

REPORT OF THE HEAD OF PLANNING SERVICES

SECTION 1: Planning Applications

SECTION 2: Appeals

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

1. PLANNING APPLICATIONS

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

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

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

Item 1.1

Reg. No. 9/2008/0168/U

Applicant:

Three Horse Shoes Ltd
The Gatekeepers Cottage
Mickleover Manor
Mickleover
DE3 0SH

Agent:

Mr M H Rennie (Shareholder)
Long Lane
Ashbourne
DE6 5BJ

Proposal: **Change of use from public house to dwelling at Three Horseshoes Long Lane Dalbury Lees Ashbourne**

Ward: **North West**

Valid Date: **11/02/2008**

This case is re-entered on the agenda following a deferment from the Committee of 13 May for a member's site visit.

Reason for committee determination

Councillor Bale has requested that the application be brought to Committee as local concern has been expressed about a particular issue

Site Description

The application site comprises the whole of the pub curtilage including its car park and grassed areas. Although the site lies in a relatively isolated position in the countryside part of the site (the building) lies with the village confine of Long Lane; a settlement of a small number of dwellings.

Proposal

The proposal is to change the use of the pub to a single residential dwelling.

Applicants' supporting information

A company owns the pub, formed by local people, who purchased the pub some 19 years ago when a previous proposal was made to close it. The pub at that time had been boarded up and in an attempt to make the pub viable then, the previous owners, First Leisure, had held a number of events that caused significant disturbance to local residents. The villagers wanted to retain the pub and a number were prepared to invest time and money to achieve that. This objective has been achieved over the last 19 years but given the circumstances outlined below, the shareholders consider that they need to consider the options open to them should another tenant fail to achieve a profit on the operation of the pub.

THE SITE



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It has become apparent to the shareholders that the pub is becoming less viable and the company is forced to put it up for sale. Despite recent cash injections from the shareholders to prevent the company from going under, there have been difficulties with retaining managers and subsequently tenants. In the past 12 months there have been three tenants, the last one handing in notice in February this year after 4 months in the pub. It is stated that the rent charged is some 30 – 40% less than what the company has been advised it should be. Despite this, tenants have found the pub to be unviable. The shareholders continue to advertise for tenants and if new tenants are found, then the pub will remain open (proof of advertisement has been received and is available on the file for inspection).

The shareholders are concerned that the campaign to keep the pub open appears to be orchestrated and in fact relatively few objections have been received compared to the numbers required to make the pub viable. There are two other rural pubs close by and a total of 5 others in a 3-mile radius.

However, the shareholders consider that there should be an alternative use for the pub should their latest attempts to find tenants prove unsuccessful. Hence the application to convert the pub to a single dwelling has been submitted. They consider that the shareholder should have the opportunity to seek an alternative use for the pub rather than accepting an offer from others who may then seek planning permission for an alternative use. The applicants note the Council's request for accounts to cover the recent period of the operation of the pub but for the last 5 years or more the pub has been let on a tenancy and as such the tenants have been responsible for the production of the accounts and the shareholders have not received copies of the accounts and as such are unable to provide them.

Since submission of the application, at the Council's request, the applicants have completed a Campaign for Real Ale (CAMRA) Public House Viability Test (available for inspection on the file).

Planning History

There is no recent planning history for this site.

Responses to Consultations

The County Highway Authority has no objection to the development because in highway safety terms it considers that there would be a net benefit due to the reduction in vehicle movements.

The Environmental Protection Manager has no comment.

Responses to Publicity

103 letters have been received objecting to the application for the following reasons, some households have written more than once: -

- a) The loss of the pub would mark a further deterioration in the rural life of the area, the church, school and pub are the centre of the community in Long Lane. There is no alternative meeting place locally for local people.

- b) Up to two years ago, new people to the village are assured of a friendly welcome in the Three Horseshoes where good food and beer were available. This has since deteriorated with the arrival of a succession of different tenants. Recent tenants have left, it is suggested, because of the unreasonable attitude of the landlords'.
- c) There is a responsibility on the shareholders to remember why they bought the pub in the first place and they should attempt to sell it as a public house before trying to change its use. The pub was saved once and it is believed that it could be saved again. The assertion that the pub is not viable is not supported by any of the information accompanying the application.
- d) The pub acts as an attraction to passing tourists and is a valuable addition to the tourist industry with two letting rooms of its own. Indeed the bed and breakfast element of the business is well used, particularly by the DEFRA inspectors when they are in the locality. Also people using the holiday lets at Windle Hill Farm enjoy the fact that there is a traditional rural pub within reasonable walking distance.
- e) The application is the thin end of the wedge and could lead to further applications to develop the grounds of the pub. Rural areas need affordable houses not more executive dwelling and certainly not to the detriment of community facilities.
- f) Little money has been spent on the fabric of the building and internally the only upgrade has been painting. The pub can survive but it needs professional people to run it with a clear focus for the future. A previous tenant has confirmed that the rent was to be increased by 50% to £30,000 – however a Valuer from Nottingham they had employed, advised the tenants that the £20,000 they were paying already was a reasonable rent. It is alleged that rent had been doubled to previous tenants and this negated the possibility of that tenant making a living from the pub.
- g) Locals aware that one or more local people are willing to purchase the pub to keep it open - a former tenant is understood to have made an offer to buy the freehold at a reasonable market price.
- h) It is also the HQ for many local clubs including the Royal British Legion, Sutton on the Hill Cricket Club and others.
- i) The local recycling centre would be lost.

Development Plan Policies

The relevant policies are:

Local Plan: None of the retained policies are relevant.

Planning Considerations

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

- The Development Plan
- Government advice in PPS 7
- The applicants' case
- The objections raised in response to publicity

Planning Assessment

There are no development plan policies that cover the particular situation that this case presents. There was a policy in the abandoned Revised Local Plan but that is not one

that is retained in the Planning Policy Statement issued following the abandonment of the Plan.

The Government's advice in PPS 7 is that authorities should have policies in the Local Development Framework documents that set criteria for assessing applications to change the use of rural amenities such as pubs. One of the methods of assessing pub viability is the use of the CAMRA test. This has been undertaken in this case.

The applicants case is that the pub would have closed some 18 years ago but for the actions of the shareholders in purchasing it. In the 18 years various persons have been employed by the consortium culminating in tenants being brought into the pub to run it as they saw fit in an attempt to make a business for the tenants and a return for the shareholders. In reality the shareholders state that they have seen little return on their investment in the pub and indeed have put more money into it. The shareholders state that they continue to seek tenants and have provided evidence of adverts attempting to let the pub once more. This, it is contended, shows that there is an ongoing commitment by the shareholders in attempting to keep the pub going as a local facility. The view of the shareholders is that, but for their intervention, the pub would have closed nearly two decades ago and that if the pub is now no longer viable as a business then they wish to ensure that when offered for sale, the shareholders have the benefit of any uplift in value that may accrue from its use as a single dwelling. The latest advert for the property indicates that the shareholders would require an annual rent of £20,000. The submitted CAMRA appraisal indicates that the pub is not on a regular bus route, there is little or no passing trade. The village itself has about 30 properties with a limited number adults living in a one-mile radius. A search of appeal decisions for the closure of pubs in similar sized communities has shown that such small communities are not large enough to sustain the pub on their own. With the lack of regular passing trade it is considered that the viability of the pub would be compromised.

The objectors take the view that the pub should remain open as a potentially viable business. Previous occupiers of the pub have made a success of the business and that there are other people willing to take the pub open and keep it as a community facility and that they should be given the opportunity to make a 'go' of the pub. Letters have been received to this effect. The pub is viewed as vital to the viability of the local community at Long Lane and the wider area with community groups and tourists taking advantage of the facilities provided by the pub. The objectors' concern is that the shareholders are just out to profit from their investment without regard to the needs of the local community.

The objectors are also concerned that if permission were granted then further applications would be submitted to erect additional dwellings in the grounds of the public house. This is not the matter under consideration at this time. Any subsequent application would be considered on its own merits and in compliance with the provisions of the development plan and potential for future applications cannot be used to refuse the current application.

The issues are finely balanced. The applicants have a right to the permission under planning law unless there are material considerations that dictate otherwise. Notwithstanding other matters raised, the overriding issue is whether the change of use of the pub to a single dwelling would result in a loss of a local community facility and whether it would be reasonable to refuse permission on that basis. Had the current group of owners not bought the pub all those years ago, then the Authority would not

have been faced with this application, the pub would have been long gone. The owners have undertaken steps to show that the potential long-term future of the pub is not good given the lack of a bus route, quiet nature of the road past the pub and the presence of competition in the locality. On the basis that the pub has been preserved as a local community facility for 18 years, and the lack of potential for increased trade identified in the CAMRA assessment, then it is considered that the refusal of permission in order to encourage the retention of the pub would be difficult to justify on the basis of existing planning policy.

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. Prior to the first occupation of the building as a dwelling, details of the treatment of the curtilage of the existing public house in terms of landscaping, parking arrangements for the dwelling and the siting of any garden buildings together with a schedule for the implementation of the works shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall thereafter be implemented in accordance with the submitted scheme and schedule.

Reason: In order to ensure that the appearance of the property as a whole is addressed in the interests of the amenity of the occupiers of adjacent dwellings.
3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, no buildings and no gates, walls, fences or other means of enclosure shall be erected on the application site, except as authorised under the submitted application or by any other condition attached to this permission, without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.

Reason: To ensure that any such structures are appropriate to the character and appearance of the building.

Item **1.2**

Reg. No. **9/2007/1079/U**

Applicant:

Mr T Gorman
(Chair Elvaston Cricket Club)
63 Grove Close
Thulston
Derby
DE72 3EY

Agent:

Mr T Gorman
(Chair Elvaston Cricket Club)
63 Grove Close
Thulston
Derby
DE72 3EY

Proposal: **Change of use to cricket field of pasture land adjacent to Elvaston Cricket Ground Elvaston Castle Country Park Elvaston**

Ward: **Aston**

Valid Date: **24/09/2007**

Reason for committee determination

The application carries an objection from a statutory consultee (Garden History Society).

Site Description

The site is a field used for grazing, situated adjacent to the existing established cricket ground at Elvaston Castle and is located in the Green Belt. The field displays an historic ridge and furrow pattern and is part of a registered historic park and garden. Whilst there are numerous listed buildings focussed on Elvaston Castle the site is separated from them by woodland. Elvaston Castle Country Park is also identified as being of natural history interest (included on the Derbyshire Wildlife Sites Register).

Proposal

The development would involve use of the whole field for cricket. However operational development would be confined to:

- The removal of a raised ridge running east/west across the centre of the field, involving the excavation of some 140 cubic metres of material;
- A cricket square measuring some 30m x 20m, involving the excavation of a further 90 cubic metres of material; and
- The levelling of land either side of the square to form bowlers' run-ups, utilising excavated material.



