes have been incorporated within the design and applications for these formal diversions would be made shortly.

The continuation of both footpath and cycle routes along William Nadin Way and linkages to the existing proposals for the new residential areas and golf course have been considered and are incorporated within the layout and are illustrated on the wider masterplan for the area. The improvements to accessibility by sustainable modes of transport ensure the compliance with LPP1 INF2 and NPPF paragraph 32.

### Future Management

With regards to the deliverability of the country park, the applicant has extensive experience of successfully undertaking similar projects. A number of desk top and intrusive ground investigations undertaken over recent years have informed the country park design. The earthworks and drainage works associated with the adjacent golf course have already improved drainage on site. Together with the addition of some recent grass growth which has served to dry out the site considerably. It is therefore considered that the proposed country park design is achievable on this former colliery site. The balancing pond that is currently maintained by the Council is not within the application site, however, it is envisaged that future maintenance could be taken on by Severn Trent Water.

In terms of the onward management and maintenance of the country park, once delivered, the applicants are currently in discussion with the Lands Trust for a site-wide transfer of the open spaces, amenity land and country park to the Lands Trust

to maintain in perpetuity. The cost of this would be covered by a service charge covenant on each of the new residential sites surrounding the golf course. The applicant would continue to manage and maintain the open spaces on site until the transfer is made.

### Conclusion

The proposal involves the creation of a country park which provides both recreational and ecological benefits that would serve to ensure the long term viability of the long awaited golf course. The overall package of the golf course uses, commercial area and country park serve to provide a new leisure and tourist destination within the National Forest, wholly in accordance with Local and National Policy, which would be accessible by sustainable modes of transport and would contribute to reducing the deficit in open space provision within the district.

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

### **Recommendation**

**GRANT** permission subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with drawing no's EMS.2696\_002 received on the 20th March 2017 and EMS2865\_02D received on the 24th March 2017; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

3. Notwithstanding the submitted landscape masterplan, before any works involving the creation of the country park are commenced a detailed landscaping scheme shall be submitted and approved in writing by the Local Planning Authority which shall include indications of all existing trees and hedgerows on or adjacent to the site (including those which would have their root or canopy structure affected), and details of any to be retained, together with measures for their protection in the course of development.

Reason: In the interests of the appearance of the area, recognising that initial clearance and groundworks could compromise the long term health of the trees/hedgerows affected.

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. Before any works involving the creation of the country park are commenced a landscape and ecological management plan (LEMP) for the site shall be submitted to, and be approved in writing by, the Local Planning Authority.

The content of the LEMP shall include the following.

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management which shall include details of public access to the country park.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a twenty-five year period).
- g) Details of the body or organization responsible for implementation of the plan.
- h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The approved plan will be implemented in accordance with the approved details.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework. This needs to be made clear before commencing to ensure that all stages of development are considered.

6. The development shall be implemented in accordance with the mitigation measures to minimise disturbance outlined in paragraphs 6.7, 6.8 and 6.9 and enhancement measures detailed in paragraphs 6.11 - 6.30 of the breeding bird survey report by FPCR dated October 2016.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework.

7. The development shall be implemented in accordance with the mitigation strategy and enhancement measures outlined in section 5.0 of the Herpetofauna Report and Method Statement prepared by FPCR dated October 2016.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework.

8. No development shall take place until a construction management plan or construction method statement has been submitted to and been approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto highway and any proposed temporary traffic restrictions.

Reason: In the interests of highway safety.

9. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

Reason: To ensure that any contamination identified during development is dealt with appropriately (i.e. in order to mitigate any risks to 'Controlled Waters' receptors).

10. No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site, in accordance with Defra Non-statutory technical standards for sustainable drainage systems, has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved detailed design prior to the use of the building commencing.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and sufficient detail of the construction, operation and maintenance of sustainable drainage systems is provided to the LPA in advance of full planning consent being granted.

11. Within 3 months of the date of this permission a timetable for implementation of the country park shall be submitted and agreed in writing by the Local Planning Authority and implemented in accordance with the agreed timescales.

Reason: To ensure the delivery of the country park.

## Informatives:

1. The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal mining. Further information is also available on The Coal Authority website at: [www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority). Property specific summary information on past, current and future coal mining activity can be obtained from: [www.groundstability.com](http://www.groundstability.com).

2. The Police Crime Prevention Design Advisor considered that access to the country park should be restricted for use of off-road cycles and quad bikes.

3. The application site is affected by three public rights of way (Footpaths 44, 46 & 98, as shown on the Derbyshire Definitive Map). The routes must remain unobstructed on their legal alignment at all times and the safety of the public using them must not be prejudiced either during or after development works take place. Further advice can be obtained by calling Economy, Transport and Communities Department at County Hall, Matlock (01629 533190) and asking for the Rights of Way Duty Officer. Please note that the granting of planning permission is not consent to divert or obstruct a public right of way.

If it is necessary to temporarily obstruct a right of way to undertake development works then a temporary closure is obtainable from the County Council

If a right of way is required to be permanently diverted then the Council that determines the planning application (The Planning Authority) has the necessary powers to make a diversion order.

Any development insofar as it will permanently affect a public right of way must not commence until a diversion order (obtainable from the Planning Authority) has been confirmed. A temporary closure of the public right of way to facilitate public safety during the works may then be granted by the County Council.

To avoid delays, where there is reasonable expectation that planning permission will be forthcoming, the proposals for any permanent stopping-up or diversion of a public right of way can be considered concurrently with the application for the proposed development rather than await the granting of permission.

4. The EA advises the following:

The applicant / developer should refer to our 'Groundwater Protection: Principles and Practice' (GP3) document, available from gov.uk. This sets out our position on a wide range of activities and developments, including:

- Waste management
- Discharge of liquid effluents
- Land contamination
- Drainage
- Storage of pollutants and hazardous substances

- Management of groundwater resources

All precaution must be taken to avoid discharges and spills to ground both during and after construction. For advice on pollution prevention measures, the applicant should refer to guidance available on our website ([www.gov.uk/environment-agency](http://www.gov.uk/environment-agency)).

#### Waste on site

The CLAIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated material arising from site during remediation and/or land development works are waste or have ceased to be waste. Under the Code of Practice:

- excavated materials that are recovered via a treatment operation can be re-used on-site providing they are treated to a standard such that they fit for purpose and unlikely to cause pollution
- treated materials can be transferred between sites as part of a hub and cluster project
- some naturally occurring clean material can be transferred directly between sites.

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed on site operations are clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays.

The Environment Agency recommends that developers should refer to:

- the Definition of Waste: Development Industry Code of Practice on the CL:AIRE website and;
- The Environmental regulations page on GOV.UK.

#### Waste to be taken off site

Contaminated soil that is, or must be, disposed of is waste. Therefore, its handling, transport, treatment and disposal are subject to waste management legislation, which includes:

- Duty of Care Regulations 1991
- Hazardous Waste (England and Wales) Regulations 2005
- Environmental Permitting (England and Wales) Regulations 2010
- The Waste (England and Wales) Regulations 2011

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically in line with British Standard BS EN 14899:2005 'Characterization of Waste - Sampling of Waste Materials - Framework for the Preparation and Application of a Sampling Plan' and that the permitting status of any proposed treatment or disposal activity is clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays.

If the total quantity of waste material to be produced at or taken off site is hazardous waste and is 500kg or greater in any 12 month period the

developer will need to register with us as a hazardous waste producer. Refer to the Hazardous Waste pages on GOV.UK for more information.

#### Flood Risk

We have no fluvial flood risk objections to the proposal as submitted. However, we would wish to highlight the fact that the Flood Map for Planning (Rivers and Sea) shows the large lake/pond within this site to form part of the floodplain of the Darklands Brook. This floodplain extent has also been confirmed by hydraulic modelling of this watercourse, submitted in support of other previous planning applications on this site.

As such any alterations to the watercourse connecting the large lake/pond to the Darklands Brook such as installing sluices to control water within the pond could prevent flood water from entering it and thereby have the potential to increase flood risk elsewhere. As detailed below under additional information, any such works should therefore not be undertaken without the prior consent of the Lead Local Flood Authority (LLFA) Derbyshire CC. In addition any new or altered crossing of any watercourse, ditch etc on this site may also need the prior consent of the LLFA.

#### Additional Information

Under the terms of the Land Drainage Act 1991, the prior written consent of Lead Local Flood Authority (Derbyshire County Council) is required for any proposed works affecting the flow of any ordinary watercourse or to any existing or proposed structure forming part of the ordinary watercourse drainage system. This includes alterations to existing and/or proposed headwall outfalls, crossings of a watercourse to provide vehicular or pedestrian access, eg culverts or bridges, and any other weir or dam like structure. For more information go to [http://www.derbyshire.gov.uk/environment/flooding/ordinary\\_watercourse\\_consents/default.asp](http://www.derbyshire.gov.uk/environment/flooding/ordinary_watercourse_consents/default.asp)

#### 5. Severn Trent advise the following:-

Please note 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. They may obtain copies of our current guidance notes and application form from either our website ([www.stwater.co.uk](http://www.stwater.co.uk)) or by contacting our New Connections Team (Tel: 0800 707 6600).

Severn Trent Water advises that there is a public sewer located within the application site. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals. Severn Trent Water will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.

#### 6. DCC Flood Team advise the following:-

The proposed destination for surface water should accord with the hierarchy

in Approved Document Part H of the Building Regulations 2000, to ensure that surface water from the development is directed towards the most appropriate waterbody in terms of flood risk and practicality by utilising the highest possible priority destination on the hierarchy of drainage options. The assessment should demonstrate with appropriate evidence that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:

- I. into the ground (infiltration);
- II. to a surface water body;
- III. to a surface water sewer, highway drain, or another drainage system;
- IV. to a combined sewer.

The County Council do not adopt any private SuDS schemes. As such, it should be confirmed prior to commencement of works which organisation will be responsible for SuDS maintenance once the development is completed.

Any works in or nearby to an ordinary watercourse require consent under the Land Drainage Act (1991) from the County Council (e.g. an outfall that encroaches into the profile of the watercourse, etc) to make an application for any works please contact [Flood.Team@derbyshire.gov.uk](mailto:Flood.Team@derbyshire.gov.uk).

The applicant should ensure there is a sufficient buffer strip in place which will allow for efficient maintenance to take place. We would recommend an easement of approximately 3m if any linear feature is less than 2m in width and 4.5m for linear features over 2m in width. Whilst this is not stipulated within any legal byelaw the County Council would recommend these distances in order to safeguard access for essential maintenance and inspection purposes.

To discharge the condition the applicant should ensure all of the below parameters have been satisfied:

1. The production and submission of a scheme design demonstrating full compliance with DEFRA's Non-statutory technical standards for sustainable drainage systems:

- Limiting the discharge rate and storing the excess surface water run-off generated by all rainfall events up to the 100 year plus 40% (for climate change) critical duration rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site to comply with S2 & S3.
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm to comply with S7 & S8.
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements.
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development to ensure the features remain functional.
- Production of a plan showing above ground flood pathways where relevant for events in excess of 1 in 100 year rainfall event to comply with S9.
- Where reasonable practicable demonstrate that the runoff volume of the site

reflects the requirements of S4.

2. Information to indicate that the surface water can, in principle, be disposed of sustainably in compliance with Approved Document H of the Building Regulations 2000. In particular, the following information should be provided to the Local Planning Authority for review:

- o Soakaway/ground investigation conducted in compliance BRE Digest 365 methodology or similar submitted to demonstrate the feasibility of infiltration alone to manage surface water on the site.

- o If infiltration is found not to be feasible, an alternative option for surface water disposal should be proposed. In order of preference this should be to:

- i. an adjacent watercourse with detailed evidence of the feasibility of this option given the existing site constraints,

- ii. a surface water public sewer, with appropriate evidence that the relevant Water and Sewerage Company deems this acceptable, or

- iii. a combined public sewer, with appropriate evidence that the relevant Water and Sewerage Company deems this acceptable.

7. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through suggesting amendments to overcome objections and improve the quality of the proposal. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

11/04/2017

Item 1.3

Ref. No. 9/2016/1071/SSO

**Applicant:**  
**Mr Neil Terrett**  
**C/O Agent**

**Agent:**  
**Mr Steve Lewis-Roberts**  
**Pegasus Planning Group**  
**4 The Courtyard**  
**Church Street**  
**Lockington**  
**Derby**  
**DE74 2SL**

**Proposal:** **OUTLINE APPLICATION WITH ACCESS FOR APPROVAL AND ALL OTHER MATTERS TO BE RESERVED FOR FUTURE APPROVAL FOR THE ERECTION OF A PUBLIC HOUSE/RESTAURANT (USE CLASS A4), A CAFÉ/RESTAURANT (USE CLASS A3) A RETAIL UNIT (USE CLASS A1) AND ASSOCIATED WORKS PLUS THE CREATION OF A CAR PARK AT LAND NORTH OF WILLIAM NADIN WAY SWADLINCOTE**

**Ward:** **SWADLINCOTE**

**Valid Date** 14/10/2016

#### **Reason for committee determination**

The item is presented to Committee at the discretion of the Planning Services Manager as it is a major application of local interest.

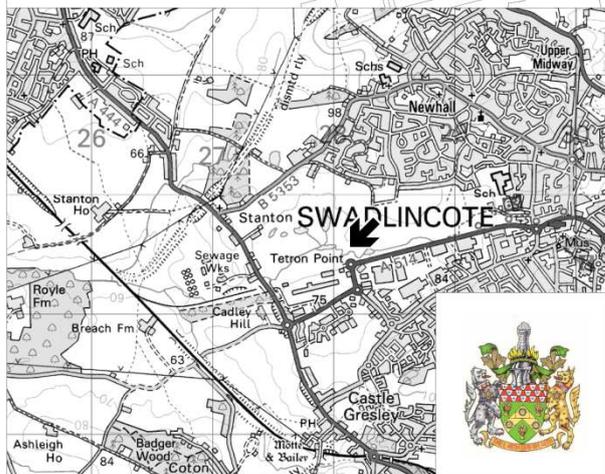
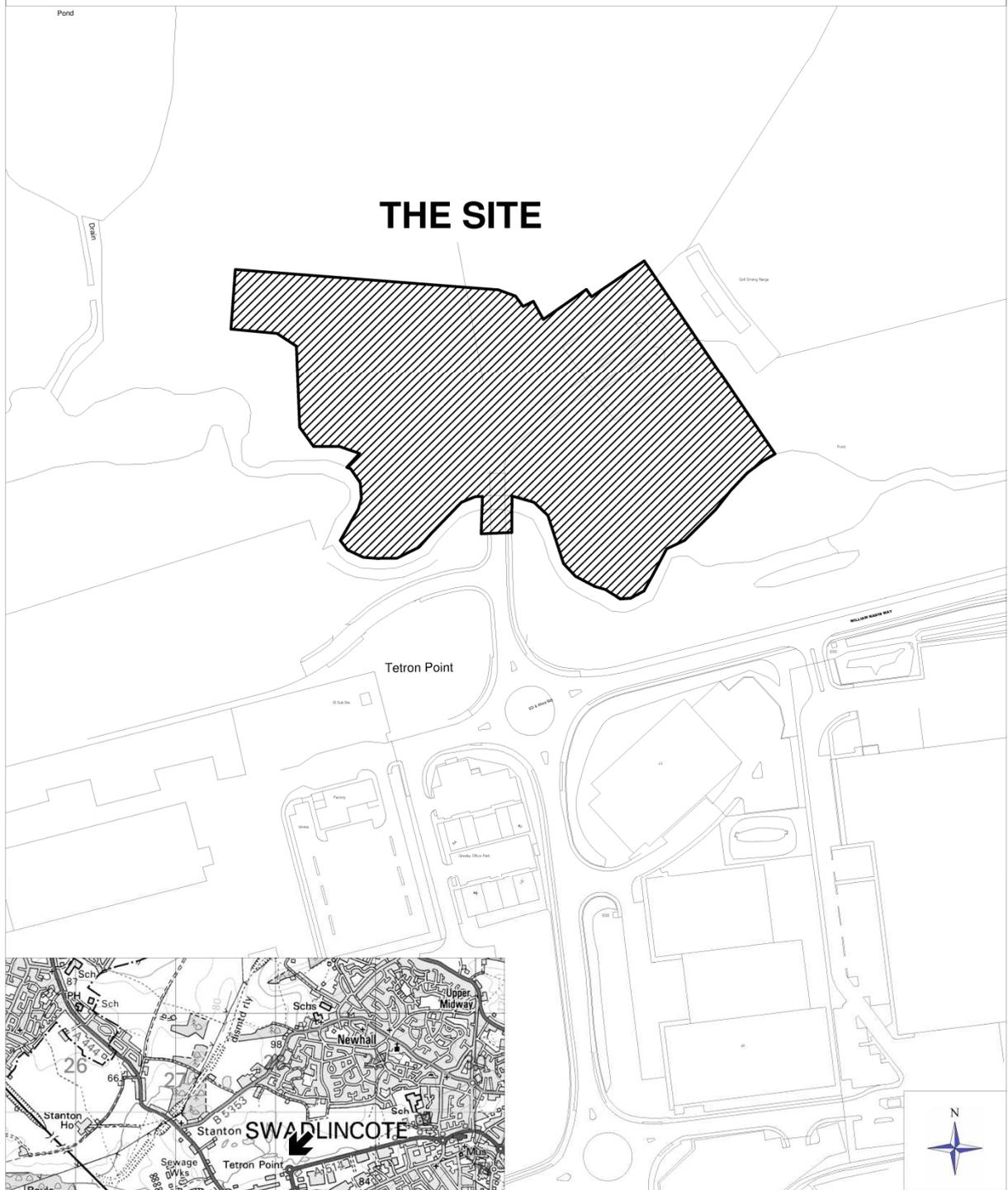
#### **Site Description**

This 2.5 ha site is located to the north of the roundabout at the western end of William Nadin Way. The Bison Concrete complex is to the south west and the golf course site is to the north and west with the driving range to the east. The site forms the entrance of the golf course and is currently part grassed and part car park / site compound. It is relatively flat with some tree planting within the car park area. Land levels rise to the north towards Newhall.

#### **Proposal**

Outline permission is sought for a public house / restaurant, a café / restaurant and a golf retail use with associated car parking. Access is included for approval but all other matters are to be reserved. The site would utilise the existing access to the golf driving range. Car parking for the Country Park is included which is the subject of a

9/2016/1071 - Land North of William Nadin Way, Swadlincote (DE11 0BB)



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**South Derbyshire District Council. LA 100019461. 2014**

companion application also before committee (9/2016/1070). An indicative layout has been submitted indicating a public house / restaurant use adjacent to the William Nadin Way boundary, with the golf retail use to the north, the café / restaurant uses would be west of the access road and the country park car parking north west of the access. The size of the buildings and car parking levels have been provided on an indicative basis. Each building would have individual parking areas with the golf retail area including spaces for the driving range.

### **Applicant's supporting information**

The Design and Access Statement outlines the relevant planning policy and describes the site as a new leisure destination within the National Forest with a linked application proposing creation of a country park. The driving range has been successfully operating for more than a year and a 9 hole golf course (a reworking of some of the holes for the 18 hole course) is nearly completed with a smaller family course proposed. The site's context is described as sustainable, being served by four different bus services with existing industrial and residential uses within walking distance and linked by cycle routes. Site land levels differ by 7.5m across the site with the higher levels to the north east and lowest levels on the access road on the southern boundary. There is a small tributary of the River Trent to the west of the site which links to a secondary tributary running eastwards. The evaluation is based on the creation of provision of a leisure destination with an active site frontage and prominent gateway to the country park. The uses proposed are described as accompanying and providing facilities for the existing golf uses in a sustainable location.

The Planning Statement describes the site and the uses proposed. The café/ restaurant use would occupy a prominent position would provide an attractive entrance to the new Country Park and toilet and refreshment facilities for its users. The restaurant / public house would act as a focal point for visitors of the golf course and country park and would effectively operate as the club house. A small golf shop is proposed to complement the golf uses. National and Local Planning Policies are reviewed. The principle of development is supported as the uses proposed would complement the golf course and country park and would seek to reinforce the site as a leisure destination at the Heart of the National Forest. The site has excellent footpath and cycle links to the town centre which is in close proximity. The sequential test concludes there are no vacant units within or at the edge of the town centre that are the appropriate scale or location to accommodate the requirements of the proposed development. The uses are intrinsically linked to the associated leisure facilities. The proposal represents a major investment opportunity which would deliver significant local employment opportunities by providing more than 100 jobs and is in accordance with local and national planning policies.

The Flood Risk Assessment and Drainage Strategy states the site is within Flood Zones 1, 2 and 3. Darklands Brook runs along the southern boundary of the site and existing bodies of attenuated water drain into the Brook. The surface water discharge would discharge into the Brook via onsite drainage works and limited to greenfield runoff rates. The proposed surface water drainage system should be designed to accommodate the 1:30 year rainfall event without any surface water flooding and should be capable of retaining the 1:100 year plus 40% climate change storm event

on site without flooding any buildings. Foul flows would need to cross the Darklands Brook to reach the existing sewer and Severn Trent has confirmed a connection.

The Transport Statement considers the site is accessible by all modes of travel. Vehicle access is good and there good opportunities for pedestrian and cycle travel with appropriate infrastructure provided and new routes through the country park are proposed. Busiest times would be weekday evenings and weekends which is outside the typical highway network peak periods. Assessment of the development traffic within the weekday evening highway network peak hour would be 142 two way vehicle trips per hour and this would be split evenly south and east along the A514. The roundabout at the access and at Cadley Hill were assessed and were considered to have capacity for the increase in traffic without the need for mitigation.

The Ecology Assessment states the site is dominated by species poor semi-improved grassland with hard standing, ephemeral/ short perennial vegetation, bare ground, tall herb/ ruderal vegetation and beds of sparse introduced shrub. The wider survey area has similar habitats to those present within the site but a flowing watercourse (D1) and waterbodies (P8 and P9) are present on the southern boundary. The habitats within the proposed commercial area are of value for species such as linnets and skylarks and the habitats in the wider area are to be retained and enhanced as a Country Park so any impacts should be minimised. Although the habitats in the area are of some value for commuting and foraging bats due to the presence of features such as ponds and watercourses just offsite, the extent of the development area is such that any potential impacts will be negligible. The terrestrial habitats within the commercial area have some value for great crested newts and reptiles although extensive surveys did not identify either within the site boundary. In order to provide ecological enhancement within the site in line with NPPF, preference should be given within any planting scheme to the use of locally native woody species, with an emphasis on species bearing nectar, berries, fruit and nuts, as these enhance the foraging opportunities for local wild fauna including birds and invertebrates. In addition, where possible it is recommended that faunal habitat measures be incorporated into the redevelopment which could include features such as hedgehog houses and insect tubes/boxes.

The Coal Mining Risk Assessment states the site was worked for coal by opencast methods on two occasions. Opencast operations from the Nadins site was completed in 1998, and workings were backfilled to present site levels. The risk from underground workings impacting the proposed development is deemed negligible. No mineshafts are recorded on or within 20m of the site. The risk of ground gas impacting the site from opencast backfill is considered low to moderate. Site investigation works are recommended to investigate the depth to the base of opencast workings, and the state and composition of the backfilled material.

The Sequential Analysis and Retail Impact Assessment states that it is set out at the outset that the proposals are intended to serve a site specific requirement that is not present in other areas and therefore all sites in other locations are deemed to be not suitable. However, in order to comply with the requirements of the sequential assessment this report considers all vacant town centre units and potential development sites. The vacant premises within the town centre are far too small to be seriously considered a suitable alternative for a reduced scheme or a

disaggregated scheme. Five sites have also been considered, however aside from being unsuitable for the reason given above, they were either too small or unavailable even when a flexible approach to site selection has been adopted. The development therefore, complies with paragraphs 14, 24 and 27 of the NPPF and Policy S2 of the 1998 Local Plan in relation to the sequential test, therefore there is no retail planning reasons why the application should not be approved.

## **Planning History**

9/2013/0671 – The amendment of conditions 3 and 4 of planning permission 9/2009/0355 for commencement of development before details of external materials have been approved and the amendment of approved drawings in relation to the driving range building and car park, Granted 18/10/13

9/2012/0154 – The variation of condition 11 of previously approved planning permission 9/2009/0527 for a revised landscaping layout – approved 17/07/2012

9/2009/0527 – Variation of condition 11 of planning permission 9/2006/0329 for a revised landscaping layout – approved 10/09/2009

9/2009/0355 – Approval of reserved matters for the approval of reserved matters for the siting, design and external appearance of golf clubhouse, administration building and driving range, associated leisure building and hotel, together with associated parking, access and landscaping – approved 25/08/2009

9/2006/0329 – Variation of conditions 2, 3, 6, 7, 10, 13, 14, 17 and 18 of 9/2000/0415 – approved 12/05/2009

9/2005/0586 - The variation of condition 1 of planning permission 9/2000/0415/O in order to extend the time period in which to submit reserved matters, Granted 1/7/05

9/2004/0718 – The formation of a driving range bund, Granted 28/7/04

9/2000/0415 – Outline (and Environmental Impact Assessment) with all matters reserved other than means of access, for the use of land for Business (B1) Industrial (B2), Storage and Distribution (B8) and Leisure Use (Hotel, Drive-through restaurant, Golf Course (including ancillary facilities) – approved 31/01/2002

## **Responses to Consultations**

The Council's Economic Development Manager states that the proposal for a public house, restaurant / café and golf shop complementing Swadlincote Golf Centre has the potential to create more than 100 jobs. With a rapidly growing population, South Derbyshire has a pressing need to provide greater numbers of jobs, and ideally a range of employment opportunities that are accessible locally. To achieve this will necessitate the attraction of new business investment as well as the growth of indigenous businesses. A golf-based facility that serves tourists (no requirement for membership) as well as the local community has the potential to contribute to the growth of the visitor economy of The National Forest. The South Derbyshire Economic Development Strategy 2016-2020 identifies the Visitor Economy as one of

the area's key sectors, and one of the fastest growing sectors nationally. The Visitor Economy encompasses tourism and leisure opportunities such as food & drink outlets, with the growth of this sector both diversifying the local economy and maximising the potential of The National Forest.

The Environment Health Officer has no objections.

The Council's Flood Officer states that the culvert appears to go underneath the proposed road and its ownership and maintenance responsibility should be established.

The Coal Authority has no objection subject to a condition requiring intrusive ground investigations and gas monitoring.

The County Flood Team has no objection subject to a condition for surface water drainage.

The Police Crime Prevention Design Advisor has no objection in principle, however, a condition to control appropriate enclosure of open space, natural and formal supervision of parking areas and security of the building is recommended.

The County Archaeologist confirms the site retains no archaeology potential.

The County Highway Authority has no objection in principle, however, the application site does not extend to the public highway and right of access should be satisfied. The parking provision and a construction management plan can be controlled by condition.

Severn Trent Water has no objection subject to a drainage condition.

The Environment Agency has no objection subject to a condition to ensure the development is carried out in accordance with the submitted FRA and its mitigation measures.

The Council's Contaminated Land Officer has no objection subject to a phased contamination condition.

The National Forest Company welcomes the indicative tree-lined entrance and segregated cycle/footpath route shown. The proposed use of green roofs and timber in construction is welcomed. Conditions in respect of the design of the buildings, implementation of landscape enhancements and the connection to the cycleway route along William Nadin Way.

Derbyshire Wildlife Trust concurs with the results of the Ecological Appraisal submitted. The creation of a wildflower meadow is supported and tree planting in the area should be reduced to avoid shading. Provision should be made for access to manage the area adjacent to the western boundary alongside the watercourse. Conditions relating to the mitigation measures and management of the landscaping are recommended.

## **Responses to Publicity**

No objections/letters of support have been received.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1:

S1 (Sustainable Growth Strategy)

S2 (Presumption in Favour of Sustainable Development)

S6 (Sustainable Access)

S7 (Retail)

SD1 (Amenity and Environmental Quality)

SD2 (Flood Risk)

SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure)

SD4 (Contaminated Land and Mining Legacy Issues)

BNE1 (Design Excellence)

BNE3 (Biodiversity)

BNE4 (Landscape Character and Local Distinctiveness)

INF2 (Sustainable Transport)

INF8 (The National Forest)

- 1998 Local Plan (saved policies):

Environment 7 (Open Land, Swadlincote)

Shopping 2 (Out of Town Shopping)

Recreation and Tourism 2 (New Recreation Provision, Swadlincote)

## **Emerging Development Plan Policies**

The relevant policies are:

- Submission Local Plan Part 2:

SDT1 (Settlement Boundaries and Development)

RTL1 (Retail Hierarchy)

## **National Guidance**

- National Planning Policy Framework (NPPF) Paragraphs 6-10 (Achieving sustainable development), paragraphs 11-14 (The presumption in favour of sustainable development), paragraph 17 (Core principles) and Chapter 2 (Ensuring the vitality of town centres) paragraphs 32-34 (Promoting sustainable transport), chapter 7 (Requiring good design), Chapter 8 (Promoting Healthy Communities), Chapter 10 (Flooding), Chapter 11 (Conserving and Enhancing the Natural Environment).