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The remaining ridge and furrow is very gentle and would not interfere with the safe use of the field for cricket.

Applicants' supporting information

- The ridge that would be removed is understood to form part of a roadway that joined Coronation Cottage to the roadway from the Golden Gates.
- The bulk of the ridge and furrow would be retained, as is the case with the existing cricket field.
- The existing mature tree would be retained but may need minor works for safety reasons.
- The applicant would do nothing to undermine the status of the park and has a good track record as a tenant.
- The club has 120 youngsters signed on for 2007 and is keen to offer them the best possible opportunity to enjoy sport and develop as cricketers and good citizens. The proposal would be of great importance in helping the club to meet those objectives.

The applicant has also supplied a letter of support from the Derbyshire County Cricket League, which makes the following points:

- The proposal would further the development of one of the league's leading clubs and enable the club to develop junior cricketers in large numbers along with its commitment to the visually impaired.
- It would allow junior cricketers access to better pitches and facilities on a regular basis and take the strain away from the existing square.
- There would be no need to make substantial alteration to the ridge and furrow and the oak tree in the corner would not conflict with the playing area.
- The development would enhance the club's facilities to a level that only a handful of other clubs could match.

Planning History

There are no previous applications affecting this particular site although the adjacent cricket ground has benefited from several permissions that have enabled it to improve its outdoor sport and recreation facilities.

Responses to Consultations

The Parish Council has no comment.

The Garden History Society appreciates that the cricket ground is low key but because the field is ridge and furrow considers it inappropriate to turn it to sporting use.

English Heritage does not wish to comment in detail but asks for the advice of the Council's archaeological adviser and the Garden History Society to be taken into account, and for the decision to be based on the Council's specialist conservation advice in accordance with national and local policy guidance.

The Development Control Archaeologist considers that whilst the loss of ridge and furrow would have a negative impact, it would still be possible to 'read' the features and appreciate the overall context of the ridge and furrow within the landscape. Therefore subject to an appropriate condition there is no objection to the cricket square.

The County Council's ecologist points out that the tree in the north west corner of the site, and another on the boundary, are identified by a Derbyshire Wildlife Trust survey as veteran trees. Conditions relating to tree protection and enhancement are recommended.

Derbyshire Wildlife Trust (DWT) considers the potential impact on wildlife to be minimal but recommends a condition to secure a margin of rough grassland around the Oak and a similar margin, 2m wide, around the field boundary.

The Design and Conservation Officer has no objection on the basis that the majority of the ridge and furrow would remain undisturbed.

The Highway Authority has no objection, as the facility would be ancillary to the main cricket ground.

Responses to Publicity

5 letters have been received objecting as follows:

- a) The proposal would be detrimental to the visual amenity and setting of the historic park.
- b) The setting of the Grade 1 listed St Batholomews Church would be harmed.
- c) The importance of the ridge and furrow and the need to protect it is highlighted in the Conservation Plan for Elvaston Castle.
- d) A precedent would be set for further works affecting the ridge and furrow system.
- e) The biodiversity of the site would be reduced, including the use of pesticides, herbicides, fungicides and other grass and ground treatments.
- f) There would be increased traffic, resulting in pollution and danger to visitors.
- g) Associated score boards, seating, lighting, signage etc would adversely affect the openness of the green belt.
- h) The future of the estate could be prejudiced by such ad hoc plans.
- i) The character of the countryside would be adversely affected.
- j) Community involvement has been inadequate.
- k) PPG15, PPS7 and PPS1 should be taken into account.
- l) The use of the pitch would put other park users in danger from stray balls.
- m) There are sustainable alternatives for the facility.
- n) The use of the site for grazing in the winter would damage the pitch. It would be better for the facility to be in a place where this would not happen.
- o) Traffic is likely to be greater than as suggested by the applicant.

Development Plan Policies

The relevant policies are:

RSS8: Policies 27 & 31

Saved Joint Structure Plan: L&TP2

Saved Local Plan: GB1 GB6 EV1 EV11 EV13 EV14 EV15 RTP1

Planning Considerations

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

- The principle.
- Impact on the setting of listed buildings.
- Impact on the registered historic garden.
- Archaeology
- Natural history.
- Highway safety.

Planning Assessment

The principle of outdoor sport and recreation is accepted by national and local green belt, countryside and recreation policies. Given that Elvaston Cricket Club is established in this particular location it would not be a preferable option, in sustainability terms, to locate its second pitch in the urban area.

The existing cricket ground is an established feature within the grounds of Elvaston Castle. The proposal would not significantly alter the character of the parkland surrounding the listed buildings at Elvaston Castle. Therefore the impact on the setting of those buildings would not be significant or harmful.

There would be impact on the ridge and furrow contained within the application site. This would amount to about 600 sq m for the cricket square and about 1020 sq m for the run up areas. This would be about 16% of the site so the remaining 84% of the ridge and furrow would not be affected by excavation or leveling works. The scale of the works proposed would conserve the character of the historic park.

Subject to the condition recommended by the Development Control Archaeologist this issue would be adequately safeguarded.

The veteran tree on the site is identified as a UK priority habitat. The conditions recommended by the County Council's ecologist would help to protect and enhance its natural history value. The wider protection of ecological issues would be dealt with by conditions recommended by DWT.

On the basis that the facility would be ancillary to the main cricket ground, there would be no harm to highway safety interests.

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

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

3. A management plan for the veteran tree on the site and the field boundary, including a maintenance schedule and, in the case of the tree, the provision of protective fencing, shall be submitted to and approved by the Local Planning Authority before the commencement of any other works on the site. The management plan shall be implemented as approved.

Reason: To protect and enhance the amenity and biodiversity value of the tree.

Item **1.3**

Reg. No. **9/2008/0385/M**

Applicant:

Mr Mrs J & A Hudson
7 Silverton Drive
Stenson Fields
Derby
DE24 3BU

Agent:

Bryan Wolsey (Planning) Ltd
29 Chapel Street
Ticknall
Derby
DE73 7JY

Proposal: **Development of a children's camp including the erection of a multi purpose accommodation/recreation block and manager's house together with a site layout for various recreational activities and the formation of an access road at Fryzms House Farm Buckford Lane Stenson**

Ward: **Stenson**

Valid Date: **03/04/2008**

Reason for committee determination

The application is brought to Committee because this is a major application which has attracted more than two letters of objection.

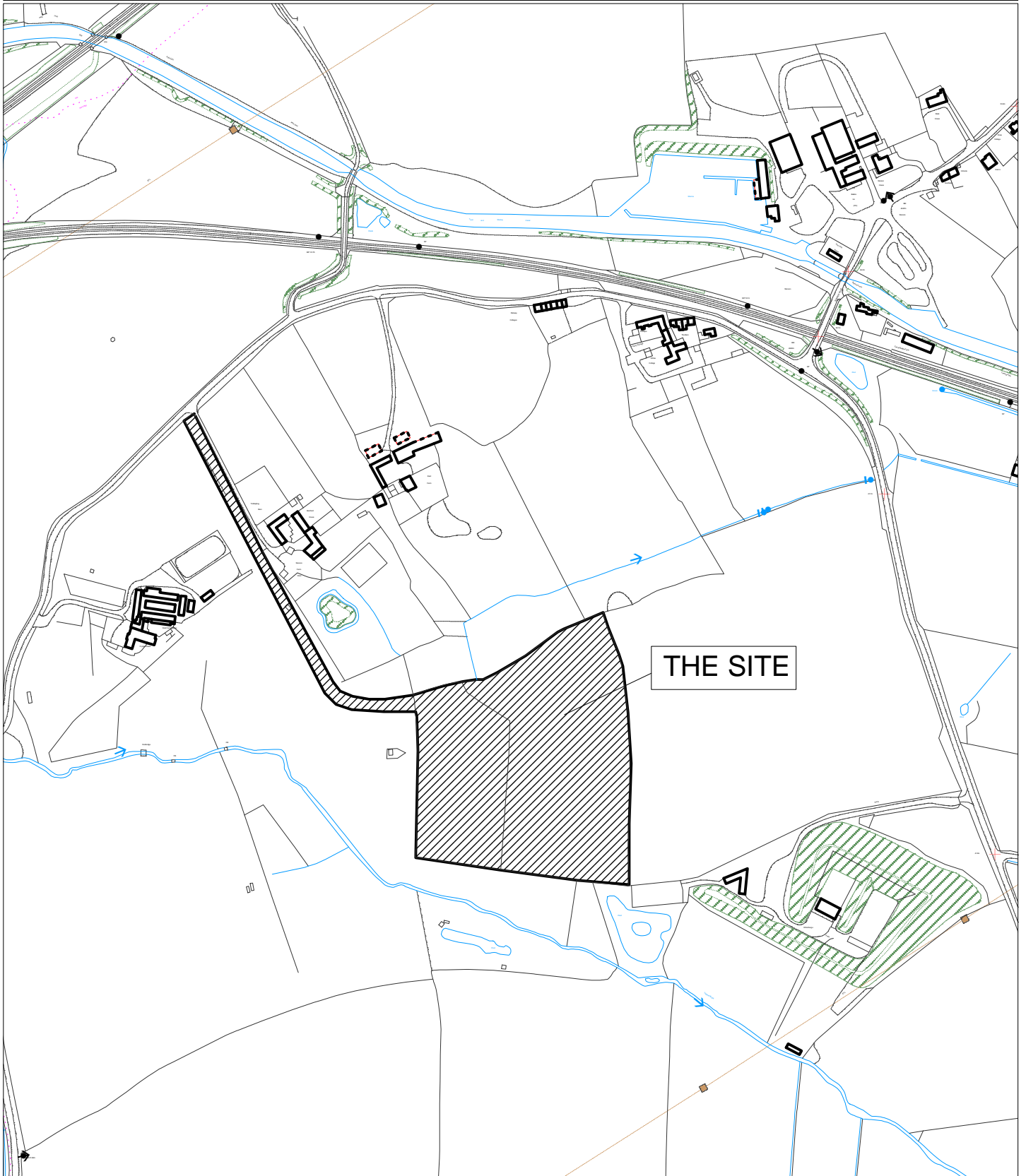
Site Description

The site has an area of some 4 hectares and is presently used for grazing horses. The site and surrounding land is generally flat with a gentle fall towards the River Trent to the south. Mixed thorn hedges generally define field boundaries, although numerous mature trees are also evident in the local landscape.