- Planning Practice Guidance (PPG) Ensuring the vitality of Town Centres, Flood Risk and Coastal Change, Land affected by Contamination and Natural Environment.

## **Local Guidance**

- None relevant

## **Planning Considerations**

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

- Principle of Development
- Design and Landscaping
- Ecology
- Flood Risk and Contamination
- Highways and Accessibility

## **Planning Assessment**

### Principle of development

The principle of development was established by the granting of the outline consent in February 2002. This permission encompassed the golf course and associated buildings, industrial floorspace to the south of William Nadin Way, a drive through restaurant, 100 bed hotel and office floorspace. In 2006 a variation of conditions application was approved and supersedes the original outline permission. Since the granting of the 2006 permission, the majority of the industrial and commercial elements to the south of the site have been developed.

A reserved matters application was approved in 2009 in relation to golf clubhouse, administration building and driving range, associated leisure building and hotel. This approval was superseded in 2013 and the details of the driving range building changed as part of this permission.

The current proposal seeks the principle of uses that would complement the golf course under construction and the existing driving range use that has been in use for over a year. The linked application (9/2016/1071 – also on this agenda) for provision of a country park to the north west seeks to increase public use of the site.

Relevant policies for the site are the saved Local Plan (1998) Policies EV7 and RT2. EV7 states that open land which makes a valuable contribution to the character and environmental quality of Swadlincote will be safeguarded from development. RT2 states that a community recreation area including playing fields, nature trails and golf course is proposed on land between Meadow View Road and Newhall and the former Cadley Hill Railway. The proposal is considered to comply with these policies as it would secure the creation of a leisure and tourist destination within the National Forest in a sustainable location relatively close to Swadlincote town centre.

Saved Shopping Policy 2 relates to out of town shopping with new shopping development preferred within town centres. Out of town locations would only be acceptable where they cannot be accommodated within or immediately adjacent to a centre, they would not seriously affect the vitality and viability of the existing centre, they would not intrude into the countryside and would be acceptable on highway and amenity grounds and they can adequately be served by public transport. LPP1 Policy S7 states that the role of Swadlincote Town Centre will be supported and enhanced and a town centre boundary established in Part 2. Emerging Policy RTL1 states that applications for new main town centre uses outside of the defined centres will be subject to the sequential test. It defines the retail hierarchy as town centres, local centres and other centres in key and local service villages. NPPF paragraph 24 has a requirement for a sequential test for applications involving main town centre uses that are not in an existing centre. The preference is for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre proposals be considered. It goes on to state that when considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Paragraph 26 of the NPPF has a requirement for an 'impact test' with a floorspace threshold of 2,500 m<sup>2</sup>. This proposal would have a combined floorspace of 1,765 m<sup>2</sup> and is thus below the threshold for the test.

This application is accompanied by a sequential test which seeks to demonstrate that the public house / restaurant, café / restaurant and golf shop proposal could not be accommodated within or on the edge of Swadlincote town centre. The sequential test considers and rejects a number of potential vacant units and redevelopment sites within and on the edge of Swadlincote town centre and finds that none are suitable either due to being of insufficient size, being unavailable at the present time or being constrained by other factors. Notwithstanding having undertaken this work, the applicant indicates that the facilities should be seen as being part of an overall leisure and tourism destination, which would also comprise the golf course, driving range facility and country park, offering a complete visitor experience. The evidence submitted by the applicant provides adequate support for the location of the proposed facilities on the application site and satisfies the paragraph 24 requirement.

Local Plan Part 1 Policy INF10 "Tourism Development" provides for the development of such facilities within and on the edge of the urban area. The driving range part of the site bounds part of the LPP1 Housing allocation Policy H2 and as such the site is considered on the edge of the urban area. Opportunities to maximise new and improved walking and cycling facilities have been taken in this case.

To conclude, the principle of complementary development in the form of a drive-through restaurant, hotel and leisure development is long established on this site and is avidly supported by the Council's Economic Development Manager. The creation of the golf course has been an aspiration of the local area since the opencast coal mining works ceased and this development would serve to ensure its long term viability through provision of a tourist and leisure development which has good sustainable transport connections to the town centre.

#### Design and Landscaping

LPP1 Policy BNE1 requires all new development to be well designed and respond to their context and BNE4 requires development to have regard to the character and visual amenity of the landscape. As the proposal is outline with details of layout, scale, appearance and landscaping reserved for future approval assessment of these impacts is not yet possible. However, the national forest context adjacent to the open areas of the golf course and country park would suggest the principle of low level buildings with an element of timber within their construction.

### Ecology

LPP1 Policy BNE3 states that planning proposals that could have a direct or indirect effect on sites with potential or actual ecological or geological importance including sites of County importance such as Local Wildlife sites, ancient woodlands, veteran trees and hedgerows and priority habitats and species shall be accompanied by appropriate surveys to assess impacts and the mitigation proposed. Where mitigation measures cannot sufficiently offset the significant harm resulting from the development, planning permission will be refused. NPPF paragraph 109 requires impacts on biodiversity to be minimised and net gains provided and paragraph 118 states that Local Planning Authorities should aim to conserve and enhance biodiversity and if significant harm resulting from development cannot be avoided, adequately mitigated or as a last resort, compensated for, then planning permission should be refused.

The areas within the proposed commercial zone are of species poor habitats which do not pose a constraint to development. No protected species were found on site and surveys indicate that bats only use the site for foraging and commuting with the presence of features such as ponds and watercourses just offsite. The Wildlife Trust supports the proposed mitigation in terms of habitat creation. The proposal therefore accords with LPP1 Policy BNE3 and paragraphs 109 and 118 of the NPPF.

### Flood Risk and Contamination

LPP1 Policy SD2 requires development in flood risk areas to be resilient to flooding through design and layout and surface water measures required to minimise the likelihood of new development to increase flood risk with any development that change the surface water flows incorporating SUDS. The majority of the site is within Flood Zone 1 with part of the site adjacent to the Darklands Brook within Flood Zone 3. Darklands Brook runs along the southern boundary of the site and existing bodies of attenuated water drain into the Brook. The proposed SUDS would be designed to accommodate the 1:30 year rainfall event without any surface water flooding and would be capable of retaining the 1:100 year plus 40% climate change storm event on site without flooding any buildings. Foul flows would need to cross the Darklands Brook to reach the existing sewer and Severn Trent has confirmed a connection. The Environment Agency has no objection subject the recommendations within the submitted FRA and its mitigation measures are secured by condition.

LPP1 Policy SD4 relates to contaminated land and mining legacy issues and requires applicants to demonstrate through appropriate investigations that necessary remediation measures can be incorporated. The submitted Coal Mining Risk Assessment considered the risk from underground workings impacting the proposed

development is deemed negligible especially given the extent of opencasting. No mineshafts are recorded on or within 20m of the site. The risk of ground gas impacting the site from opencast backfill is considered low to moderate. The Coal Authority has no objection and recommends conditions in respect of intrusive ground investigations and gas monitoring.

### Highways and Accessibility

LLP1 Policy INF2 states that planning permission will be granted for development where travel generated by development should have no undue detrimental impact upon local amenity, the environment, highway safety and the efficiency of the transport infrastructure and availability of public transport services. It requires that appropriate provision is made for safe and convenient access to and within the development and car travel generated is minimised.

NPPF paragraph 32 requires decisions to take account of whether: the opportunities for sustainable transport modes have been taken up to reduce the need for major transport infrastructure, safe and suitable access to the site can be achieved for all people and improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of developments are severe.

An indicative plan to illustrate the levels of parking that could be achieved on site has been submitted. The driving range would have parking adjacent to the golf retail part of the development which includes parking for 66 cars. The Highways Authority has no objection to the use of the existing access and considers that as the application is outline parking provision can be controlled by condition.

In regard to cycling facilities, an appropriate number of secure and sheltered cycle parking spaces should be secured by condition in accordance with standards set out in the South Derbyshire Cycling Strategy Appendix A.

The site would be accessed from the existing four arm roundabout on the A514 William Nadin Way roundabout. The development would primarily generate linked and pass-by trips associated with vehicles already on the A514 as well as linked trips with the country park. Traffic generation is considered to be within the capacity of the existing roads. Five bus services run past the site and another seven in the vicinity. The site is within the 2km preferred maximum walking distance for pedestrians and routes and crossings directly connect the site to the town centre. Sections of cycleway are being improved through developments along William Nadin Way to link the site to the west and Burton upon Trent and new routes through the country park are proposed. The proposal is considered to have good sustainable transport linkages and the access and parking is considered acceptable in accordance with LPP1 INF2 and NPPF paragraph 32.

### Conclusion

In conclusion, both applications together present a 'package' that would create a significant destination in the National Forest and the District for wide

access/participation and broad appeal. A golf course in this location has been long awaited by the community and provision of a tourist and leisure destination with excellent links to the town centre within the National Forest with the associated economic and social benefits without any undue impact on the environment is considered a bonus. As stated by the Council's Economic Development Manager the opportunity for this diversification of the use of the site fits well with the Council's Economic Development Strategy.

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

## **Recommendation**

**GRANT** permission subject to the following conditions:

1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.  
  
(b) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.  
  
Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. Approval of the details of the appearance, landscaping, layout and scale (the Reserved Matters) shall be obtained from the Local Planning Authority in writing upon an application made in that regard before any development is commenced.  
  
Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.
3. The development hereby permitted shall be carried out in accordance with drawing Inset Plan 1 EMS2865\_02D and 14142-105 Rev D; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).  
  
Reason: For the avoidance of doubt and in the interests of sustainable development.
4. Prior to commencement of development a scheme of intrusive site investigation followed by a report of the findings arising from the intrusive site investigations and any remedial works required shall be submitted and approved in writing by the Local Planning Authority and implemented in accordance with the approved details.  
  
Reason: To protect the health of the public and the environment from hazards arising from previous mining work on the site which might be brought to light by development of it and recognising the Council's opinion that this element of

the development could lead to unacceptable impacts even at the initial stages of works on site.

5. No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site, in accordance with Defra Non-statutory technical standards for sustainable drainage systems, has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved detailed design prior to the occupation of any of the buildings.

Reason: To ensure that it is possible to incorporate important flood avoidance features including construction levels before the development begins In the interests of flood protection.

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

Reason: In the interests of pollution control.

7. The development permitted by this planning permission shall be carried out in accordance with the approved FRA carried out by Rogers Leask dated October 2016 reference P16-334 revision B, and drawing numbers 3726\_March\_2016 and 14142-105 and the following mitigation measures detailed within the FRA:

- Finished floor levels should be set a minimum of 300mm above the existing ground levels of the site, Section 3.1.4

- Post and rail fencing (open) to be used within the flood plain areas as shown on drawing number 3726\_March\_2016

Reason: To ensure that it is possible to incorporate important flood avoidance features including construction levels before the development begins In the interests of flood protection.

8. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.

B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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.

9. The development shall be carried out in accordance with the mitigation measures outlined in paragraphs 4.14, 4.20, 4.22 and 4.25 of the Ecological Appraisal prepared by FPCR dated October 2016.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework. This needs to be made clear before commencing to ensure that all stages of development are considered.

10. Before any works involving the construction of any building commences a landscape and ecological management plan (LEMP) for all retained and created habitats shall be submitted to, and be approved in writing by, the local planning authority. The content of the LEMP shall include the following.
- a) Description and evaluation of features to be managed / created.
  - b) Ecological trends and constraints on site that might influence management.
  - c) Aims and objectives of management.
  - d) Appropriate management options for achieving aims and objectives.
  - e) Prescriptions for management actions.
  - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
  - g) Details of the body or organization responsible for implementation of the plan.

h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The approved plan will be implemented in accordance with the approved details for each building.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework. This needs to be made clear before commencing to ensure that all stages of development are considered.

11. In respect of each plot identified on zoning plan 14142-105 Rev D, the materials to be used in the construction of a building on that plot shall be submitted to and approved in writing, before the development on that plot commences. The work shall be carried out in accordance with the agreed details.

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

12. Before any works involving the construction of any buildings commence a Construction Traffic Management Plan shall be submitted to and been approved in writing by the Local Planning Authority. The approved plan shall be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, loading, unloading of goods vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto highway and any proposed temporary traffic signing or restrictions.

Reason: In the interests of highway safety.

13. Any reserved matters application shall include a scheme for the provision of replacement spaces for the golf driving range to be provided and maintained throughout the period of construction and a scheme for their permanent replacement to be laid out and maintained throughout the life of the development prior to the first new building on the site being taken into use.

Reason: In the interests of highway safety.

14. Prior to each new building being taken into use, space shall be provided within the site for the parking of associated vehicles in accordance with the following criteria:

- Public houses - one space per 3m<sup>2</sup> of public area, plus one space for each residential member of staff and one space per 40m<sup>2</sup> of public area for non-residential staff.

- A3 café/restaurants - one space per 4m<sup>2</sup> public area plus one space per 10 tables or 40m<sup>2</sup>.

Reason: In the interests of highway safety.

15. Prior to the first occupation of the development hereby permitted, measures to minimise the risk of crime to meet the specific security needs of the application site and the development shall be implemented in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority.

Reason: In pursuance of the Council's duty under section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in exercising its planning functions; to promote the well-being of the area pursuant to the

Council's powers under Section 2 of the Local Government Act 2000 and to reflect government guidance set out in PPS1.

16. Prior to the occupation of any of the buildings, secure and sheltered cycle parking spaces shall be provided in accordance with standards set out in the South Derbyshire Cycling Strategy Appendix A.

Reason: To encourage access by cycling.

Informatives:

1. The permanent retention of a continuous unobstructed area is an essential requirement for the preservation of the water course corridor, wildlife habitat, flood flow conveyance and future ordinary watercourse maintenance or improvement. As such you will need to contact the LLFA (Derbyshire County Council) for more information about the requirement for a buffer zone between the bank of the above ordinary watercourse and the proposed development. It is best to discuss proposals for any works with them at an early stage.

2. The application was submitted which a Phase I Desktop Study (Betts Geo Environmental Ltd, May 2016, 16CHE143/DS), this has been reviewed and the recommendations put forward in Section 7 are supported. Namely a proposed ground investigation (Phase II), the scope of which forms part of the scheme to identify and control any contamination of land, or pollution of controlled waters- as required by Part A of the above condition.

The remaining phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 2A. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance.