A small group of dwellings lies to the north west of the main part of the site. The nearest property, Stenson Farm West, is some 125m from the nearest part of the site (excluding the access). That part of the application site containing the new access road would run parallel to the drive serving the dwellings at West Farm (Glenfield House, Tiddly Frog Barn and Stenson Farm West), passing within 30 metres of the south west wing of Tiddly Frog Barn at its nearest point. Stenson Farm West benefits from planning permission for a boarding cattery, which is located about 16 metres away from the proposed access drive at its nearest point.

A rifle range set within a steep-sided noise attenuation bund lies to the east of the site.

The low-lying nature of the site and the presence of an extensive pattern of mature hedgerows preclude significant public views of the site.



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Proposal

The proposed development is a recreational facility aimed at children who would occupy overnight accommodation and engage in a range of recreational and sporting activities based both on site and in the wider Trent Valley area. Accommodation would be provided in a single multi purpose building, designed to accommodate up to 60 children together with facilities for the support staff. In addition to the sleeping accommodation the building would also serve as a restaurant and games room. Specific accommodation would be provided to meet the needs of disabled persons. The building would measure 11 m in height to the ridge of the roof. It would be some 250 metres away from the nearest existing dwelling.

The balance of the site would be laid out with a variety of recreational activities including a pool for water-based activities, a play space, a formal playing field and a woodland area with related play equipment.

The application includes a separate building, which would function as the site office, storage and site manager's accommodation. This would be 9m in height to the ridge of the roof. Permission is also sought to place a caravan/mobile home on the land. This would be removed on completion of the manager's accommodation. A third permanent building, measuring some 6.1 m x 6.1 m x 7 m is proposed to serve as a store.

The buildings on the site would be timber units, incorporating an energy-efficient timber log system.

The application indicates later phases of the scheme, including a sports hall, a book café and staff accommodation.

Vehicular and pedestrian access is to be taken from a new access road to be formed parallel to, and about 15 metres away from, the drive serving Stenson Farm West with access off Buckford Lane.

The proposals include extensive additional tree and other planting on the site.

Applicants' supporting information

The applicant has supplied a detailed Landscape Appraisal Report and Landscape Masterplan, a Flood Risk Assessment, a Traffic Speed Survey, a Personal Statement, and the usual Design and Access Statement, summarised as follows:

- The development proposals are wholly in accordance with National, Regional, County and District policies.
- The site is flat and featureless and cannot be seen from public vantage points. Although the proposed buildings have the potential to be glimpsed from beyond the holding, the modest scale of the buildings, taken together with the distances they will be seen from, would result in minimal visual impact or detriment. The proposed significant additional tree planting on the site would soften the impact and bring about improvements to the quality of the natural environment generally.
- The traffic speed assessment indicates that there is adequate visibility available for the percentile traffic speeds on the public highway. The new access would be

- wide enough to allow two vehicles to pass at the entrance point and for the appropriate distance back from the public highway.
- By its very nature as a children's camp traffic generation would be less than a comparable development for adults, since the bringing of children to and from the camp and taking them out on excursions would be by mini-bus. This is a highly efficient means of transportation and relatively sustainable.
 - Adequate parking provision for all vehicle types likely to visit and use the facility would be made within the extensive grounds of the development site.
 - The site adjoins an area falling within the higher flood risk zones as set out in Planning Policy Statement 25. The built development would not however fall within these zones. Vehicular and pedestrian access would be across higher land out to the north and thus there would be no risk to evacuation routes or for access for emergency vehicles to the site.
 - The nearest part of the site is some 125m from the nearest dwelling that is unrelated to the development (Stenson Farm West). That distance increases to 200m to the nearest feature on the site where there would likely be some activity and some (limited) noise generation i.e. the pool and sports/play area. Most of the development would be centred around the eastern and north-eastern parts of the site which are further from the nearest dwellings. Although a rural area, background noise levels are in any event likely to be relatively high, given the proximity of the site to the A50, the railway line, the neighbouring rifle range and East Midlands Airport. The existing use of the land for horse exercising will also generate some noise. In this context it is not felt that noise from (supervised) play would be significant or intrusive. There would be some impact from traffic passing along the access track. This has been relocated away from Stenson Farm West (rather than the original concept of using one shared access) to reduce that effect. Suitable landscaping and screening could be carried out at appropriate points along that road as required.
 - This proposal includes a building that is to function in part as residential accommodation. Under national and local planning policies new dwellings are not normally allowed in the countryside, as here, unless they are specially justified. The principal use, that of a recreational facility relies upon a countryside setting and as such, in accordance with the planning policy, it needs no special justification. The dwelling proposed is ancillary to that use and is not intended to occupy it separately therefrom. The building includes more functions than a single dwelling, as it would incorporate an office and related storage in connection with the operation of the venture. Principally however the residential accommodation is required to allow the site, and particularly the visitors, to be overseen at all times. It must be remembered that the intended occupants are children, who are a particularly vulnerable category and need supervision and protection at all times. This could not be guaranteed with any alternative off-site provision. Although it can be assumed that most groups of children would arrive with their own supervisors there will remain an overall responsibility on the site manager/supervisor to ensure compliance with all necessary child protection measures which cannot be guaranteed if there is no 24 hours a day presence and surveillance. It can also be anticipated that there may be difficulty in securing all the necessary levels of insurance if a full on-site presence is not available. Without the appropriate level of insurance the enterprise may not be capable of being operated. It is the intention of the applicants that at least one of them would become fully trained in first aid so as to provide immediate assistance in the event of accidents.

- The applicants have been involved in full time Christian work for 18 years, working mostly with children, youth and families. They have been resident in Stenson Fields for 17 years, having established a popular children's club at the local school with over 100 local children involved.
- The applicants run family events in the community and one is a leader at Stenson Fields Christian Fellowship on Pilgrims Way, which provides community activities for all ages. There is a youth group with 40-75 attendees on Saturday evenings.
- One of the applicants is involved in the delivery of the RE curriculum at local schools and is Chair of Governors at Sinfin Community School and a governor at Stenson Fields.
- The applicants have a heart for the local area and the proposal is seen as an extension of what they are already doing with children, young people and families.

Planning History

None.

Responses to Consultations

The Environment Agency has no objections subject to conditions. The Agency is supportive of the applicants' objectives for the use of SUDS, and recommends maintenance measures to ensure that it is successful. The Agency considers that the proposed landscaping measures would greatly increase the wildlife and recreational value of the site.

The Highway Authority notes that whilst the speed readings were taken at the adjacent West Farm access only it does not consider that an objection based on highway grounds could be sustained. Conditions are recommended relating to sightlines, preclusion of access via Fryzms House Farm and on site parking.

Severn Trent Water Limited, the Environmental Health Officer and the Contaminated Land Officer have no objection in principle.

The Development Control Archaeologist comments that site has considerable archaeological potential and recommends an appropriate condition.

Responses to Publicity

Four letters have been received raising the following objections:

- a) The proximity of the access track to the properties at West Farm would result in disturbance, including at night when events are held.
- b) Traffic would disturb dogs at West Farm and cause barking.
- c) The access should be located elsewhere.
- d) There would be no gain to the local economy by this kind of tourism.
- e) There would be loss of agricultural land.
- f) There would be disturbance from noise generating activities at the site.
- g) The applicant may be unable to deliver the whole project, which could result in an eyesore and possibly residential use only.
- h) Proposed screening would be inadequate.

- i) The development would harm the character of the countryside.
- j) There would be increased risk of crime.
- k) Disturbance to cats and dogs would affect the cattery business and dog breeding at West Farm.
- l) Drainage from the site could affect neighbouring property.
- m) Sewage would be significant.
- n) There is concern over the local roads.
- o) The adjacent rifle and pistol ground could cause noise resulting in action by the Council to impose stricter controls on it, which could result in its closure.
- p) Visitors to the site could gain access to the rifle and pistol ground, which would be hazardous.

Development Plan Policies

The relevant policies are:

RSS8: P27 P30

Joint Structure Plan: LT2

Local Plan: EV1, EV9, EV14, RTP1, T6.

Planning Considerations

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

- The principle.
- Impact on the character of the countryside.
- Residential amenity.
- Noise from adjoining use.
- Highway safety.
- Archaeology.
- Flood risk.
- Drainage and sewerage.
- Contaminated land.

Planning Assessment

Environment Policy 1 looks to prohibit new development outside settlements unless it is essential to a rural based activity, unavoidable in the countryside and the character of the countryside is protected. However, more specifically the principle of the location of such a facility is dealt with under the saved Local Plan Recreation and Tourism Policy 1. This seeks to ensure that facilities do not cause disturbance to local amenity by virtue of noise or traffic generation, have adequate access, parking, servicing, screening and landscaping; and are of an appropriate scale and design well integrated into their surroundings (the saved Leisure and Tourism Policy 2 in the Structure Plan contains similar criteria). More recently, PPS7 advises local planning authorities to support the provision of general tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres. Where new or additional facilities are required, these should normally be provided in, or close to, service centres or villages. Local planning authorities should allow appropriate facilities needed to enhance visitors' enjoyment of a particular countryside feature or attraction. Whilst the statement advises the reuse of existing buildings, new buildings may be justified where needed in conjunction with a particular countryside attraction.

The site lies in the countryside to the south of Derby. This particular location is sought because of the applicants' objective of providing a specifically countryside based attraction for children and families, whilst remaining reasonably close to their community involvement at Stenson Fields. As such it is necessary for it to be located within this particular locality. Therefore, the remaining tests are: disturbance upon local amenity; the adequacy of access, parking and servicing; the adequacy of landscaping and screening; and the scale of the development and integration into its surroundings.

The establishment of an outdoor-based recreational development is acceptable as matter of principle. The dwelling is justified on the basis of the needs of this particular enterprise. Appropriate conditions would safeguard its future use.

Because of the low lying nature of the land, its distance from main public vantage points, and the presence of mature hedgerows and trees in the landscape, the development would have low impact on the character of the area. The extensive landscaping proposed would provide further screening to the site.

The site is located well away from neighbours. There is no objection from the Environmental Health Officer. Vehicles passing along the access could be seen and heard from the three dwellings at West Farm. However the frequency of traffic movements is unlikely to be so extensive as to cause demonstrable harm to residential amenity. The applicants have indicated a willingness to plant along the new access to screen it from the neighbouring dwellings.

Noise from the nearby rifle and pistol club could potentially result in disturbance to the occupiers of the proposed dwelling. However in this case the dwelling would only exist to enable the proposed facility to function. As such the occupiers are likely to be engaged in the management of the activities of the children's camp at times when shooting can occur. Therefore their expectation of a quiet environment would be substantially reduced, minimising the risk of any conflict in this regard.

On the advice of the Highway Authority the proposal would not be harmful to highway safety interests.

Subject to appropriate conditions as recommended by the Development Control Archaeologist, cultural heritage interests would be adequately protected.

Subject to the recommendations of the Environment Agency the development would not increase the risk of flood, drainage or sewerage problems. The risk of contamination would be safeguarded by way of condition.

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 occupation of the dwelling shall be limited to the family and/or dependents of a person employed wholly or mainly in the management of the children's camp hereby permitted.

Reason: The site is within open countryside where the Development Plan provides that development shall be confined within the limits of an existing town or village, except where the needs of a rural based activity justify a departure from that policy. The Local Planning Authority is concerned to avoid proliferation of unwarranted dwellings in the countryside.

3. Unless as may otherwise be agreed writing with the Local Planning Authority, the mobile home shall be removed from the site within 2 years of the date of commencement of development, or first occupation of the dwelling, whichever is sooner.

Reason: The site is within open countryside where the Development Plan provides that development shall be confined within the limits of an existing town or village, except where the needs of a rural based activity justify a departure from that policy. The Local Planning Authority is concerned to avoid proliferation of unwarranted units of living accommodation in the countryside.

4. 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 (including the decorative finish to the timber) and roof of the buildings have been submitted to and approved in writing by the Local Planning Authority.

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

5. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

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

6. 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.

7. No work shall take place on the site until details of a scheme for the disposal of surface water, including a timetable for implementation, have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the approved details and timetable.

Reason: In the interests of flood protection.

8. No development shall commence until a scheme for the provision and implementation of surface water run-off limitation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall incorporate sustainable drainage principles and shall be implemented in accordance with the approved programme and details.

Reason: To prevent increased flood risk

9. No development shall take place until details of a scheme for the conveyance of foul drainage to a private treatment plant has been submitted to and approved in writing by the Local Planning Authority. The treatment plant shall be constructed in accordance with the approved details before the development is brought into use.

Reason: In the interests of pollution control.

10. Before development begins a management and maintenance plan for the surface water run-off scheme, for the lifetime of the development, which shall include the arrangements to secure the operation of the scheme throughout its lifetime, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented, maintained and managed in accordance with the approved details.

Reason: To ensure the continuing effectiveness of the sustainable drainage system.

11. Prior to the commencement of any other operations, the new access shall be formed to Buckford Lane. The access shall be laid out in accordance with the application drawing (D1629.008), having a minimum width of 5 m for the first 15m into the site from the highway boundary, being provided with 10m radii and visibility sightlines of 2.4m x 120m in each direction, the area forward of which shall be cleared and maintained in perpetuity clear of any obstruction to visibility exceeding 1m in height (600 mm in the case of vegetation) relative to the nearside carriageway edge. The access shall be surfaced in a solid bound material for at least 15m into the site from the highway boundary and provided with measures to ensure that surface water does not flow from within the site onto the public highway.

Reason: In the interests of highway safety.

12. There shall be no means of access to the site via the access off Buckford Lane to Fryzms House Farm.

Reason: In the interests of highway safety.

13. Prior to the first use of the main accommodation block the car parking and overspill parking area shall be laid out in accordance with the application drawing and shall be maintained thereafter free from impediment to its designated use.

Reason: In the interests of highway safety.

14. 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 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) 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 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.

15. 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.

16. No development shall take place, until the applicant has made arrangements for the implementation of a scheme of archaeological field evaluation. This shall include geophysical survey and trial trenching, and shall be undertaken in accordance with a written scheme of investigation which has been submitted to and approved by the Local Planning Authority in writing.

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

17. No development shall take place, until the developer has made provision for the implementation of a scheme of archaeological mitigation, following the completion of field evaluation. The work shall be undertaken in accordance with a written scheme of investigation which has been submitted to and approved by the Local Planning Authority in writing.

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

Informatives:

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 www.south-derbys.gov.uk/Environment/Pollution/LandPollution/contaminatedlandguide.htm

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: simon.mortimer@south-derbys.gov.uk.

To note the attached advice of the Environment Agency.

Item **1.4**

Reg. No. **9/2008/0412/MA**

Applicant:

Pendleton Investments
C/O Agent

Agent:

Simon Chadwick
Signet Planning
Hornbeam Park
Harrogate
North Yorkshire
HG2 8RE

Proposal: **The erection of a school with associated residential accommodation and extension to existing offices at Grangecraft Garden Centre Hospital Lane Mickleover**

Ward: **Etwall**

Valid Date: **04/04/2008**

Reason for committee determination

The application is brought to Committee at the request of Councillor Lemmon because local concern has been expressed about a particular issue.

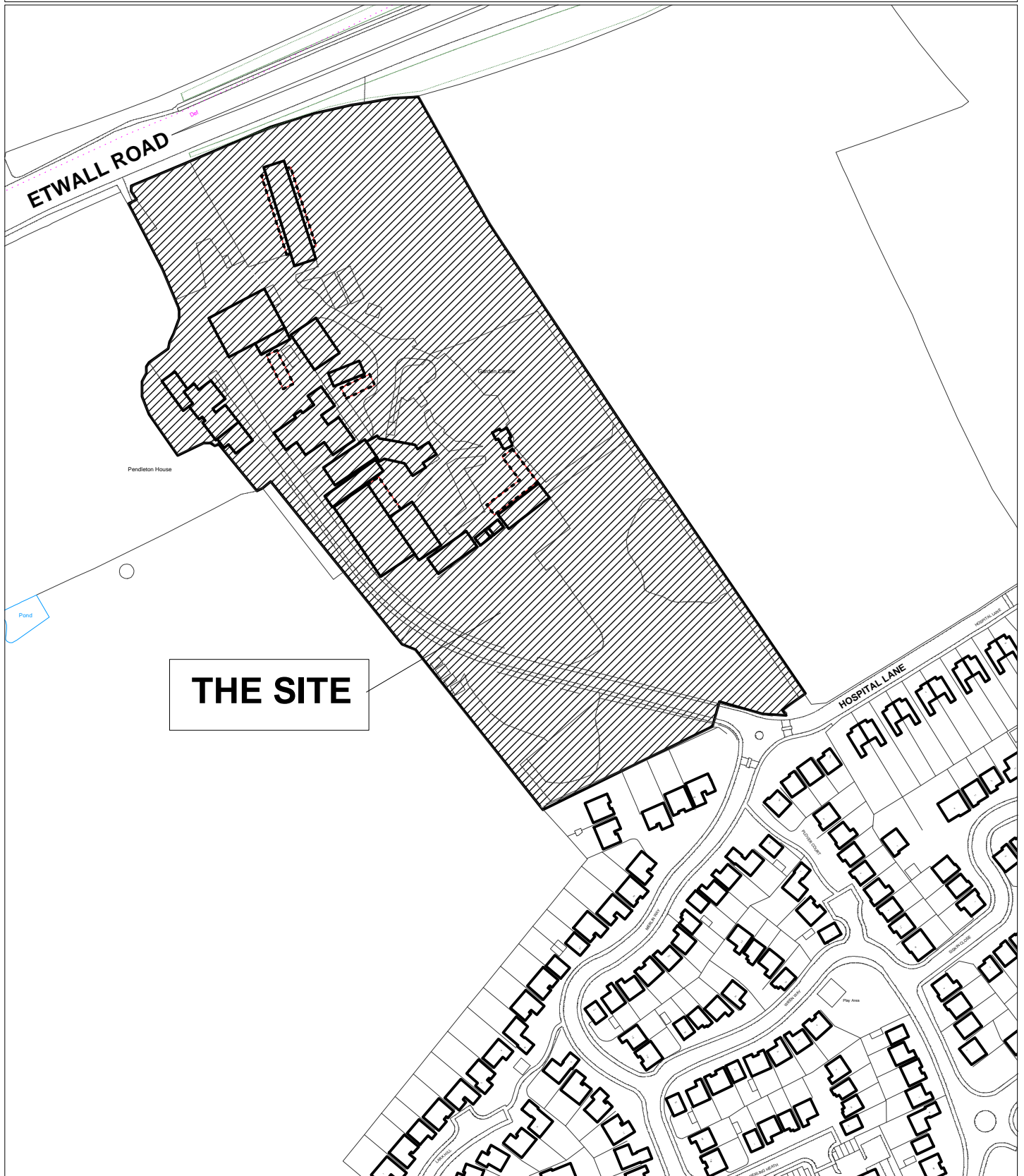
Site Description

The site is located immediately adjacent to the south-western edge of the urban area of Derby that adjoins the district of South Derbyshire. It is situated at the end of a cul-de-sac known as Hospital Lane that serves a housing estate in the former hospital grounds. Access to the site is via Hospital Lane from the A516.

The surroundings to the site are characterised by its edge-of-urban-area location. Pastureland lies immediately to the north beyond the A516 and to the west and east of the site. To the south, there is residential development, which was formerly a hospital, beyond which is countryside comprising the rural area beyond Derby city.

The Mickleover Garden Centre and car park together with its outdoor display areas form the bulk of the buildings on the site. An office building with extension, currently occupied by private companies, together with the car parking area lie close to the western boundary.

Apart from the main garden centre buildings, the site comprises areas of hard standing for car parks for the garden centre and offices and an outdoor display area used for conservatories and garden sheds.



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Proposal

The scheme comprises three elements:

- The new school with sports hall and swimming pool,
- The existing office building retained but with an extension to replace some of the poorer quality accommodation to house the administrative function
- Six residential housing units for occupation by 36 students and their carers.

The proposed buildings and facilities would be set in an extensive area of open space to be landscaped in keeping with its location.

Submitted in support of the application are a Transport Assessment, Planning Statement and Design and Access Statement and Flood Risk Assessment copied of which have been sent to the relevant statutory consultees, but which are available on the file and on the Council's web site.

Applicants' supporting information

The application is for a special needs school for children with autism between the ages of 4 and 19. Of the 50 children who will be using the site, some 36 will stay on site on a permanent basis. In addition to the school buildings, an extension is proposed to the existing offices on the site for school administration purposes.

The scale of development proposed in terms of buildings, footprint and hard surfacing is less than that currently on the site. In addition to the school, there will be more open areas around the buildings with a 'campus' feel to the development as well as an outdoor sports court.

There is a need to provide education facilities dedicated to children with autism as recognised in Government education policy. It is the case that typically children with autism are not provided with dedicated facilities within local authority areas due to expense and the critical mass required to justify a purpose built school. This facility will provide for day pupils from the surrounding area (up to an hour's drive away) but also on-site residential care for children who may live anywhere in the country.

The applicants have experience of running such schools elsewhere and are currently in the process of developing a new scheme near Wolverhampton. They are fully knowledgeable of the Government's requirements and the school facilities and accommodation necessary. With the staffing regime the school will be able to operate successfully to serve the autistic children in this part of the country.