For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire: Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from [http://www.south-derbys.gov.uk/environment/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/environment/pollution/contaminated_land/default.asp). Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the Environmental Protection Officer (contaminated land) in the Environmental Health Department: [thomas.gunton@south-derbys.gov.uk](mailto:thomas.gunton@south-derbys.gov.uk).

Further guidance can be obtained from the following:

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

- BS 8576:2013 Guidance on investigations for ground gas. Permanent gases and Volatile Organic Compounds (VOCs).

3. The detailed design should follow the National Forest Design Charter as required by adopted Local Plan policy BNE1 which encourages the use of green roofs and walls, the visible use of timber, incorporating low and zero carbon energy generation and sustainable design.

4. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and suggesting amendments to improve the quality of the proposal. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

5. Severn Trent Water advises that there is a public sewer located within the application site. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals. Severn Trent Water will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.

11/04/2017

**Item**            **1.4**

**Ref. No.**        **9/2016/1230/FO**

**Applicant:**  
**Ms Barton**  
**C/O S G Design Studio**  
**202 Woodville Road**  
**Hartshorne**  
**Swadlincote**  
**DE11 7EX**

**Agent:**  
**Mr Stephen Greaves**  
**S G Design Studio Limited**  
**202 Woodville Road**  
**Hartshorne**  
**Swadlincote**  
**DE11 7EX**

**Proposal:**     **THE ERECTION OF TWO BUNGALOWS AND ALTERED ACCESS  
AT 673 BURTON ROAD MIDWAY SWADLINCOTE**

**Ward:**           **MIDWAY**

**Valid Date**    **07/02/2017**

#### **Reason for committee determination**

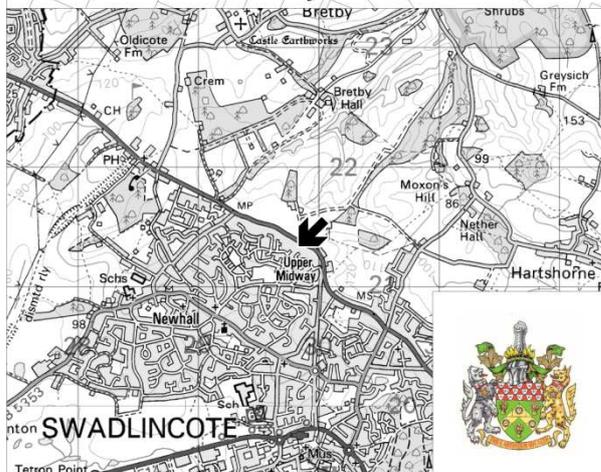
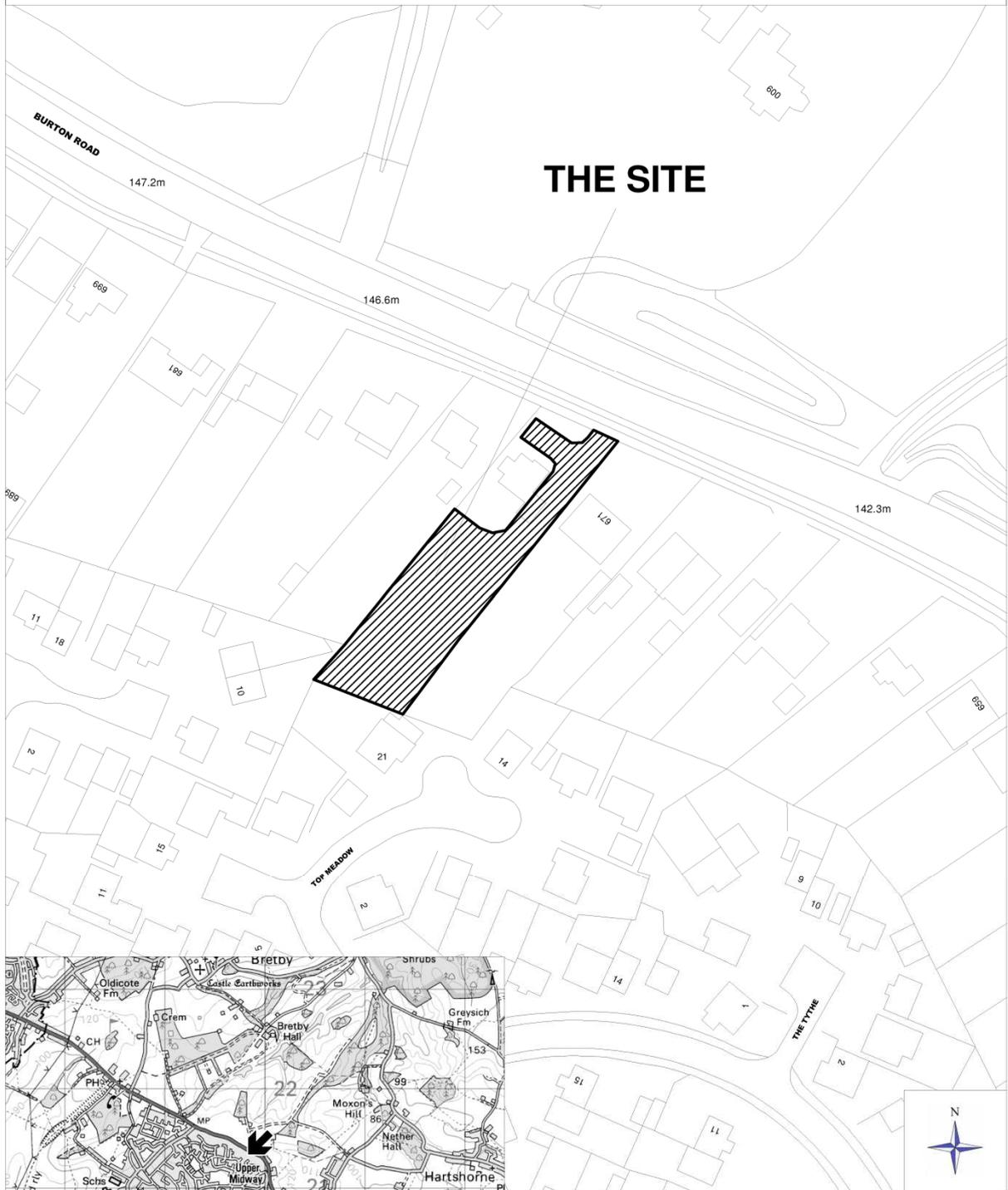
The item is presented to Committee at the request of Councillor Wilkins as unusual site circumstances should be considered by the committee.

#### **Site Description**

The application site is located to the rear of No. 673 Burton Road, Midway, a single detached dwelling with large rear garden. The existing dwelling is set back approximately 10 metres from Burton Road and is raised up from the road by approximately 1 metre behind a modest front garden, which is predominately a paved parking area. The site includes most of the existing dwelling's rear garden, with the site being accessed by the existing driveway down the eastern side of the existing property, adjacent to No. 671 Burton Road. The rear of the property has a single storey rear extension and an attached single storey garage, which would be demolished to allow for access to the rear of the property.

To the East and West of the site lie dwellings on Burton Road, they are predominantly large detached dwellings, with a mix of bungalows and 2 storey dwellings, with large long gardens and frontages running adjacent to Burton Road. To the North of the site, is a classified road; Burton Road, and to the north of that an area of woodland and open countryside. The rear garden of No. 21 Top Meadow runs parallel to the southern boundary of the application site and 2 semi-detached dwellings face the South West corner of the site.

9/2016/1230 - 673 Burton Road, Midway, Swadlincote DE11 0DL



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South Derbyshire District Council. LA 100019461. 2014

## **Proposal**

Outline planning permission is being sought for the erection of 2 bungalows to the rear of No. 673 Burton Road, with access being sought and all other matters reserved. The proposed access to the dwellings would be from Burton Road, the shared access with No. 673 would be widened to 4.8m. The access route to the bungalows would then run down the eastern side of No. 673 and adjacent to No. 671. The existing garage would be demolished in order for this to be made possible. The proposed bungalows are shown set back 21m from the rear of No. 673, with space for parking and manoeuvring of vehicles.

## **Applicant's supporting information**

Aside from the usual supporting plans, a Coal Mining Risk Assessment was submitted, it concluded that coal would be unlikely to have been worked in this area.

## **Planning History**

9/1999/0520 – The erection of a single storey extension at the rear of No. 673 Burton Road, Midway - Approved November 1999

## **Responses to Consultations**

The County Highway Authority has no objection subject to conditions relating to the provision of visibility splays, parking spaces and a restriction on the provision of gates within 5m of the highway boundary.

The Coal Authority has no objection having considered that the content and conclusions of the Coal Mining Risk Assessment are sufficient and that the likely risk from part coal mining activity is very low. However further, more detailed consideration may be required as part of any substantial building regulations application.

The Council's Contaminated Land Officer has no objection subject to a condition for ground gas prevention.

Severn Trent Water has no objection subject to an informative.

## **Responses to Publicity**

One letter of objection was received, with concern that:

- a) The 2 proposed dwellings and subsequent increase in the amount of people living in that area would increase the amount of noise generated.
- b) An increase in disturbance from traffic movement, due to the total increase in vehicles from 1 up to 5.
- c) The proximity of the development to neighbours boundaries, impacting on the privacy of residents when in their gardens.
- d) The increase in vehicles using the same access would have a negative impact on Burton Road, with concerns for safety when joining the road.

- e) If the application is granted, it could result in similar applications being submitted along burton road, resulting in an impact on the open aspect of the surrounding area.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence) and INF2 (Sustainable Transport).

## **Emerging Development Plan Policies**

- Local Plan Part 2: SDT1 (Settlement Boundaries and Development), BNE7 (Trees, Woodland and Hedgerows)

## **National Guidance**

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

## **Local Guidance**

- Housing Design & Layout SPG (2004)
- Better Design for South Derbyshire (2010)

## **Planning Considerations**

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

- The principle of development
- Highway safety
- Access
- Amenity
- Other Matters

## **Planning Assessment**

### The Principle of Development

Midway is accessible by a choice means of transport and has services and facilities within walking distance. The site is surrounded by existing dwellings and is on a main bus route, connecting it to Burton upon Trent and Swadlincote town centre. Midway is a part of the Swadlincote urban area, which sits on the highest tier of the settlement hierarchy under policy H1 of the Local Plan Part 1, within which developments of all sizes within the settlement boundaries are considered appropriate and reflect the presumption in favour of sustainable development within

Policy S2. In terms of increasing the number of dwellings on the site, the efficient use of land is supported by Policy H20. As such the principle of developing the site for residential purposes is considered to be acceptable subject to consideration of the detailed matters below.

### Highway Safety

The location of vehicular and pedestrian access to the site remains the same, with the existing access widened from 2.5m to 4.8m in order to provide sufficient width for vehicles. The application demonstrates that 2.4m x 65m visibility splays can be achieved from the access on Burton Road in both directions, meeting the requirements of 2.4m x 43m as defined by the Highway Authority. In terms of parking provision, each of the dwellings would have 2 parking bays at the front of each dwelling, providing parking for up to 2 cars per dwelling. The Highway Authority considers the access to be sufficient when widened and the layout indicates that sufficient parking and manoeuvring can be achieved within the site. As such the proposals are therefore considered to comply with Policy INF2 and the requirements of the NPPF.

### Amenity

The indicative site layout shows 2 bungalows in the rear garden of No. 673 Burton Road, set back 21m from the existing dwelling. The frontages are shown parallel to that of nearby dwellings on Burton Road. The existing detached property No. 673 would be retained, with the existing garage to be demolished to allow for access to the proposed dwellings and the garden size reduced to accommodate the proposed development. The proposed site layout is considered to establish that the site can accommodate 2 dwellings without an adverse impact on the amenity of the existing residential properties that surround it and as such complies with Policy SD1, the Council's SPG and NPPF paragraph 17. The indicative site plan submitted as part of the outline application is enough to satisfy that the standards set out in the Council's SPG can be met, therefore ensuring that the privacy and amenity of existing occupiers are respected. Some of the existing trees on the site can be retained and suitable protection of their root protection areas can be achieved through the submission of the landscaping detail at reserved matters stage as it would include trees to be retained.

### Other Matters

As detailed in the application and as shown on the proposed site plan, foul water drainage would be connected to the mains sewer and surface water managed using a soakaway, a sustainable drainage system and is thus considered to represent sustainable development in accordance with Policy SD3. The applicant has demonstrated through a Coal Mining Risk Assessment that the application site is safe and stable for the proposed development, thus meeting the requirements of the NPPF and SD4.

### Conclusion

The proposal is acceptable in principle taking into account the provisions of the development plan, given the site is located within the settlement boundary for Swadlincote urban area. The addition of 2 dwellings to the rear of No. 673 Burton Road is not considered to bring about harm which is not outweighed by the benefits of extra dwellings.

The site has been the subject of a coal mining risk assessment as required by the local authority and then assessed by the coal authority, the matters raised are acceptable subject to conditions and relevant mitigation so to comply with the relevant legislation and planning policy. The surrounding highway network is considered to have sufficient capacity to accommodate the proposed development, suitable construction phase, access and parking arrangements are achievable such that there would be no significant detrimental impacts on the safe and efficient operation of the local highway network.

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

## **Recommendation**

**GRANT** permission subject to the following conditions

1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.  
  
(b) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.  
  
Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. Approval of the details of the appearance, landscaping, layout and scale (the Reserved Matters) shall be obtained from the Local Planning Authority in writing upon an application made in that regard before any development is commenced.  
  
Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.
3. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.  
  
Reason: To safeguard the appearance of the existing building and the locality generally.
4. Construction work shall not take place on the site outside the following hours:

0800 to 1800 Monday to Friday; 0800 to 1300 on Saturdays; and at no time on Sundays or Bank Holidays with the exception of work needed during an emergency. No deliveries shall be taken at or despatched from the site except between the hours of 8am and 6pm Monday to Friday, 8am and 1.00pm Saturdays and no deliveries Sundays or Bank Holidays. No generators or pumps to be used on site without prior written permission from the Local Planning Authority.

To protect the amenities of the existing residential properties.

5. (a) Before any other operations are commenced, the existing access to Burton Road shall be modified in accordance with the application drawings, laid out, constructed and provided with 2.4m x 43m visibility splays in both directions, the area in advance of the sightlines being maintained clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to the adjoining nearside carriageway channel level.  
  
(b) The premises, the subject of the application, shall not be occupied until space has been provided within the application site in accordance with the application drawings for the parking and manoeuvring of residents' vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.  
  
(c) There shall be no gates or other barriers within 5m of the nearside highway boundary and any gates shall open inwards only.

Reason: In the interest of highway safety.