Insofar as there are planning policies that are applicable, these mainly seek to provide and improve educational facilities and also ensure that disabled people are properly considered within the planning process.

Planning History

The site has a long and varied site history. The original use of the premises was as part of the Pastures Hospital complex. In the late 1980's it was developed as a centre for training of young people with learning difficulties. It was from this that the garden centre

use was created. Various uses were developed with the aim of training these young people for the wider world. This included the manufacture of concrete garden products, the keeping of chickens and the growing and sale of plants. Over the years various applications have been submitted for uses such as café and other sales, the formation of car parks. These have culminated in the form of the current Grangecraft Garden Centre that is now proposed for redevelopment.

Responses to Consultations

Burnaston Parish Council has no objection but a condition is sought to ensure that there is no future development on the site as the proposal is very large. Contractors are asked to take care along Hospital Lane which one of the major routes into the development as at certain times of the day, it is busy with school children walking to and waiting for school buses. In order that residents along Hospital Lane are not too inconvenienced, a condition is requested that work cannot commence before 8.00am.

The County Highway Authority has no objection in principle subject to conditions covering the provision of parking and manoeuvring space prior to the buildings being taken into use. The Transport Assessment suggests a travel plan be prepared; the County Highway Authority requires this to be a condition of any planning permission.

The Environment Agency has no objection subject to the imposition of conditions to control foul and surface water discharge, including the control of flows from the site, contamination issues being dealt with and the provision of oil interceptor/gullies for the car parking areas.

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

The Police Crime Reduction Officer considers that the buildings are well thought out and limit the opportunity for criminal activity through good design and a secure boundary.

The Environmental Protection Manager has no objection but suggests that hours be limited when construction takes place through the imposition of a planning condition. It is also recommended that conditions be imposed requiring the submission of details of any plant and machinery together with measures to limit noise generated by this machinery and to ensure contaminated land issues are addressed.

Responses to Publicity

One letter has been received objecting to the development on the basis that surface water from the existing site is flowing onto land in their ownership and they do not want this to continue if the site is redeveloped.

Development Plan Policies

The relevant policies are:

RSS8: Policies 1, 2, 3, 4, 5, 6 & 15.

Joint Structure Plan: None

Local Plan: Community Facilities Policy 1; Environment Policy 1; Transport Policies 6 and 7.

Planning Considerations

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

- The principle of development.
- The impact on the countryside.
- Access to the site.
- Land drainage issues.

Planning Assessment

The main policy relating to the development of a new school is Community Facilities Policy 1. The criteria in this policy are that the development does not cause disturbance to local amenity by virtue of noise or traffic generation; adequate provision be made for pedestrian and vehicular access, parking, servicing, screening and landscaping; and that the facility is of an appropriate scale and design and is well integrated into its surroundings. This application proposes the reuse of a brownfield site on the edge, albeit separated from a major area of housing development on the fringe of Derby. Whilst in the countryside, the proposed use could provide a useful community facility adjacent to the City to meet the needs both of the City and the South Derbyshire area. Accordingly the reuse of the site for the purposes specified is considered acceptable under the provisions of Community Facilities Policy 1.

Government advice published since the Local Plan also needs to be taken into account. In particular PPS7 refers to the need to protect the countryside in its own right. It also allows for the replacement of existing buildings in rural areas provided that there is no significant detriment to the character of the countryside and that any unacceptable environmental impacts are properly assessed.

The existing site is visible from the A516 and to a lesser extent from public footpath No 7 along Grassy Lane that lies some 400 - 500 metres from the site boundary to the west of the application site. There are houses on Hospital Lane, Merlin Way and Lark Hill lie some 100 metres from the proposed buildings. However from the east along Hospital Lane the site is well screened by the landform behind the proposed buildings.

None of the buildings proposed on the site would exceed the height of the existing office complex that lies in one of the lowest parts of the site. The sports hall and the main school building would be higher than the existing buildings in that locality and would thus be more prominent. The residential block would occupy higher ground but have a lower overall height.

The design, appearance and layout of the buildings have been the subject of discussions prior to the submission of the application, which included input from the Council's urban designer. The basic concept for the new buildings is that of contemporary design dictated by the function of each building but with a unifying style. The buildings would have a horizontal emphasis giving them the appearance of a relatively low position in the landscape. They would be faced with a mix of materials to add interest and relief. The office extension however is designed in a more traditional style to match the retained building (originally a farmhouse). The applicants have submitted extensive analysis of the visual impact of the development on its location and in particular this shows that none of the proposed buildings would exceed the height of

the current offices to be retained although the new school buildings would appear more prominent from one direction. However, given the quality of the overall design approach, the scheme would result in a significant improvement to the visual quality of the area whilst avoiding any undue impact on the countryside.

On the advice of the County Highway Authority access to the site would not be harmful to highway safety.

The Environment Agency and Severn Trent Water require details of foul and surface water drainage to be submitted. The submission of these details should address the concerns of the objector about surface water flowing onto his land.

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. 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.
3. No development approved by this permission shall be commenced until a scheme for the provision and implementation of surface water run-off limitation has been submitted to and approved in writing by of the Local Planning Authority. The scheme shall incorporate sustainable drainage principles and shall be implemented in accordance with the approved programme and details.
Reason: To prevent the increased risk of flooding.
4. No development approved by this permission shall be commenced until a scheme for the conveyance of foul drainage to a private treatment plant has been submitted to and approved by the Local Planning Authority. No part of the development shall be brought into use until such treatment plant has been constructed.
Reason: To prevent pollution of the water environment.

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

Reason: To prevent pollution of the water environment.

6. Prior to the premises being taken into use, the internal road layout, parking and manoeuvring space shall be laid out in accordance with the application drawing and maintained throughout the life of the development free of any impediment to their designated use.

Reason: To ensure that adequate parking and manoeuvring provision is available.

7. Prior to the premises being taken into use, a Travel Plan, including details of the use of the two school mini buses (Transport Assessment - paragraphs 4.4.7 and 6.10), public transport services and car sharing initiatives for both the school and the offices, shall be submitted to and approved in writing by the local Planning Authority in consultation with the County Highway Authority and implemented throughout the life of the development.

Reason: In order to ensure that the amount of traffic entering and leaving the site is minimised.

8. 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 buildings have been submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard the appearance of the locality generally.

9. During the development of the site hereby permitted, no building or other operations shall be undertaken and no deliveries of materials to or transportation of material from the site shall take place outside the following times nor at any time on Sundays, Bank or Public Holidays: 0800 - 1800 Monday to Friday, 0800 - 1300 on Saturdays.

Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.

10. Before the development is commenced, details of any plant or machinery to be sited on the walls or roof of any of the buildings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall include reference to the noise generated by such plant or machinery and include provision for their long-term maintenance. The approved details shall then be used to install any such plant or machinery and it shall thereafter be maintained in accordance with the approved maintenance regime.

Reason: In order to minimise noise from externally mounted plant and machinery does not affect the residential amenity of the occupiers of dwellings in the locality

11. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment

shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

12. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

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

13. 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.

14. The development shall not be commenced until precise details of the intensity, angling and shielding, and the area of spread of the lights have been submitted to and approved in writing by the Local Planning Authority. The lights shall be installed in accordance with these details and thereafter retained in conformity with them. The submitted scheme shall comply with the Institute of Lighting Engineers "Guidance notes for the Reduction of Light Pollution" (2000).

Reason: To preserve amenity and to prevent danger to road users.

15. Notwithstanding the provisions of Part 32, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) no building required for use as part of, or for a purpose incidental to the use of the school shall be erected without the prior written approval of the Local Planning Authority.

Reason: In the interests of ensuring that any addition to the school complex is sited so as to minimise the impact of such buildings on dwellings or the character or appearance of the countryside hereabouts.

Informatives:

In submitting details of plant and machinery required by condition 10 above you are advised that the rated level emitted from the development (LA_{eq,t}) should be below the existing background level (LA_{90,t}) by at least 5dB(A) at the nearest noise sensitive properties at all times.

Where development is proposed, the developer is responsible for ensuring that development is safe and suitable for use for the purpose for which it is intended. The developer is thus responsible for determining whether land is suitable for a particular development or can be made so by remedial action. In particular, the developer should carry out an adequate investigation to inform a risk assessment to determine:

- whether the land in question is already affected by contamination through source - pathway - receptor pollutant linkages and how those linkages are represented in a

conceptual model;

- whether the development proposed will create new linkages, e.g. new pathways by which existing contaminants might reach existing or proposed receptors and whether it will introduce new vulnerable receptors; and
- what action is needed to break those linkages and avoid new ones, deal with any unacceptable risks and enable safe development and future occupancy of the site and neighbouring land.

A potential developer will need to satisfy the local authority that unacceptable risk from contamination will be successfully addressed through remediation without undue environmental impact during and following the development. In doing so, a developer should be aware that actions or omissions on his part could lead to liability being incurred under Part IIA, e.g. where development fails to address an existing unacceptable risk or creates such a risk by introducing a new receptor or pathway or, when it is implemented, under the Environmental Liability Directive (2004/35/EC). Where an agreed remediation scheme includes future monitoring and maintenance schemes, arrangements will need to be made to ensure that any subsequent owner is fully aware of these requirements and assumes ongoing responsibilities that run with the land.

The Environment Agency request that the surface water drainage scheme for the above proposed development meets the following criteria:

1. The drainage scheme shall utilise sustainable drainage techniques or SuDS;
 2. Any outflow from the site must be limited to the maximum allowable rate, i.e. no increase in the rate &/or volume of run-off.
 3. The surface water drainage system must deal with the surface water run-off from the site up to the critical 1% Annual Probability of Flooding (or 1 in a 100-year flood) event, including a 20% allowance for climate change (i.e. for the lifetime of the development). Drainage calculations must be included to demonstrate this (e.g. MicroDrainage or similar sewer modelling package calculations which include the necessary attenuation volume).
 4. Adoption and maintenance of the drainage system must be addressed and stated.
- In respect of the condition requiring a treatment plant for foul water discharge; the Environment Agency advises that a discharge consent will be required from the Agency and will not necessarily be granted. The applicant is advised to contact Environment Officer Paul Chambers (01773 547025) to discuss consent issues.

The Environment Agency advises that during the period of construction, oil and fuel storage will be subject to the Control of Pollution (Oil Storage) (England) Regulations 2001. The Regulations apply to the storage of oil or fuel of any kind in any kind of container which is being used and stored above ground, including drums and mobile bowsters, situated outside a building and with a storage capacity which exceeds 200 litres. A person with custody or control of any oil or fuel breaching the Regulations will be guilty of a criminal offence. The penalties are a maximum fine of £5000 in Magistrates' Court or an unlimited fine in Crown Court. Further details of the Regulations are available from the Environment Agency.