6. (a) No development shall take place until a suitable scheme for the prevention of ground gas ingress has been submitted to and approved in writing by the Local Planning Authority (LPA). Alternatively, the site shall be monitored for the presence of ground gas and a subsequent risk assessment completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'. Upon completion of either, verification of the correct installation of gas prevention measures (if any) shall be submitted to and approved in writing by the LPA prior to the occupation of the development hereby permitted.  
  
(b) If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 2A, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented to the satisfaction of the LPA.

Reason: To protect human health.

7. Before any works involving the construction of the building commences a detailed design and associated management and maintenance plan of surface water drainage for the site, in accordance with DEFRA Non-statutory technical standards for sustainable drainage systems (March 2015) has been submitted to and approved in writing by the Local Planning Authority. The

approved drainage system shall be implemented in accordance with the approved detailed design prior to the use of the building commencing.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and sufficient detail of the construction, operation and maintenance of sustainable drainage systems is provided.

8. Prior to the development hereby approved commencing, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).

Reason: To protect the amenities of adjoining properties and the locality generally.

#### Informatives:

1. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to resolve planning objections and quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

2. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 12 weeks prior notification should be given to the Environmental Services Department of Derbyshire County Council before any works commence on the vehicular access within highway limits; please contact 01629 538537 for further information.

3. The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the householder.

4. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

5. Severn Trent Water advise that although our statutory sewer records do not show any public sewers within the area you have specified, there may be sewers that have been recently adopted under, The Transfer Of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and you are advised to contact Severn Trent Water to discuss your proposals. Severn Trent will

seek to assist you obtaining a solution which protects both the public sewer and the building.

Please note 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. They may obtain copies of our current guidance notes and application form from either our website ([www.stwater.co.uk](http://www.stwater.co.uk)) or by contacting our New Connections Team (Tel: 0800 707 6600).

11/04/2017

Item 1.5

Ref. No. 9/2017/0027/BSM

**Applicant:**  
Bellway Homes (EM) Ltd  
3 Romulus Court  
Meridian East  
Braunstone Town  
Leicester  
LE19 1YG

**Agent:**  
Miss Sally Smith  
Bellway Homes (EM) Ltd  
3 Romulus Court  
Meridian East  
Braunstone Town  
Leicester  
LE19 1YG

**Proposal:** THE VARIATION OF CONDITIONS 2, 21, 24 & 34 OF PLANNING PERMISSION REF: 9/2013/0663 (RELATING TO RESIDENTIAL DEVELOPMENT FOR 157 DWELLINGS (38 WITHIN DERBY CITY AND 119 WITHIN SOUTH DERBYSHIRE) AND ASSOCIATED INFRASTRUCTURE, LANDSCAPING FOUL WATER PUMPING STATION AND PUBLIC OPEN SPACE (CROSS BOUNDARY)) ON LAND AT SK3729 4656 SOUTH WEST OF HOLMLEIGH WAY CHELLASTON DERBY

**Ward:** ASTON

**Valid Date** 13/01/2017

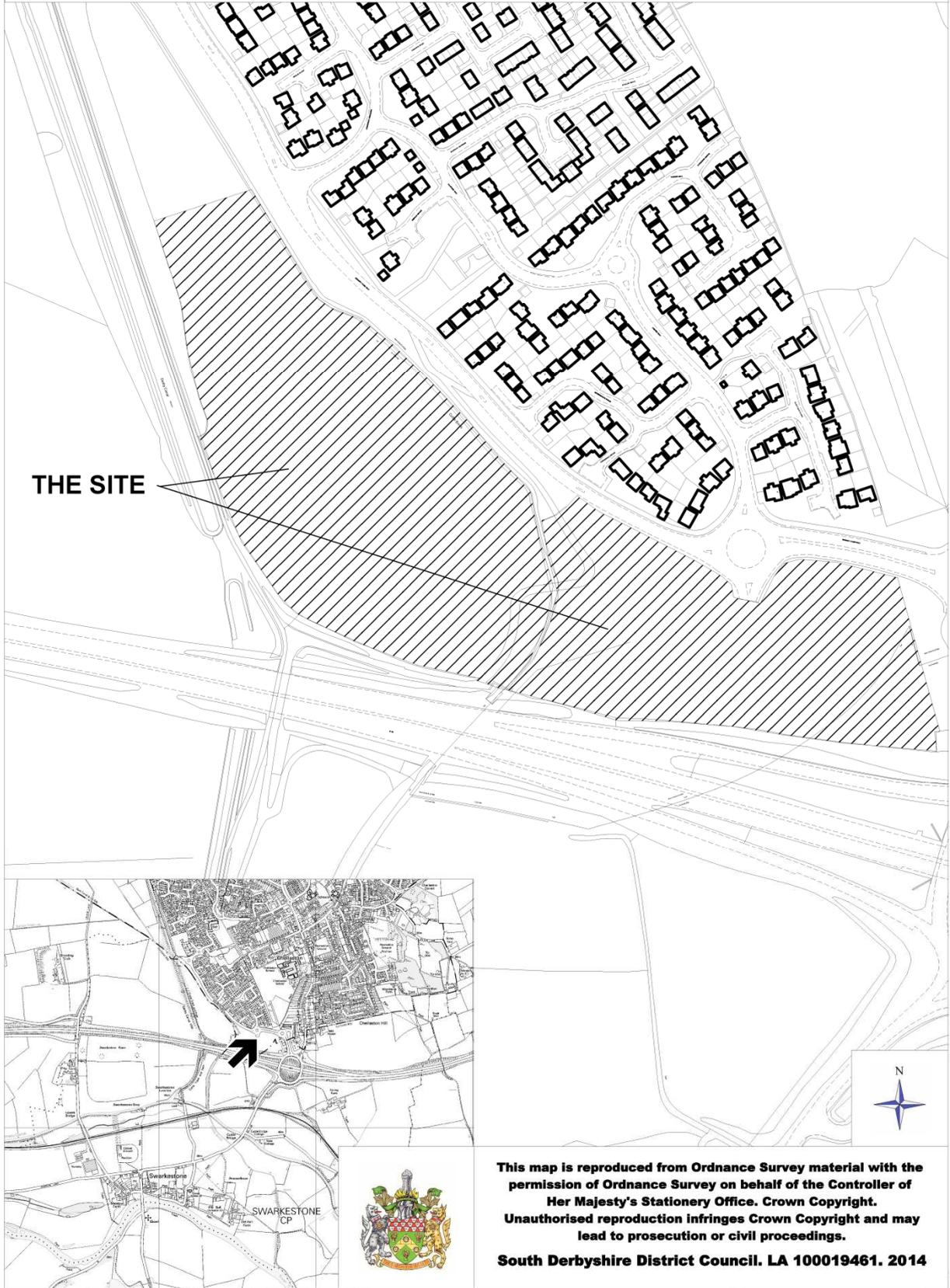
#### **Reason for committee determination**

The item is presented to Committee at the discretion of the Planning Services Manager, the Committee having previously granted permission for the development.

#### **Site Description**

The site extends to approximately 8.6 hectares and forms the larger part of a wider cross-boundary site with Derby City. The site is generally level although it rises steeply towards the eastern edge, beyond which there is a development of offices and apartments. The site is currently undeveloped and comprises arable agricultural land with woodland areas to the western site boundary, beyond which is the former Derby Canal; and much of the boundary to Holmleigh Way, where the Cuttle Brook also runs. The woodland follows this brook corridor to the A50 boundary and divides the site – with it marking the lowest ground between the sites. and an agricultural track winds up over a bridge across this brook. A public footpath (Chellaston Footpath 1) crosses the part of the site in Derby City, from the roundabout at Crown Way, across the Cuttle Brook and to the footpath/cycle path running along the edge of the A50 and the canal corridor (Swarkestone Footpaths 11 & 9 respectively).

9/2017/0027 Land at SK3729 4656 Southwest of Holmleigh Way, Chellaston  
DE73 5UE



The residential estate to the north of the site, on the opposite side of Holmleigh Way, is relatively modern and provides an urban edge to this part of the City. A local centre (within the City) provides a medical centre, pharmacy, convenience store and hot food take-away, some 200 metres to the north of the site at the junction of Holmleigh Way and Rowallan Way. The Rose and Crown and The Bonnie Prince public houses are located approximately 100 metres to the east of the site. Chellaston Junior School and Chellaston Academy are located some 1.5 km to the north.

Most of the combined site is within South Derbyshire. A 'wedge' of the land is taken into the City boundaries, meaning all the land east of the Cuttle Brook, save for a small corner at the south-eastern end, is within the City.

## **Proposal**

It is proposed to amend the layout of the development as part of reducing the affordable housing provision to policy compliant levels. The layout changes are relatively minor, but material, and the proposed changes also attract the need to amend the section 106 agreement accompanying the extant permission.

The development already secured comprises 157 dwellings in a mix of 1, 2, 3, 4 and 5-bedroom houses, of which 38 fall within Derby City (and 10 would be for affordable purposes) and 119 within South Derbyshire, of which a maximum of 48 would be affordable. This proposal would reduce this compliment of 48 (40%) to 37 (31%) with a tenure mix of 23 rented to 14 intermediate.

## **Applicant's supporting information**

A Covering Letter confirms the application is submitted in order to amend the affordable housing level on the South Derbyshire proportion of the site from 40% to 30%, reflecting the current adopted Policy. In light of discussions with the Housing Officer, the mix has also been amended to provide 2 and 3-bed family housing, being an identified need in this area. However, in order to maintain the overall number of dwellings being delivered, three additional house types are included in the overall portfolio across the site.

## **Planning History**

- |             |                                                                                                                                                                                                                                                                        |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9/2013/0663 | Residential development for 157 dwellings (38 within Derby City boundary and 119 within South Derbyshire boundary) and associated infrastructure, landscaping, foul water pumping station and public open space (cross boundary application) – Approved December 2014. |
| 9/2009/0971 | Outline permission (all matters except for access to be reserved) for the construction of a mixed use development comprising business park, residential units, public open space, formation of an access and ancillary works – Withdrawn.                              |

- 9/2009/0054 The construction of new canal (Outline with all matters reserved) joining the Erewash and Trent and Mersey canals – Approved September 2011.
- 9/1999/0065 The widening of Cuttle Brook to provide surface water outfall – Approved June 1999.
- 9/1192/0684 Outline application for roadside facility for A50 – Approved January 1994.

### **Responses to Consultations**

Highways England advises the changes would have no material impact on the Strategic Road Network and raises no objection.

The County Highway Authority notes that the proposed changes do not appear to affect the proposed highway layout and the level of parking is considered comparable to that previously proposed. There is no objection subject to the conditions being carried forward.

Natural England has no comments to make.

The Environment Agency has no objection noting that the application relates to house type modifications and changes to a cycle path.

The Lead Local Flood Authority has no comments to make and refers to standing advice.

The Police Designing Out Crime Officer has no objections.

The County Council Minerals Officer notes that permission is already in place for the development and thus has no comments to make in respect of the minerals planning interest.

The County Council Planning Policy Officer notes the existing obligations towards education facilities and greenway funding for the Trent and Mersey Canal Corridor Towpath.

The NHS CCG seeks £59,799 towards providing additional capacity to meet the demand at the Listerhouse Chellaston practice.

### **Responses to Publicity**

One representation has been received, questioning whether consideration has been given for additional schooling and healthcare, with waiting times at the local doctors already unacceptable and the local primary school full. Additionally, the speeds of vehicles on Infinity Park Road mean safe crossing points would be required.

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H17 (Holmleigh Way, Chellaston), 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), SD5 (Minerals Safeguarding), 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), INF9 (Open Space, Sport and Recreation),
- 1998 Local Plan (saved policies): EV9 (Protection of Trees and Woodland), EV11 (Sites and Features of Natural History Interest) and EV14 (Archaeological and Heritage Features)

### **Emerging Development Plan Policies**

The relevant policies are:

- Submission Local Plan Part 2: SDT1 (Settlement Boundaries and Development), BNE7 (Trees, Woodland and Hedgerows) and BNE10 (Heritage).

### **National Guidance**

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

### **Local Guidance**

- Housing Design and Layout Supplementary Planning Guidance (SPG)
- Section 106 – A Guide for Developers (2010)

### **Planning Considerations**

With the principle of development established on the site, the focus is solely on the effect of the requested variation to the condition. The housetype and layout changes are discussed below, whilst the change to affordable housing provision is also addressed. Matters relating to the impact on the surrounding highway network; the impact on local services and facilities; and ecology, flood risk and visual impacts have all been previously considered acceptable, subject to conditions and/or obligations. In this respect, the request of the NHS CCG is not considered CIL compliant, the previous permission establishing that the impact of the development on such services could be sustained without mitigation. All previous conditions and obligations will be carried forward unless they require amendment to accommodate this proposal, with appropriate 'streamlining' of the conditions and obligations regime where possible.

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

- Revision to the quantum of affordable housing; and
- Effect of the changes to layout and design.

## **Planning Assessment**

### Revision to the quantum of affordable housing

The principle policy is H21 of the Local Plan Part 1. The policy requires a maximum of 30% of the dwellings to be provided on site to be made available for affordable housing purposes. Whilst the extant consent secures well above this amount, at 40%, it must be recognised that provision was secured under out-of-date policies and does not reflect the evidence base underpinning Policy H21. It is also recognised that the revisions still provide more than the maximum (31%, or 37 dwellings in this case, where 36 dwellings would still be compliant); and this is welcomed. The tenure split of 62% for rent and 38% intermediate also broadly follows the evidence in the Strategic Housing Market Assessment (SHMA). There are thus no planning grounds upon which to resist the change, particularly when the site is now acceptable in principle under the allocation made by Policy H17 and a further 'fresh' application could be made offering just 30%.

### Effect of the changes to layout and design

The changes solely relate to the western 'half' of the site and a relatively minor, with housetypes swapped in various locations. However, these changes retain the character as originally envisaged along the main estate road and fronting out onto open space.

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

## **Recommendation**

**GRANT** permission subject to the receipt of a deed of variation to the original section 106 agreement, to accommodate the changes to affordable housing provision discussed above, and the following conditions:

1. The development permitted shall be begun before 10 December 2017.  
Reason: To conform with Sections 73 and 91(1) 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 plans/drawings ref: CHEL/0285/100/01 Rev D and CHEL/0285/100/02 Rev B (Site Layouts); the standard and handed House Type Packs ref: ems.2363 (as amended 4 December 2013) as supplemented or superseded by the Lichfield, the Somerby, the Weston or the Twyford house types (including plot specific

variations); Eaves details SD-7-04, SD-7-05 & SD-7-06; the Typical Details ref: PC0285/TYP/001 Rev A; and Boundary/Enclosure details ref: SD-9-02, SD-9-03 Rev D and SD-9-05 (all as submitted under application ref: 9/2013/0663 or this application, as appropriate); unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

3. The development shall be carried out in accordance with the Flood Risk Assessment (FRA) ref: 12086, the subsequent Addendum letter dated 5 December 2013 and Floodplain Compensation Scheme for Cuttle Brook, dated July 2013, all as received with application ref: 9/2013/0663; and the following mitigation measures detailed within the FRA:

- Provision of compensatory flood storage in accordance with the Floodplain Compensation Scheme for Cuttle Brook report; and
- Finished floor levels are set no lower than 39.550m above Ordnance Datum (AOD).

The compensatory flood storage measures shall be fully implemented in accordance with the timing/phasing arrangements embodied within the scheme.

Reason: To prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided and to reduce the risk of flooding to the proposed development and future occupants.

4. With the exception of work needed during an emergency, during the period of construction no deliveries shall be taken at or despatched from the site and no construction work shall take place outside the following times: 0800-1800 hours Monday to Friday and 0800-1300 hours on Saturdays.

Reason: To protect the amenities of nearby residents.

5. The areas shown the approved site layouts and house type drawings for the parking/garaging of vehicles shall not be used other than for such purposes except with the prior permission of the Local Planning Authority granted on an application made in that regard.

Reason: In the interests of providing adequate parking provision, in the interests of highway safety.

6. There shall be no gates or other barriers within 5m of the nearside highway boundary (proposed highway boundary) and any gates shall open inwards only.

Reason: In the interests of highway safety.

7. The proposed access drives to the internal estate roads shall be no steeper than 1 in 15 for the first 5m from the nearside highway boundary.

Reason: In the interests of highway safety.

8. Gutters and downpipes shall have a black finish.

Reason: In the interests of the appearance of the buildings and the character of the area.

9. No development shall take place until a scheme has been submitted to and approved in writing by the Local Planning Authority that specifies the provision to be made for dust mitigation measures and the control of noise emanating from the site during the period of construction of the development. The approved measures shall be implemented throughout the construction period.

Reason: To protect the amenities of nearby residents, noting that preparatory works may cause unacceptable impacts.

10. Other than demolition and/or site clearance, no groundworks or the construction of a building, road or hard surface shall commence until space has been provided within the site curtilage for the storage of plant and materials, site accommodation, loading and unloading of goods vehicles, cleaning of construction vehicles in order to prevent the deposition of mud or other extraneous material on the public highway, and parking and manoeuvring of site operatives and visitors vehicles; laid out and constructed in accordance with details to be first submitted and approved in writing by the Local Planning Authority. The approved facilities shall be maintained throughout the contract period in accordance with the approved details free from any impediment to their designated use.

Reason: In the interests of highway safety.

11. No development shall take place until a detailed method statement for removing or the long-term management/control of Himalayan Balsam on the site has been submitted to and approved in writing by the Local Planning Authority. The method statement shall include measures that will be used to prevent the spread of Himalayan Balsam during any operations (e.g. construction works, mowing, strimming or soil movement). It shall also contain measures to ensure that any soils brought to the site are free of the seeds/root/stem of any invasive plant listed under the Wildlife and Countryside Act 1981, as amended. The development and subsequent maintenance of affected areas shall proceed in accordance with the approved method statement.

Reason: This condition is necessary to prevent the spread of Himalayan Balsam, which is an invasive species, listed under Schedule 9 of the Wildlife & Countryside Act 1981, as amended, noting that preparatory works may cause unacceptable impacts.

12. No development shall take place until a survey for badger setts on or adjoining the site has been submitted to and approved in writing by the Local Planning Authority. If any setts are present on or within 30 metres of the site, site clearance and construction works shall not commence until a method statement for the protection of badgers has been produced and any necessary Natural England licences have been obtained. The method statement shall be implemented in full.

Reason: To ensure that protected species and their habitats are adequately protected, noting that preparatory works may cause unacceptable impacts.

13. The tree protection measures as shown on plan ref: GL0097 06 shall be installed prior to any development commences, including site preparatory works. The area surrounding each tree or hedgerow within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:
- (i) There shall be no changes in ground levels;
  - (ii) No material or plant shall be stored;
  - (iii) No buildings or temporary buildings shall be erected or stationed;
  - (iv) No materials or waste shall be burnt within 20 metres of any retained tree or hedgerow; and
  - (v) No drain runs or other trenches shall be dug or otherwise created;
- without details of the need to (re)move the tree protection measures having been first submitted to the Local Planning Authority at least 5 clear working days in advance of such action.

Reason: In the interests of protecting existing habitat and the visual amenities of the area.

14. No site clearance works or development shall take place until there has been submitted to the Local Planning Authority for its written approval a scheme showing the type, height and position of protective fencing to be erected 10 metres either side of the Cuttle Brook. No development shall commence until there a scheme showing the type, height and position of protective fencing to be erected 10 metres either side of the Cuttle Brook has been submitted to and approved in writing by the Local Planning Authority. No development shall commence until the protective fencing is installed. Except as is authorised by this permission or required by any condition pursuant thereto, the area between the brook and the protective fencing shall remain undisturbed during the course of the works, and in particular in this area:
- (i) there shall be no changes in ground levels;
  - (ii) no material or plant shall be stored; and
  - (iii) no buildings or temporary buildings shall be erected or stationed; and
  - (iv) no drain runs or other trenches shall be dug or otherwise created.

Reason: To ensure that protected species and their habitats are adequately protected, noting that preparatory works may cause unacceptable impacts.

15. a) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the Local Planning Authority; and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of Section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the Local Planning Authority dispenses with any such requirement specifically and in writing.
- b) Prior to occupation of the development (or parts thereof) an independent verification report must be submitted, which meets the requirements given in

Box 2 of Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

c) In the event that it is proposed to import soil onto site in connection with the development, this should be done to comply with the specifications given in Box 3 of Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

d) If required by the conceptual site model, no development shall take place until monitoring at the site for the presence of ground gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the Local Planning Authority, which meets the requirements given in Box 4, Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

16. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the developer shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the Local Planning Authority without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.

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

17. No building, road or hard surface shall be constructed until details of a scheme for the disposal of foul water has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

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

18. No building, road or hard surface shall be constructed until details of a scheme for surface water drainage, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme to be submitted shall demonstrate:

- the utilisation of holding sustainable drainage techniques;
- treatment facilities in accordance with Drainage Strategy 12086 Drawing 1 Rev A (as submitted under application ref: 9/2013/0663), or equivalent;
- the limitation of surface water run-off to greenfield rates;
- the ability to accommodate surface water run-off on-site up to the critical 1 in 100 year event plus 30% for climate change, based upon the submission of drainage calculations;

- a phasing plan/timetable for the provision and operation of the drainage system; and
- responsibility for the future maintenance of drainage features.

The scheme shall be implemented in accordance with the approved phasing plan/timetable and within 12 months of the commencement of the operation of the approved surface water drainage scheme, it shall be certified as completed in accordance with the approved drawings/documents by a Chartered Surveyor or Chartered Engineer with a copy of this certification provided to the Local Planning Authority.

Reason: To prevent the increased risk of flooding; to improve and protect water quality; to improve habitat and amenity; and to ensure the future maintenance of the sustainable drainage structures.

19. No building, road or hard surface shall be constructed until details of the finished floor levels for the buildings and of ground levels relative to the buildings and across the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: In the interests of the visual appearance of the development, to ensure the proposal complies with the 6Cs Design Guide for highways, and to ensure the proper functioning of drainage infrastructure.

20. No building, road or hard surface shall be constructed until details of the materials to be used on the surfaces of the roads, footpaths, car parking areas and courtyards along with samples of the materials to be used on the external surfaces of the buildings and boundary walls have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out using the approved materials.

Reason: To safeguard the appearance of the buildings and the locality generally.

21. Prior to the commencement of any works to construct the new bridge in the Cuttle Brook corridor, a survey for water vole and otter shall be submitted to and approved in writing by the Local Planning Authority. The measures required pursuant to condition 24 shall incorporate the findings of the approved survey.

Reason: To ensure that protected species and their habitats are adequately protected, noting that preparatory works may cause unacceptable impacts.

22. Prior to the first occupation of a dwelling, full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. These details shall relate to all public and private areas and include details of minor artefacts and structures (e.g. street furniture, play equipment, refuse collection points, etc.) and any retained historic landscape features and proposals for their preservation/restoration. Soft landscape works shall include written specifications and plans & schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and a programme/timetable for its implementation. Soft landscaping shall include means to delineate between public and private spaces to the front of dwellings. All hard landscape works shall be carried out

in accordance with the approved details prior to the first occupation/use of the property/space served by such landscaping, whilst all soft landscape works shall be carried out in accordance with the approved programme/timetable for its implementation and finished not later than the first planting season following completion of the development. 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.

23. Prior to the first occupation of a dwelling, a landscape management plan, including phasing and implementation strategy, long term design objectives, management responsibilities (including details of funding mechanisms) and maintenance schedules for all landscape areas, other than privately owned domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be implemented as approved.

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

24. The schemes required pursuant to conditions 22 & 23 shall include the recommended wildlife mitigation measures provided in the Wildlife Protection and Mitigation Plan prepared by JBA Consultancy Services Ltd on behalf of Bellway Homes and JW Langton (October 2013), and shall include the following elements:

- detail extent and type of new planting (with planting to be of native species);
- details of maintenance regimes;
- details of protection of existing habitats and species;
- details of any new habitat created on site;
- details of treatment of site boundaries and/or buffers around existing water bodies (a minimum 10m buffer should be provided both to the woodland and river to prevent development encroachment on the environment; and
- details of management responsibilities.

Reason: To ensure that biodiversity is adequately protected and enhanced.

25. Each dwelling shall not be occupied until the proposed new estate streets between that respective dwelling and the existing public highway have been laid out in accordance with the approved plans, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

26. Each dwelling shall not be occupied until space has been provided within the site in accordance with the approved plans for the parking and manoeuvring of residents/visitors/service and delivery vehicles to serve that dwelling, laid out and surfaced. Once provided any such facility shall be maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

27. The footpath/cycleway from Holmleigh Way through the site to the southern boundary, crossing the Cuttle Brook over the existing vehicular bridge, shown in part on the approved site layouts shall be provided and made available for use before the first occupation of a dwelling in accordance with further details as to its layout and construction first submitted to and approved in writing by the Local Planning Authority. 2m by 25m visibility splays, or other sightlines as may be first submitted to and approved in writing with the Local Planning Authority, shall be provided in both directions at its southern extremity and shall thereafter be maintained free of any obstruction above 600mm in height.

Reason: To facilitate movement by cycle and on foot and in the interests of highway safety.

28. Prior to the occupation of any of plots 34-44, 50- 51, 55-58, 63-68, 74-79 and 84-88, the noise mitigation measures outlined in the Environmental Noise Assessment ref. 12258 Rev E, as received with application ref: 9/2013/0663, shall be implemented in full and retained thereafter.

Reason: To protect the aural amenities of the occupiers of those dwellings.

29. Notwithstanding the approved plans, large scale drawings to a minimum scale of 1:10 of window cills and heads, verges and porch canopies shall be submitted to and approved in writing by the Local Planning Authority before their incorporation into any building. No dry verges (cloaking tiles) shall be used, windows set on stone or chamfered reveals shall not have stub cills, and porch canopies shall not be finished with a GRP tile effect. The window cills and heads, verges and porch canopies shall be constructed in accordance with the approved drawings.

Reason: The details submitted are inadequate to determine whether the appearance of the buildings would be acceptable, in the interests of achieving a development which reflects and enhances local vernacular.

30. Notwithstanding the approved plans, details of the construction of bin collection points and their location for all shared driveways and courtyards shall be submitted to and approved in writing by the Local Planning Authority prior to the construction of the relevant shared driveways/courtyards. The approved bin collection points shall be provided prior to the first occupation of a dwelling to which they serve and subsequently maintained thereafter from any impediment to their designated use.

Reason: In the interests of the appearance of the area and reducing the likelihood of bins obstructing the public highway.

#### Informatives:

1. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to minimise the number of conditions and pre-commencement requirements therein, seeking amendments to improve the quality of the proposal, and quickly determining the application. As such it is considered that the Local Planning Authority has implemented the

requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

2. The hedgerows on the application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact Natural England: 0300 060 3900.

3. The Environment Agency does not consider oversized pipes or box culverts as sustainable drainage. Should infiltration not be feasible at the site, alternative above ground sustainable drainage should be used.

4. Under Drainage Byelaws, prior written consent of the Environment Agency is required for any proposed works or structures, in, under, over or within eight metres of the top of the bank/foreshore of the Cuttle, designated a 'main river'. This applies to the proposed bridge structure over the brook.

5. Surface water run-off should be controlled as near to its source as possible through a sustainable drainage approach to surface water management. Sustainable Drainage Systems (SuDS) are an approach to managing surface water run-off which seeks to mimic natural drainage systems and retain water on-site as opposed to traditional drainage approaches which involve piping water off-site as quickly as possible.

6. The scheme required by Condition 24 should consider the following elements:

- additional native tree and shrub planting along the woodland edge;
- the inclusion of a buffer strip along the stream corridor of wildflower/species rich grassland;
- seeding of woodland ground flora;
- the addition of bat and bird boxes around the site (location to be agreed with a suitably qualified ecologist); and
- details of lighting regime to minimise disturbances to bats.

7. Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

8. Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Strategic Director of the Economy, Transport and Environment Department at County Hall, Matlock (Tel: 01629 533190). The applicant is advised to allow

approximately 12 weeks in any programme of works to obtain a Section 38 Agreement.

9. Pursuant to Sections 219/220 of the Highways Act 1980, relating to the Advance Payments Code, where development takes place fronting new estate streets the Highway Authority is obliged to serve notice on the developer, under the provisions of the Act, to financially secure the cost of bringing up the estate streets up 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.

10. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

11. Highway surface water shall be disposed of via a positive, gravity fed system (ie; not pumped) discharging to an approved point of outfall (eg; existing public sewer, highway drain or watercourse) to be sanctioned by the Water Authority (or their agent), Highway Authority or Environment Agency respectively. The use of soak-aways for highway purposes is generally not sanctioned.

12. The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the landowner.

13. The phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance referenced in footnotes 1-4, to the relevant conditions attached to this permission.

For further assistance in complying with planning conditions and other legal requirements applicants should consult 'Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated'. This document has been produced by local authorities in Derbyshire to assist developers, and is available from [http://www.south-derbys.gov.uk/business/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp)

Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department:

[pollution.control@south-derbys.gov.uk](mailto:pollution.control@south-derbys.gov.uk).