Site operators should ensure that there is no possibility of contaminated water entering and polluting surface or underground waters.

It is also recommended that the installation of fittings that will minimise water usage such as low, or dual, flush WC's, spray taps and economical shower-heads in the bathroom are installed. Power showers are not recommended as they can consume more water than an average bath. Water efficient versions of appliances such as

washing machines and dishwashers are also recommended. For outdoors consider installing a water butt, or even a rainwater harvesting system, to provide a natural supply of water for gardens. Simple treatment systems exist that allow rainwater to be used to supply WC's within the home. Following the above recommendations will significantly reduce water consumption and associated costs when compared to traditional installations. Rainwater harvesting utilises a free supply of fresh water and reduces the cost to the environment and the householder.

It is an offence to kill or damage or disturb bats or their roosts, or other protected species and their nests/breeding areas or to disturb birds during the nesting season. If bats are found you are advised to inform Natural England, at Bakewell, Derbyshire.

Practical advice on how to protect/relocate any bats may be obtained from the Derbyshire Bat Group. The onus is on the developer to ensure that none of the species protected under the Wildlife and Countryside Act 1980 are likely to be affected by demolition or works of construction prior to the commencement of development. Failure to comply with the provisions of the Act can lead to prosecution.

Item 1.5

Reg. No. 9/2008/0447/B

Applicant:

Mrs Dawn Twiggs
Thulston
Derby
DE72 3 EY

Agent:

David Bown
7 Ash View Close
Etwall
Derby
DE65 6JY

Proposal: **Variation of condition 2 of 9/2006/0951/U to permit alterations to opening hours of salon at Rectory Cottage Park Lane Weston-on-trent Derby**

Ward: **Aston**

Valid Date: **23/04/2008**

Reason for committee determination

The application is referred to Committee at the request of Councillor Watson because local concern has been expressed about a particular issue.

Site Description

The site is a cottage attached to Rectory Farmhouse, a Grade II listed building. Access is via Park lane, into a stone surfaced car park. The property has been in its business use for over 12 months. The accommodation comprises two treatment rooms at first floor level and a waiting area and kitchen on the ground floor. The parking area is shared with another outbuilding (The Dairy) and access can also be gained to Rectory Farmhouse through it.

Proposal

The applicant seeks to extend the opening hours of the salon from:

- 0900 hrs – 1700 hrs (Monday to Friday) and 0900 hrs – 1200 hrs (Saturday); to
- 0900 hrs – 1800 hrs (Monday and Tuesday), 0900 hrs – 1900 hrs (Wednesday and Thursday) and 0900 hrs – 1600 hrs (Saturday).

Applicants' supporting information

- Typical vehicle movements would be, at most, no more than 8 vehicles per day. Typically there are 2-3 cars per day, as local clientele (around 30%) walk to the salon. The car park is large and clients never use Park Lane to park.
- A consultation typically lasts for around an hour.



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- The car park is shared with the occupier of The Dairy. It is also used by visitors to that property and for any deliveries to The Dairy or Rectory Farm.
- The lights belong to the property next door and have been adjusted upon request of a neighbour when the applicant first occupied the premises. The applicant gave an assurance that, if there were any more inconvenience with the lights, she would mediate between the owner and neighbour and adjust them accordingly.

Planning History

Permission was granted to commence the use in 2006 (9/2006/0951/U).

Responses to Consultations

The Parish Council comments that the opening of the salon has already compromised the safety by increased traffic, and the proposal would exacerbate the situation, particularly on darker nights in winter months.

The Highway Authority and Environmental Health Officer have no comment.

Responses to Publicity

Two neighbours object as follows:

- a) The business has generated noise from vehicles manoeuvring on the gravel drive. The proposal would exacerbate this.
- b) Access should be from the front of the building by way of a quiet surface car park.
- c) There have been instances when the existing hours of operation have been exceeded.
- d) 15 external lights, triggered by movement, cause light pollution. This would be exacerbated by the extension of hours.
- e) Park Lane is unsuitable for additional traffic and there would be danger to other road users.
- f) The use has an adverse impact on privacy and quality of life.
- g) The listed building should be protected.

Development Plan Policies

The relevant policies are:

RSS8: Policy 6

Local Plan: E5

Planning Considerations

The main issue central to the determination of this application is the impact of the proposal on residential amenity.

Planning Assessment

The principle of the use is established by the existing permission, based on the relevant development plan policies. These favour business development in rural and residential areas, subject to environmental and traffic considerations.

Given the duration of a typical consultation and the very limited extra traffic movements likely to be generated, and given the lack of objection from environmental health, there would be no demonstrable harm to residential amenity.

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 premises shall not be open to clients outside the following hours:

Monday and Tuesday 0900 - 1800 hours

Wednesday and Thursday 0900 - 1900 hours

Friday 0900 - 1700 hours

Saturday 0900 - 1600 hours.

The premises shall not be open to clients on Sundays or Bank Holidays.

Reason: In the interests of residential amenity.

Item 2.1

Reg. No. 9/2008/0176/M

Applicant:

Mr John Bowler
John Bowler Ltd
Ivy Court
Etwall
Derby
DE65 6JG

Agent:

Mr Ian Pick
Ian Pick Associates Ltd
Unit 3
Drifffield
YO25 6QP

Proposal: **Outline application for the demolition of the existing
poultry unit and the erection of an egg packing station
at Badger Farm Willow Pit Lane Hilton Derby**

Ward: **Hilton**

Valid Date: **13/02/2008**

Reason for committee determination

This is a major application where the Head of Planning Services considers that should be determined by the Committee.

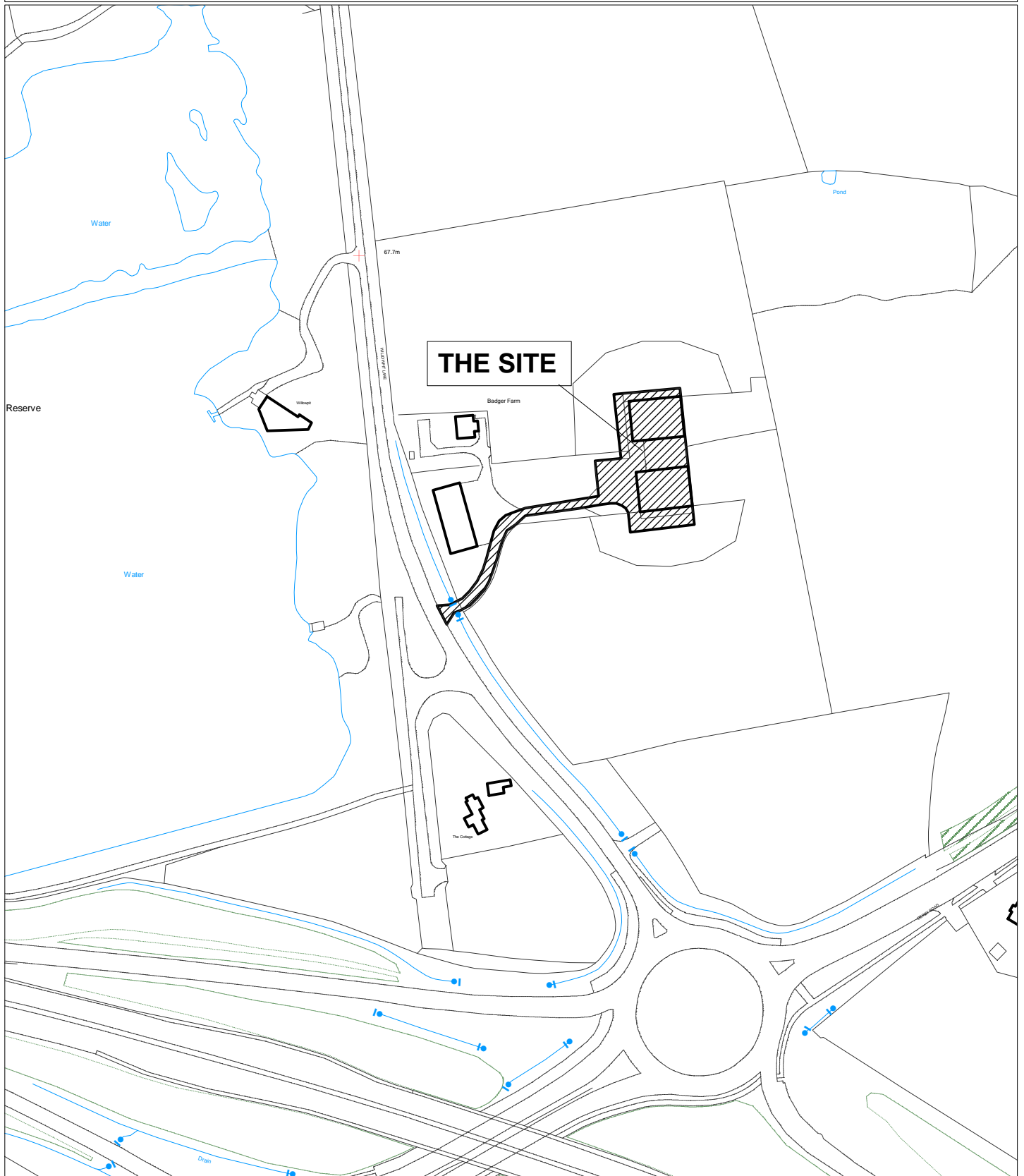
Site Description

The site lies to the east of Willowpit Lane and its access is some 75 metres from the interchange of the A516 and A50. Two free-range egg production buildings currently occupy the site and a barn within the site is being redeveloped as the HQ for the John Bowler Business relocated from Etwall. A substantial number of trees have been planted within the site to complement the existing trees and hedges on the site. In addition to the above buildings there is also an agricultural workers dwelling on the site. To the west of Willowpit Lane is a Site of Special Scientific Interest (SSSI) – Hilton Gravel Pits

Proposal

The existing egg production buildings would be demolished and replaced with a larger building that would contain the packing equipment. It would measure 60 metres x 35 metres and it is suggested that the eaves height of the building would be 5.0 metres with a ridge height of 9.6 metres. The building would be designed to look like a large agricultural building with materials that would match the office building that is currently in the course of development.

This is an outline application where the only elements that require approval are the siting (as described above) and the access; it is proposed to use the existing access to



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the site. The site would also accommodate external areas for car parking, cycle storage and areas for parking up to 4 Heavy Goods Vehicles.

The packing station would employ some 20 people and it is anticipated that there would be 30 HGV vehicles entering and leaving the site at the following times 0800 – 1000 hours on Monday to Friday and 0800 – 1300 on Saturday. The proposed hours of operation are 0600 – 0000 hours on Monday to Friday and 0800 – 1300 hours on a Saturday. The eggs would be delivered to the site using the company's own fleet and the packing station would sort the eggs into boxes of 6, 10 & 12 prior to delivery to supermarket distribution centres.

The access was recently installed to the County Highway Authority's requirements and the site is well located in proximity to the national trunk road network. In addition the site is well located to take advantage of the local bus services where there are frequent buses to Hilton, Burton, Derby and Uttoxeter.

Applicants' supporting information

In terms of background to the application, the applicants state that there have been significant changes to the egg packing industry in the UK since the merger of the two largest packing companies. This has caused the Company to review its position arrangements for having its eggs packed. At the current time all its packing is done by a single company. The Company has had a good working relationship with the existing packers for over 20 years but the management is about to change at that company. The Applicant Company has therefore decided that the time is right to start doing its own packing in a purpose built building. Since its inception in the 1980's the Company has grown to a point where its suppliers (mainly franchise holders) are producing around 1.3 million eggs a day.

The company also sees that it has an obligation to reduce the 'road miles' travelled. Whilst eggs are currently transported to Gloucestershire for packing, many of the egg producers in the company's franchise system are located in the North Midlands and Wales. Transportation costs and the carbon footprint associated with the egg production would be reduced if the packaging station were more centrally located. It would also make more efficient use of the company's lorry fleet as the same vehicle could be used to distribute the eggs that collect them.

It is acknowledged that the location of the packing station is outside the village at Hilton but the land is in the ownership of the applicant and whilst they have tried to buy land on employment sites, the only options on local sites are for 'Design and Build' packages and there is no land available on a freehold basis. The Applicant Company is proposing a £3M investment in the egg packing building and would like it to be on land within its control.

Planning History

The first development on this field was the free-range egg production buildings and general-purpose agriculture building that was supervised by a mobile home. A permanent dwelling followed some three years later when the viability of the production unit was proven. Subsequently the agricultural machinery building was declared surplus to requirements and members will recall that permission was granted to move the HQ of the egg production business last year. This is currently being implemented.

Responses to Consultations

Hilton Parish Council object to the development on the grounds that it would represent a change from agricultural use to industry contrary to the adopted Local Plan: the building would be much larger than the permitted ones; the number of HGV movements will compromise a narrow rural road, lorries arriving at night would be forced to park on the highway and the noise from the site would be disturbing in a rural area. The Parish Council concludes that there are numerous industrial locations in the area and the use would be better suited located on one of those sites.

The County Highway Authority has no objection subject to the imposition of conditions.

The Highways Agency has no comments on the proposal as it considers the proposals are unlikely to impact on the trunk road network.

Severn Trent Water and the Environment Agency have no objection subject to foul and surface water drainage details being submitted. The Environment Agency advises that any demolition waste should be disposed of by a registered waste carrier at a site, licensed to accept such waste.

The Environmental Protection Manager has no objection

Responses to Publicity

Three letters have been received objecting to the proposals on the following grounds: -

- a) The development is for an industrial/warehouse process that is not appropriate in a countryside location and is contrary to the Development Plan and the advice in PPS 7. The use would be better located on one of the employment sites in Hilton. The applicant should not be allowed to make the area an industrial site. Whilst it is acknowledged that the development would bring jobs to the local area, this should not be at the expense of the aesthetic sensibilities of the residents of Willowpit Lane. If the business were successful, then 24-hour operations would surely follow and be detrimental to the amenity of residents. The development would lead to the coalescence of Hilton with Etwall. It would be a visual intrusion into the countryside. The building would be higher and more visually intrusive.
- b) The development could adversely affect the nearby nature reserve. (SSSI).
- c) Willowpit Lane is not a highway as stated in the application and is not of a standard that would accommodate HGV's. There would be a significant increase in traffic levels on Willowpit Lane given the number of uses operated by Mr Bowler on the Lane. 20 more cars and 30 lorries will be significant on Willowpit Lane. Deliveries to Woodcock Farm and Badger Farm have far exceeded the levels specified in those planning applications and it is suspected that the lorry movements would far exceed the levels predicted in the application
- d) Noise pollution from the long operating hours, the lorries visiting the site, roller shutter doors and cooling equipment would be detrimental to the occupiers of nearby properties. If successful 24-hour operation may follow as it is the site would have vehicle movements for some 18 hours a day during the week.

- e) Floodlighting would cause loss of amenity to the occupiers of nearby dwellings. The lighting of the site would also affect local wildlife.
- f) Notwithstanding instructions to drivers, they will use their satnavs that may take them along the rural part of Willowpit Lane. There is no provision for lorries that arrive after the site has been shut.
- g) The amount of vermin and flies has increased since the egg production buildings have been developed.

Development Plan Policies

The relevant policies are:

RSS8: Policies 2, 3 & 6.

Retained Local Plan Policies: Employment Policies 1, 4, 5 & 8, Environment Policy 1 & 11 and Transport Policy 6.

Planning Considerations

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

- The Development Plan
- The impact on the countryside
- Highway implications
- Noise
- Other material considerations

Planning Assessment

The Development Plan

Environment Policy 1 of the Local Plan requires that development should be permitted in the countryside only where a location in the countryside is shown to be necessary.

Employment Policy 1 makes provision for the expansion of existing firms on their site or on land adjoining the site provided that there are no significant traffic or environmental impacts. However, at the time of writing the office base for the company is in the course of development and the established use of the land is as a farm. Planning Policy Statement 7 does make provision for the reuse or replacement of redundant agricultural buildings for business purposes that contribute to the economic well being of the rural economy.

On the other hand the provisions of Employment Policy 5 seek to direct new employment uses in rural areas to locations within or on the edge of existing settlement provided that the proposal is compatible with the scale and character of the settlement and is acceptable on environmental and traffic grounds. If a proposal does not meet these criteria then such development will not be permitted.

Clearly it is only a matter of time before the office use of this business becomes firmly established on the Willowpit Lane site, thus the business use in a replacement 'agricultural building' falls within the provisions of Employment Policy 1.

Regardless of the weight apportioned to each policy, the determination of this application turns on the environmental and traffic impacts.

Environmental Issues/Impact on the Countryside

These are the visual impact of the development, (including the increase in its eaves and ridge height), intrusion from noise (from lorries, plant and machinery) and lighting, and the impact of those on the countryside and the occupiers of nearby dwellings.

The proposed building potentially has a much higher ridge and eaves than the present building as specified in the supporting information. The siting and principle of this development are sought in this application (a detailed design would follow through the submission of a further application should this be approved). Its footprint would also be larger than the combined size of the existing building. An eaves height of 5 metres with a ridge height of 9.6 metres has the potential to have a significant impact on the countryside. The site is particularly visible to passing traffic on the A50 and there are 3 dwellings (plus the agricultural workers dwelling) near the site. Whilst none of the non-agricultural dwellings is particularly close to the site, the new building would be more apparent from these public vantage points.

There would be lorries using the roads and the internal areas at the site. The manoeuvring of lorries and their reversing alarms are a source of noise at the site. The applicants have proposed hours of operation and indicated the hours when lorries are likely to use the site. Objectors have noted that there is no provision for the lorries to park when the site is shut. However, the times when that would occur would be limited, as the lorries would most likely arrive after the site has opened and leave before it closes, although there are no parking restrictions on the highway for the occasions when lorries arrive early which is not a matter for planning control.

The Environmental Protection Manager has raised no objections but it would be necessary, if the application were permitted, to impose conditions that required the submission of details including noise suppression measures, for all external plant and machinery. Lighting would be another issue that could be controlled by condition should the application be permitted.

Clearly all these issues have the potential to cause intrusion into the countryside and thus impact on the local environment. The judgement is whether these impacts are likely to be sufficiently harmful to weigh against granting permission.

Highway/traffic Implications

Neither of the highway authorities has objected to the development. Residents' concerns are that the narrower parts of Willowpit Lane would be used by HGV's. It is clear that HGV's would continue to service Woodcock Farm to the north on Willowpit Lane but the applicants did install passing places to cater for this type of traffic. The vast majority if not all of the HGV traffic for the egg packing station would approach the site via the A516 or the A50 from the egg production units in the rest of the country. The access from the A50 Interchange to the site entrance is constructed to a high standard and is clearly capable of accommodating the traffic that would be generated by the development. In the absence of objection from either highway authority, refusal on highway grounds would be difficult to justify.

Other Material Considerations

The proposed building would be some 120 metres from the boundary of the SSSI. It is not anticipated that the egg packing building would affect the SSSI. Objectors have raised concern about the current presence of vermin and rats following the development of the egg farm. Food sources for such pests are likely to be reduced from this location if the egg farm were removed.

Conclusions

The major consideration is whether the use needs to be located in the countryside. Clearly the proposal could be accommodated on an employment site such as Hilton Business Park. However, the company is an established business in the countryside and its HQ will shortly transfer to the application site in a converted farm building. The proposal therefore falls to be considered under the provisions of Employment Policy 1 that permits the expansion of firms as described above.

Given the scale of the proposed building, its visual impact on the countryside and the length of the hours of operation it is considered that the development would have significant environmental and traffic impacts contrary to the provisions of the above policy and should be refused for the reason set out below.

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

Recommendation

REFUSE permission for the following reason:

The proposed development involves the erection of a substantial new building in the countryside. In the countryside, Environment Policy 1 of the adopted South Derbyshire Local Plan has a basic requirement for development to be necessary in that location. Employment Policy 1 of the Local Plan makes provision for the expansion of employment sites in the countryside on or adjacent to their established sites provided that the proposal is not detrimental to the locality or residential amenity and does not cause environmental or traffic problems. In addition Employment Policies 4 & 5 set criteria for the adaptation of or creation of new employment sites on the edge of villages or the wider countryside. The proposed development involves the replacement of two egg production buildings with a larger egg packing station. The new building is stated to be 5 metres high to the eaves and 9.6 metres to the ridge with an overall floor area of 2100sqm. The building is larger in floor area and higher than the existing buildings on the site. The visual impact of the building would be greater and the impact on the countryside more significant. The company is not yet established on the site and it has not been demonstrated that the location of the egg packing building is necessary in the countryside nor is it considered to occupy an edge of village location. Given the above interpretation and consideration of the relevant planning policies it is considered that the development would be unacceptable in this countryside location.

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Decision	Com/Del
9/2007/0584	Sutton	North West	Dismissed	Delegated
9/2007/1036	Swarkestone	Aston	Dismissed	Delegated
9/2007/0776	Burnaston	Etwall	Allowed	Delegated
9/2007/1066	Hilton	Hilton	Allowed	Committee
9/2007/1354	Swarkestone	Aston	Dismissed	Delegated



Appeal Decision

Site visit made on 7 May 2008

by **R Ogier BA MRTPI**

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

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Decision date:
14 May 2008

Appeal Ref: APP/F1040/A/08/2066021

**Rose Cottage, Back Lane, Osleston and Thurstaston, Asbourne, Derbyshire
DE6 5JH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs I Clarke against the decision of South Derbyshire District Council.
- The application Ref 9/2007/0584/FH dated May 2007 (received 16 May 2007), was refused by notice dated 11 July 2007.
- The development proposed is an extension.