14. The applicant is advised to seriously consider the installation of a sprinkler system to reduce the risk of danger from fire to future occupants and property.

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

11/04/2017

**Item** 1.6

**Ref. No.** 9/2017/0128/BSM

**Applicant:**  
Mrs L Beddard & K Sammons  
3 New Street  
Rosliston  
Swadlincote  
DE12 8JE

**Agent:**  
Mrs Janet Hodson  
JVH Town Planning Consultants Ltd  
Houndhill Courtyard  
Houndhill  
Marchington  
ST14 8LN

**Proposal:** THE REMOVAL OF CONDITION 3B OF PLANNING PERMISSION REF: 9/2015/0723 (RELATING TO OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR RESIDENTIAL DEVELOPMENT FOR UP TO 24 DWELLINGS ON LAND AT SK2416 7131 COTON LANE ROSLISTON SWADLINCOTE

**Ward:** LINTON

**Valid Date** 08/02/2017

#### **Reason for committee determination**

The item is presented to Committee as it is a major application contrary to the Development Plan, with the original application determined by the Committee.

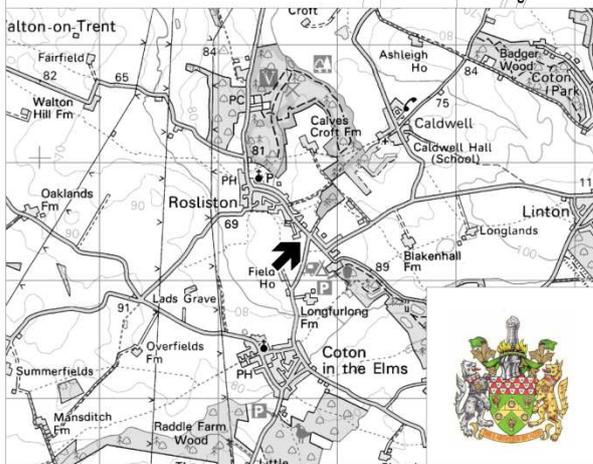
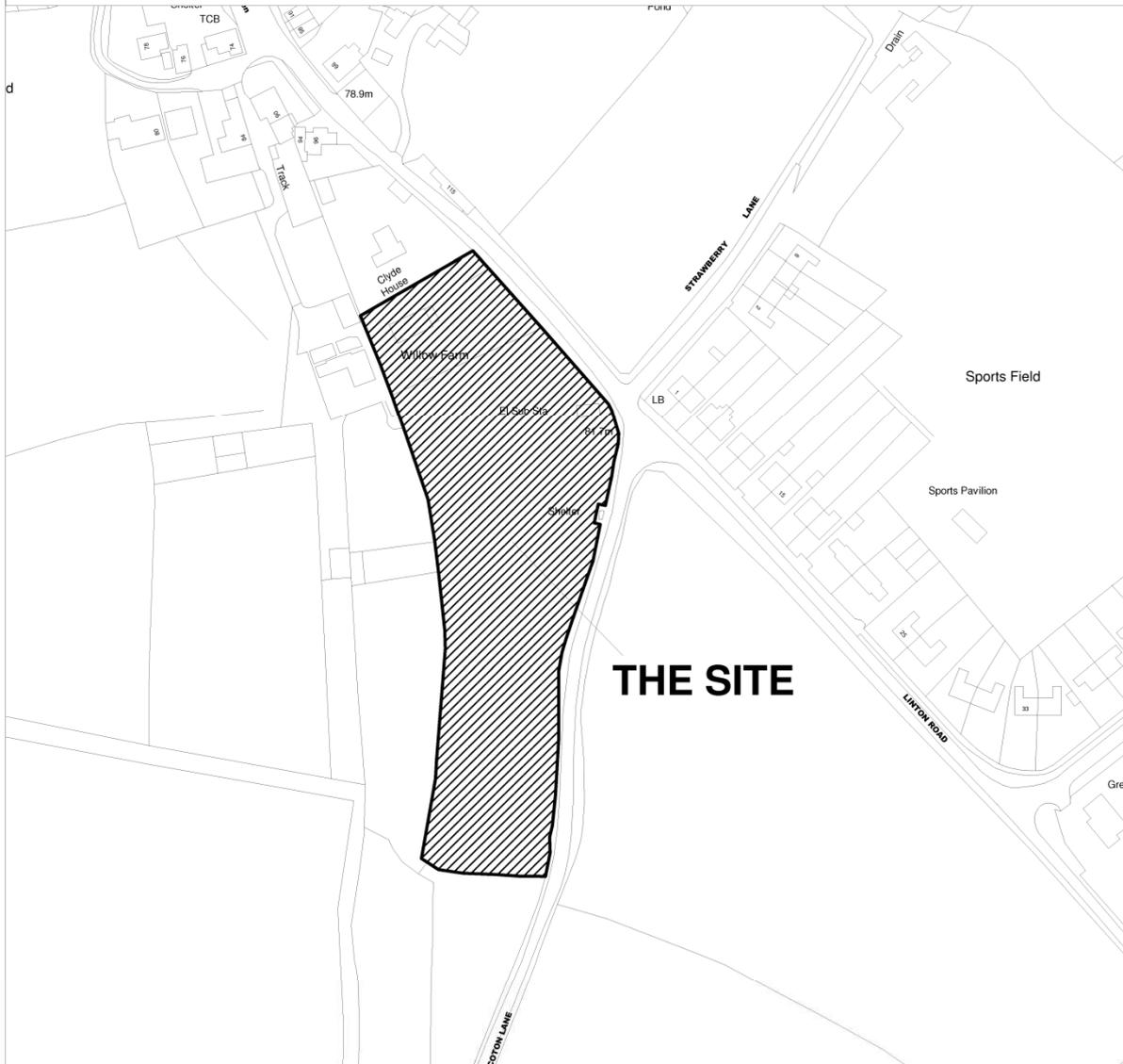
#### **Site Description**

The site comprises some 1.1 hectares of agricultural land to the west of Main Street and Coton Lane, Rosliston. It is presently put to pasture and carries mature hedgerows and trees to the boundaries, particularly the eastern boundary where the trees are subject to a Tree Preservation Order (TPO). There is an access gate to the north-east corner and a further one onto Coton Lane. A substation sits within the site with overhead cables running west across it, whilst in the north-west corner is an open-sided barn/stables. Residential properties lie adjacent to the northern boundary whilst further residential properties line the end of Main Street and Linton Road away from the Main Street/Coton Lane mini-roundabout.

#### **Proposal**

It is proposed to delete part (b) of condition 3 to the extant permission. This requires provision of at least 25.4m<sup>2</sup> of public open space per person/bedroom and an equipped area for play as part of the details submitted under the reserved matters. The application also seeks confirmation as to the level of National Forest woodland

9/2017/0128 - Land at SK2416 7131 Coton Lane, Rosliston, Swadlincote  
DE12 8JL



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planting required, with the condition requiring a policy compliant level of 0.22 hectares (20% of the site area) yet the section 106 (s106) unilateral undertaking seeking 0.3 hectares.

The proposal as a whole remains in outline with all matters except for access reserved, with up to 24 dwellings to be provided in a mix of types and tenures, along with sustainable drainage systems (SuDS), a new access road and landscaping. The indicative housing mix is for 5 two-bed dwellings, 13 three-bed dwellings and 6 four or five-bed dwellings.

### **Applicant's supporting information**

None, although a Supporting Statement submitted with an identical, as yet undetermined, application (see Planning History below) is of relevance. This confirms that the area of public open space (POS) required under condition 3(b) equates to some 0.23 hectares (based on 89 bedrooms) – slightly greater than the area of woodland planting that is required under condition 3(a). If a separate area of POS and play equipment were provided it would be contrary to the indicative plan on the extant permission and prevent the delivery of 24 homes as allowed for under the extant permission. Moreover, it would appear not to be the intention to provide on-site POS since the s106 undertaking obligates the developer to make an off-site financial contribution in lieu, which is to be spent on upgrading play equipment at the Forestry Centre. The condition is considered unnecessary and unreasonable, whilst a clause in the s106 undertaking carries the existing obligations forward – negating the need for a Deed of Variation and meaning the terms will apply in the same manner for any new permission granted here.

### **Planning History**

- 9/2016/0836     The removal of condition 3(b) of planning permission ref: 9/2015/0723 (relating to outline application (all matters except for access to be reserved) for residential development of up to 24 dwellings) – Pending
- 9/2016/0615     Approval of reserved matters for layout, scale, appearance and landscaping of planning permission ref: 9/2015/0723 – Pending
- 9/2015/0723     Outline application (all matters except for access to be reserved) for residential development of up to 24 dwellings – Approved March 2016
- 9/2014/0372:     Outline application (all matters except for access to be reserved) for residential development – Refused August 2014.

### **Responses to Consultations**

Derbyshire Wildlife Trust (DWT) responded under the first application to remove condition 3(b). They confirmed that, as the indicative layout plan is the same, there is no objection to the application. Those comments are equally applicable to this application.

The National Forest Company (NFC) responded under the pending reserved matters application, noting disappointment that the planting provision is to reduce from 0.3ha to 0.22ha; but they recognise that the higher proportion exceeds the policy compliant requirement of 0.22ha.

## **Responses to Publicity**

At the time of writing, the site notice is yet to expire (4 April). Any further representations received on or before that date will be reported verbally to the Committee.

Rosliston Parish Council objects to the removal of condition 3(b), noting their disappointment that s106 monies are to be allocated to healthcare provision out of the village and to the Forestry Centre rather than being kept within the village core itself. Questions are raised as to the lack of detail in respect of the use of the building facilities sum, it being just defined as “enhancements to visitor facilities at Rosliston Forestry Centre”; why the off-site open space contribution cannot be spent on play equipment within the village; and why healthcare sums are being directed to a practice elsewhere and not the one in the village. The Parish Council is also concerned that removal of condition 3(b) would open the ‘surplus’ land up for a future application for additional housing and is in conflict with the Council’s Section 106 Agreements guidance – particularly in respect of there being no play equipment provided on the site.

1 objection has been received, raising the following concerns/comments:

- a) the safety of children in having to travel to open spaces off-site, with it possible that the nearest play area is in Coton in the Elms;
- b) 24 houses in a small space without any provision is unfair on the families likely to reside there; and
- c) the requirements should be retained as existing.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), H1 (Settlement Hierarchy), INF1 (Infrastructure and Developer Contributions), INF6 (Community Facilities), INF7 (Green Infrastructure), INF8 (The National Forest) and INF9 (Open Space, Sport and Recreation).
- 1998 Local Plan (saved policies): H5 (Village Development) and EV1 (Development in the Countryside).

## Emerging Development Plan Policies

The relevant policies are:

- Submission Local Plan Part 2: SDT1 (Settlement Boundaries and Development), H23 (Non-Strategic Housing Allocations) and BNE5 (Development in the Countryside).

## National Guidance

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

## Local Guidance

- Housing Design and Layout SPG
- Section 106 Agreements – Guidance for Developers

## Planning Considerations

With the principle of development established on the site and the impacts of the development previously considered as acceptable – subject to conditions and/or obligations where necessary; the focus is solely on the effect of the requested removal of condition 3(b). All other previous conditions will be carried forward unless they require amendment to accommodate this proposal, with the obligations of the s106 undertaking automatically carried forward.

## Planning Assessment

Condition 3(b) states:

3. *The details submitted pursuant to the reserved matters listed at condition 1 shall specifically accord with and/or include the following:*
  - a) *at least 0.22 hectares of woodland planting broadly in the location as shown on plan ref: 782-01 Rev E;*
  - b) *at least 25.4m<sup>2</sup> of public open space per person/bedroom generated by the development and an equipped area for play in line with the Council's Section 106 Agreements – A Guide for Developers (2010) document...;*

When considering an application to revise/remove condition(s), it is necessary to revisit the reason for the imposition of the condition(s) as well as the NPPF tests for imposing conditions. The reason given for the condition is:

*“For the avoidance of doubt and in order to secure biodiversity gains and an appropriate detailed design which accords with best design principles under Building for Life criteria and Secured by Design, the existing indicative layout noted to be unsuitable in respect of the latter”.*

The specific basis for condition 3(b) is wrapped up in that text emphasised above. The development would bring about additional residents to the village and the impact

of increase demand on public services and infrastructure needs to be mitigated. There are two approaches when it comes to POS provision – either on-site or through provision of financial contributions towards improving or extending existing provision off-site. In this case, the combination of condition 3(b), requiring on-site provision of POS, and the financial obligation in the s106 undertaking, requiring contributions towards improving facilities at the Forestry Centre; amounts to ‘double charging’.

The NPPF and PPG are clear that conditions and obligations should be used appropriately, in line with the relevant tests. It is apparent from revisiting the file for the 2015 application that the initial intention was to provide POS on site before it became apparent that National Forest woodland requirements would compromise the ability to achieve this. At the time, following dialogue with the Open Spaces and Facilities Manager, it was decided that it would be appropriate to ‘defer’ this on-site provision to upgrading existing facilities at the Forestry Centre. No other projects were brought to the attention of officers and it was this project which was eventually enshrined in the s106 undertaking. However, condition 3(b) had also been drafted by this time and it was not omitted prior to the Committee considering the application. In light of the above, condition 3(b) is neither necessary nor reasonable, with it resulting in a burden on the applicant which is more than is required under policy.

The comments of the Parish Council are noted, but as the s106 undertaking is not to be varied there is no opportunity to alter the destination for the sums set out. Those sums were based on consultation responses from the relevant parties at the time, including the Southern Derbyshire CCG. The removal of condition 3(b) would also not ‘release’ land for future development, with the condition presently leading to a ‘doubling up’ of POS and National Forest planting onto the same land.

In respect of the National Forest planting, the requirement under condition 3(a) is policy compliant. In this respect, implementation of the 0.22 hectares amount would be in line with the planning permission and it then falls to whether the obligation should be enforced to require 0.3 hectares. Given the higher figure, on review, does not fulfil the tests for imposing obligations; it is apparent that enforcement action would not be warranted in this case. Accordingly, the first informative below reflects the recommended stance on the matter.

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

## **Recommendation**

**GRANT** permission subject to the following conditions:

1. This permission is granted in outline under the provisions of Article 5(1) of the Town & Country Planning (Development Management Procedure) (England) Order 2015, and the further approval of the Local Planning Authority is required before any development is commenced with respect to the following reserved matters:
  - a) appearance;

- b) landscaping;
- c) layout; and
- d) scale.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

2. (a) Application for approval of the reserved matters listed at condition 1 shall be made to the Local Planning Authority no later than 30 March 2019; and  
(b) The development hereby permitted shall be begun before the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: To conform with Section 73 and Section 92(2) of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

3. The details submitted pursuant to the reserved matters listed at condition 1 shall specifically accord with and/or include the following:
  - a) at least 0.22 hectares of woodland planting broadly in the location as shown on plan ref: 782-01 Rev E submitted with application ref: 9/2015/0723;
  - b) sustainable drainage systems (SuDS) where at least one attenuation pond (if forming part of the drainage strategy) is designed to permanently hold water;
  - c) the internal layout shall accord with the guidance contained in the 'Manual for Streets' document issued by the Departments for Transport and Communities and Local Government and Derbyshire County Council's 6Cs Design Guide (or equivalent guidance which may replace these documents);
  - d) a swept path analysis to demonstrate that service and emergency vehicles can successfully enter and manoeuvre within the site;
  - e) a pedestrian link of 2 metres width into the site towards the north-eastern end of the site connecting with an estate road provided within the site;
  - f) means for off-road parking and access from a new estate road for the substation located on the site; and
  - g) an enhanced landscape buffer within the eastern boundary with Coton Lane/Main Street;

Reason: For the avoidance of doubt and in order to secure biodiversity gains and an appropriate detailed design which accords with best design principles under Building for Life criteria and Secured by Design, the existing indicative layout noted to be unsuitable in respect of the latter.

4. No removal of hedgerows, shrubs or scrub shall take place between 1st March and 31st August inclusive, unless prior to its removal details of a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and measures to protect the nesting bird interest on the site have first been submitted to and approved in writing by the Local Planning Authority. The approved protection measures shall then be implemented as approved.

Reason: In the interests of safeguarding against harm to protected species.

5. The landscaping details required pursuant to Condition 2 above shall include a Habitat Management Plan (HMP) that identifies all hedgerows to be retained and managed outside of private gardens. The content of the HMP shall include the following:-
  - a) Description and evaluation of features to be managed/enhanced (e.g. hedgerows, woodland planting, etc.);
  - b) Aims and objectives of management.
  - c) Appropriate management options for achieving aims and objectives;
  - d) Prescriptions for management actions;
  - e) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
  - f) where monitoring shows that conservation aims and objectives of the HMP are not being met, how contingencies and/or remedial action will be identified, agreed and implemented;
  - g) Details of the body or organisation responsible for implementation of the plan;
  - h) Details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.

The approved HMP shall be implemented in full prior to the occupation of any dwelling and thereafter operated as such.

Reason: In the interests of retaining and enhancing the biodiversity value of the site.

6. The gradient of the new estate street accesses shall not exceed 1:30 for the first 10m into the site from the highway boundary and 1:20 thereafter.

Reason: In the interests of highway safety.

7. No construction works shall take place on the site other than between 7:30am to 7:00pm Monday to Friday, and 7:30am to 1:30pm on Saturdays. There shall be no construction works (except for works to address an emergency) on Sundays or Public Holidays.

Reason: In order to protect the amenities of adjoining residential occupiers.

8. There shall be no burning of materials on site during the construction phase of the development. For the avoidance of doubt this includes any preliminary works to clear vegetation on site.

Reason: In order to protect the amenities of adjoining residential occupiers.

9. Throughout the groundworks and construction phase of the development, vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.

Reason: In the interests of highway safety.

### Pre-commencement

10. No generators shall be used on site during the construction phase of the development unless specifications of the generator(s) to be used, along with noise and fume mitigation measures where necessary, have been first submitted to and approved in writing by the Local Planning Authority. Any necessary mitigation shall be retained in situ throughout the construction phase of the development.

Reason: In order to protect the amenities of adjoining residential occupiers.

11. No development or other operations on the site (including ground works and vegetation clearance) shall commence until a scheme which provides for the protection of all hedgerows and trees identified for retention growing on or adjacent to the site has been submitted to and approved in writing by the Local Planning Authority. The approved protection measures shall then be implemented prior to any development or operations commencing and thereafter retained until a time where vehicles or mechanical equipment cannot interfere with such hedgerow or trees, or completion of the development, whichever occurs first.

Reason: In the interests of maintaining existing habitat provision to the benefit of wildlife and visual amenity, recognising the potential for permanent and long term damage to such features could occur at the outset of any works on site.

12. No development or other operations on the site (including ground works and vegetation clearance) shall commence until a site walkover survey for any signs of badger on the site has been completed with the results first submitted to and approved in writing with the Local Planning Authority. If badger is found to be present, details of mitigation measures shall accompany the results of the site walkover survey for approval in writing with the Local Planning Authority. Any approved mitigation measures shall then be implemented prior to any development or operations commencing thereafter retained until a time where there is no risk to badger from construction activities.

Reason: In the interests of protecting species which may use the site, recognising the potential for injury or worse to such species at the outset of any works on site.

13. No development shall take place until a Construction Management Plan (CMP) has been submitted to and been approved in writing by the Local Planning Authority. The approved CMP shall be adhered to throughout the construction period and shall provide for the storage of plant and materials, site accommodation, loading, unloading of goods' vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto highway, pedestrian and cyclist protection and any proposed temporary traffic restrictions.

Reason: In the interests of highway safety, recognising that even initial stages of development could cause unacceptable impacts on the public highway.

14. Before any other operations commence, a temporary access for construction purposes shall be provided in accordance with a detailed design first submitted to and approved in writing by the Local Planning Authority. The access shall have a minimum width of 5.5m, be constructed to base level and

be provided with visibility sightlines of 2.4m x 82m in the southerly direction and 2.4m x 43m to the north; the area forward of the sightlines shall be cleared and maintained throughout the construction period clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge.

Reason: In the interests of highway safety, recognising that even initial stages of development could cause unacceptable impacts on the public highway.

15. (a) No development or other operations shall take place until a Written Scheme of Investigation (WSI) for archaeological work has been submitted to and approved in writing by the Local Planning Authority, and until any pre-start element of the approved WSI has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and
- (i) the programme and methodology of site investigation and recording;
  - (ii) the programme for post investigation assessment;
  - (iii) provision to be made for analysis of the site investigation and recording;
  - (iv) provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - (v) provision to be made for archive deposition of the analysis and records of the site investigation; and
  - (vi) nomination of a competent person or persons/organisation to undertake the works set out within the WSI.
- (b) No development shall take place other than in accordance with the archaeological WSI approved under (a).
- (c) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological WSI approved under (a) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible, noting that initial ground works could lead to the permanent loss of such items.

16. No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site, in accordance with DEFRA Non-statutory technical standards for sustainable drainage systems (March 2015), specifically including pollution prevention measures and demonstrating sufficient capacity to accommodate flows from the development (including from highway surface water drainage); has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved detailed design prior to the first occupation of any dwellings.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, recognising that initial stages of development to remodel ground levels and create access infrastructure could alter the existing drainage characteristics of the site.

17. No development shall take place until a detailed assessment has been provided to and approved in writing by the Local Planning Authority to demonstrate that the proposed destination for surface water accords with the hierarchy in Approved Document Part H of the Building Regulations 2000.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, recognising that initial stages of development to remodel ground levels and create access infrastructure could alter the existing drainage characteristics of the site.

18. The development hereby permitted shall not be commenced until such time as a scheme to dispose of foul drainage has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved.

Reason: To safeguard against pollution of the natural environment, recognising that initial stages of development must secure appropriate levels and falls for the drainage system to properly function.

19. No development shall commence until a construction phase dust mitigation scheme has been submitted to and approved in writing with the Local Planning Authority. The approved mitigation shall be implemented prior to works commencing and thereafter retained throughout the construction phase.

Reason: To ensure an appropriate standard of amenity for existing occupiers, recognising the potential for works to cause unacceptable impacts on existing occupiers from the outset.

20. No development involving construction of dwellings shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the NPPF or any future guidance that replaces it. The scheme shall include:

- i. no less than 30% of housing shall be Affordable Housing.
- ii. the type, tenure and location of the Affordable Housing.
- iii. no more than 80% of Market Housing units shall be occupied before completion and transfer of the Affordable Housing Units to an Affordable Housing Provider;
- iv. the arrangements for the transfer of the Affordable Housing Units to an Affordable Housing Provider;
- v. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing to those households on the District Housing Waiting List; and
- vi. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing by means of the District Choice Based Lettings allocation scheme or in such other form as may be proposed by the Local Authority and agreed with the Affordable Housing Provider.

Reason: To ensure the provision of affordable housing within the planned design of the development, so as to ensure that the scheme is not in conflict with the reserved matters submission and recognising that the number, type

and position of dwellings could affect the position of initial ground works on site.

21. No development involving construction of dwellings shall take place until details of the finished floor levels of the dwellings and other buildings hereby approved, and of the ground levels of the site relative to adjoining land levels, along with details of any retaining features necessary have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the agreed levels and any approved retaining features.

Reason: To ensure that the visual impact of the development is minimised as far as possible, recognising that site levels across the site as a whole are crucial to establishing infrastructure routing/positions and their efficient operation thereafter.

22. Prior to works commencing on the extended footway along Coton Road to the new estate road junction, a Tree Protection Method Statement (TPMS) for working within the Root Protection Area (RPA) and canopy of protected trees shall be submitted to and approved in writing by the Local Planning Authority. The TPMS shall include:

- a) a Tree Protection Plan (TPP), informed by descriptive text where necessary, based upon the finalised proposals and showing trees for retention and illustrating tree and landscape protection measures;
- b) details of how operations during construction work are to be carried out without risk of damage to tree roots within the RPA or branches in the canopy; and
- c) details of what actions are to be taken if encountering substantial roots (>50mm) outside the RPA.

The approved TPMS shall thereafter be implemented in full throughout the duration of works and prior notice of no less than 10 working days shall be given to the Council prior to undertaking relevant works within the RPA.

Reason: To ensure that the impacts of the protected tree(s) are minimised and so to allow for appropriate monitoring of the works as they take place.

23. Prior to installation of any lighting on the site, details of the height, means of support, cowling, luminance and spill/spread of any lighting shall be submitted to and approved in writing by the Local Planning Authority. The approved lighting scheme shall thereafter be implemented in accordance with the approved details and thereafter retained as such.

Reason: To ensure that the impacts on protected species which may use the site are minimised.

#### Prior to occupation

24. No dwelling shall be occupied until the proposed new estate street(s) between each respective plot and the existing public highway has been laid out in accordance with the approved drawings pursuant to a reserved matters and/or discharge of conditions application, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads

Reason: In the interests of highway safety for prospective occupants during the course of construction works on site.

25. Prior to the first occupation of any dwelling, the new estate junction shall be formed to Coton Lane. The junction shall have a minimum width of 5.5m, be constructed to base level, be provided with 2 x 2m footways, a 6m radius on the southern side and a 10m radius on the northern side, visibility sightlines of 2.4m x 82m to the south and 2.4m x 43m to the north. The area forward of the sightlines shall be taken into the highway and constructed as footway or verge and contain no obstruction exceeding 600mm in height relative to the nearside carriageway edge. Notwithstanding the submitted drawings, the sightline in the southern direction shall be taken not only to the extent of the 82m but tangentially to the carriageway edge.

Reason: In the interests of highway safety.

26. Prior to the first occupation of any dwelling, a new footway shall be provided on Coton Lane. The footway shall have a width of 2m and extend from that existing in the vicinity of the bus stop to join the new footway into the housing development with the exception of a pinch point by the existing tree where the width shall be reduced to no less than 1m. The footway shall be laid out and constructed, drained and lit in accordance with Derbyshire County Council's specifications for adoptable roads.

Reason: In the interests of highway safety.

27. Prior to the first occupation of any dwelling, space shall be provided within each plot curtilage for the parking of two vehicles and maintained throughout the life of the development free of any impediment to its designated use. For the avoidance of doubt, where a garage is counted as a parking space, the internal dimensions should not be less than 3m x 6m

Reason: In the interests of highway safety.

28. No dwelling shall be occupied until such time as the area(s) of land for woodland planting have been planted in accordance with a detailed scheme which shall have previously been submitted to and approved in writing by the Local Planning Authority.

Reason: To deliver National Forest objectives and assimilate the development into the National Forest.

29. The pedestrian link required pursuant to Condition 3(f) above shall be provided prior to first occupation of a dwelling or in accordance with timetable previously submitted to and approved in writing by the Local Planning Authority. This link shall thereafter be retained open and free from obstruction to its use.

Reason: In the interests of facilitating convenient and suitable access to the site by all users.

#### Other

30. 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 first occupation of the dwellings or the completion of the

development, whichever is the sooner; and any plants which within a period of five years from the completion of the development die (ten years in the case of trees), are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The publically landscaped areas shall be maintained as such until these areas are transferred to the Local Authority or nominated maintenance company.

Reason: In the interests of visual amenity and to secure appropriate open space provision for occupiers of the dwellings hereby approved.

### Informatives

- a. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990, noting that only 0.22 hectares of National Forest planting is required as a minimum (in line with condition 3) contrary to that set out in the Definitions of that undertaking.
- b. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and issues and quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.
- c. In the event that great crested newt is found on site work should cease immediately and advice should be sought from a professional ecologist.
- d. If any reptiles are found on site, works should cease and advice should be taken from a professional ecologist.
- e. To discharge surface water drainage conditions the applicant should ensure all of the below parameters have been satisfied:
  - i) The production and submission of a scheme design demonstrating full compliance with DEFRA non-statutory technical standards for sustainable drainage systems:
    - Limiting the discharge rate and storing the excess surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical duration rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site to comply with S2 & S3.
    - Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm to comply with S7 & S8.
    - Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements.
    - Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development to ensure the features remain functional.

- Production of a plan showing above ground flood pathways where relevant for events in excess of 1 in 100 year rainfall event to comply with S9.
- ii) The submission of an appropriate ground investigation with percolation/soakaway results inclusive by a recognised method (i.e. BRE Digest 365) to confirm the suitability of infiltration as a primary method of disposing of surface water.
- f. The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal mining. Further information is also available on The Coal Authority website at: [www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority). Property specific summary information on past, current and future coal mining activity can be obtained from: [www.groundstability.com](http://www.groundstability.com).
  - g. Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained by contacting the County Council via email - [es.devconprocess@derbyshire.gov.uk](mailto:es.devconprocess@derbyshire.gov.uk). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.
  - h. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 12 weeks prior notification should be given to the Environmental Services Department of Derbyshire County Council before any works commence on the vehicular access within highway limits; please contact 01629 538537 for further information.
  - i. Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gully laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.
  - j. The applicant is advised to seriously consider the installation of a sprinkler system to reduce the risk of danger from fire to future occupants and property.