Decision

1. I dismiss the appeal.

Main issues

2. I have identified two main issues in the determination of this appeal. The first issue is the impact of the proposed extension on the health and wellbeing of a neighbouring oak tree, protected by a tree preservation order. The second issue is the effect of the extension on the character of Rose Cottage and its rural surroundings.

Reasons

3. The development plan includes saved policies of the Derbyshire and Derby Joint Structure Plan (SP) and saved policies of the 1998 South Derbyshire Local Plan (LP). SP Policy ENV16 referred to in the Council's decision has not been saved, and therefore expired on 27 September 2007. I shall therefore give no material weight to it. LP Policy ENV9 also referred to in the decision has been saved. Its provisions include that development will not be permitted which would lead to the loss of areas of woodland or specimen trees of value to their landscape setting. Saved LP Policy H13 states that extensions to dwellings will be permitted provided the proposals are of a scale and character in keeping with the property and not detrimental to the amenities of adjoining properties or the general character of the area. Policies ENV9 and H13 are supported by relevant Supplementary Planning Guidance (SPG), which so far as trees and development are concerned, draws attention to the potential harm that may be done by excavations within the rooting zone.
4. The oak tree in question is a mature specimen, assessed by the Council as being in good condition, and estimated by the Council officer who inspected it in connection with the subject planning application as being some 250 years

old. The tree is undoubtedly of specimen value, and it contributes significantly to the rural character of this part of Back Lane. I accept that the tree appears not to have been unduly affected by either the existing house or by an area of hard paving immediately to the west of the base of the trunk, although part of the canopy nearest the house appears to have been crown lifted at some time. Standards for the assessment of trees in relation to construction are published under BS5837, most recently revised in 2005. Two particular principles from the BS appear relevant to this case. The BS advises that particular care is needed regarding the retention of large old trees, which may be less resilient and more likely to die or become potentially unsafe as a result of pressure associated with development. Adequate space should be allowed for their long term physical protection and maintenance.

5. The appellants propose an approach to the construction of foundations for the proposed extension involving three driven piles connected by foundation ground beams supporting the external walls. Whilst like the Council I see some merit in such an approach, the process of constructing such foundations including both piles and beams would take place at one point as near as about 1.5 metres from the tree. This would be well within the root protection area suggested in BS 5837:2005 and would in my perception and despite the employment of hand digging, put the tree at significant risk from disturbance. There would also be insufficient space in which to erect protective fencing as specified by the BS. The disturbance to the tree roots and soil structure in that area would not in my view, given the age of the tree, maintain its prospects of survival as a healthy tree. I conclude that in these circumstances, the proposed extension would prove harmful to the health and wellbeing of the oak tree, contrary to LP Policy ENV9 and its supporting SPG.
6. The appellants refer to the fact that planning permission was granted in 2005 for extensions and alterations to their house, and in 2007 for development which included the construction of a 1.8 metre frontage wall to Back Lane. I accept that at one point, the permitted wall would be only 0.5 metre from the tree. However I accept the Council's argument that despite such proximity, the potential disturbance to the roots and associated soil system from the wall's foundations would not be so invasive as the works for the kitchen extension now proposed. The plans supplied by the Council in relation to the 2005 planning permission do not suggest that extension involved any projection of the building towards the oak tree as far as that now proposed. These matters do not therefore affect the conclusion I have reached in relation to the first main issue.
7. Turning to the second issue, I saw that Rose Cottage stands with its gable wall facing Back Lane and is a highly visible feature when viewed on approach from the north and south. However, in terms of its general impact, I consider that the proposed extension would not be unduly prominent despite its effect in extending the width of the house overall, because of its single storey construction near the road frontage and location of that component partially under the canopy of the oak tree, and the integrated nature of the extensions and alterations on the northern elevation which I agree would introduce a better design rationale to that elevation without increasing the visual impact of the building in its countryside setting to any inappropriate extent. Consequently I am satisfied that the proposed extension would have no

harmful impact either on the design and character of Rose Cottage or on the rural character of the surrounding area. In these circumstances the proposal would accord with LP Policy H13, and I find nothing in the related SPG to alter that view.

8. I have come to different conclusions on the main issues in this appeal. However I consider that the likelihood of harm by a part of the proposed extension on the health and wellbeing of the protected oak tree near the front of the property to be a decisive consideration, and on this basis the appeal does not succeed.

Richard Ogier

Inspector



Appeal Decision

Site visit made on 8 April 2008

by **E Norma Farish BA DipTP MRTPI**

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

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Decision date:
29 April 2008

Appeal Ref: APP/F1014/A/08/2064349

Brymar, Woodshop Lane, Swarkestone, Derby DE73 7JA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs B Davis against the decision of South Derbyshire District Council.
- The application (Ref 9/2007/1036/FH), dated 10 August 2007, was refused by notice dated 30 October 2007.
- The development proposed is the conversion into living accommodation of the existing garage and the erection of a detached double garage.

Decision

1. I dismiss the appeal.

Main issue

2. This case turns on the likely impact of the appeal development on the character and appearance of the Swarkestone Conservation Area, having regard in particular to the positioning of the proposed detached double garage in the street scene and the resulting loss of trees.

Reasons for the Decision

3. The appeal site lies within the Swarkestone Conservation Area, which comprises an area of former parkland and an associated estate village. The area is attractive and generally well cared for and I am in no doubt as to the desirability of at least maintaining its character and appearance.
 4. The appeal property is a pleasant detached house in a short row of mid-twentieth century detached dwellings. Brymar, in common with most of its neighbours, has an integral garage and little space between the side walls of the house and the plot boundaries. The proposed garage would be sited between the house and the road. The alterations proposed to convert the present garage to residential accommodation have been carefully designed to match the existing bay and there is no objection to that aspect of the appeal scheme. Moreover, permission has already been given for the removal of most of the trees in the front garden, with the exception of a western red hemlock which is the subject of a Tree Preservation Order, and there is adequate space within the property for parking.
 5. However, there is a fairly consistent building line on this side of Woodshop Lane and no buildings in frontage areas. The proposed double garage would be close to the road and of substantial size relative to the size of the front garden.
-

Hedges, trees and shrubs in neighbouring properties would provide partial screening, but they are not within the appellants' control and those on or close to a party boundary might well be affected by the proposed building works in either of the possible locations indicated or suggested by the appellants. The new garage would thus appear both obtrusive and incongruous in the street scene. Further, in the position proposed the appeal development would entail the removal of the hemlock tree, which is a significant and attractive feature in the locality.

6. I appreciate the appellants' concerns in requiring the proposed garage and I note their comments on the council's handling of the matter. Nonetheless, for the above reasons I am satisfied that the appeal scheme would neither enhance nor maintain the appearance and character of the conservation area and so would not comply with the provisions of Environment Policy 12 of the adopted South Derbyshire Local Plan 1998. The appeal fails.

E Norma Farish

INSPECTOR



Appeal Decision

Site visit made on 7 May 2008

by **R Ogier** BA MRTPI

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

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Decision date:
14 May 2008

Appeal Ref: APP/F1040/A/08/2063993

Walnut Farm, Main Street, Burnaston, Derbyshire DE65 6LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr M Nolan against the decision of South Derbyshire District Council.
- The application Ref 9/2007/0776/F dated 3 July 2007, was refused by notice dated 29 August 2007.
- The development proposed is a change of use to form ancillary accommodation.

Decision

1. I allow the appeal, and grant planning permission for a change of use to form ancillary accommodation at Walnut Farm, Main Street, Burnaston, Derbyshire DE65 6LG in accordance with the terms of the application Ref 9/2007/0776/F dated 3 July 2007 and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The ancillary living accommodation hereby permitted shall be occupied solely by members of the household of Walnut Farmhouse or by domestic staff, and shall not be severed from the main house as a separate and unconnected dwelling.
 - 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no building or gate shall be erected on the application site and no satellite dish shall be affixed to the building without the prior grant of planning permission on an application made in that regard to the local planning authority..

Main issue

2. The appeal building, a former farm outbuilding listed as of architectural or historical importance, has been converted to a high standard for use as holiday accommodation with the benefit of planning permission and listed building consent granted in 2006. The main issue in this appeal is whether the proposed use of this accommodation in connection with the main house at Walnut Farm would be appropriate, having regard to relevant policies of the development plan and current national policy relating to sustainable development.

Reasons

3. Although the appeal proposal is presented as one for ancillary accommodation associated with the main house, it does contain all the facilities to enable it to operate as an independent dwelling. The Council's decision notice refers to General Development Strategy Policy 1 of the Derby & Derbyshire Joint Structure Plan, and to PPS3 *Housing*. The Structure Plan policy was not saved under the transitional arrangements set out in the Planning & Compulsory Purchase Act 2004, and is not now relied upon by the Council in the pursuance of its case. I shall, for the same reason, give it no material weight in my assessment.
4. The appellant draws support from saved Policies H5, H7 and H13 of the South Derbyshire Local Plan 1998 (LP). The proposed change of use would accord with Policy H5 because the Council has not contested the appellant's submission that the appeal site is within the village confines, and the appeal building is in keeping with the scale and character of the settlement. The proposal would also by the same token accord with Policy H7 which relates to residential conversions within villages and other rural settlements. The proposed change of use could be regarded as an extension to the main house on the site, and thus be of relevance to Policy H13, although it seems to me that the policy is mainly intended to apply to physical extensions to dwellings. In any event, the proposal would comply with the policy.
5. The appellant also refers to Policies 1, 3, 4 and 6 of the Regional Spatial Strategy 2005 (RSS8). If the proposed change of use were to be regarded as creating an independent dwelling it would not in my view be compatible with Objective 8 of Policy 1, which seeks the prudent use of resources including through patterns of development and transport that make efficient use of existing infrastructure. However, Burnaston has no public transport service and little by way of local services including shops, schools and other services. Any occupants of the proposed permanent dwelling would therefore be reliant on the use of the private car in their daily lives. For the same reasons, the proposal would fail the second criterion of RSS8 Policy 3. There would be no conflict with the design objective of Policy 4, but a lack of accord with Policy 6, which seeks to encourage non-car modes of travel in the rural area.
6. The Council's statement additionally refers to RSS8 Policies 15, 16 and 25. Policy 15 seeks to direct housing development outside the Three Cities to locations with good public transport linkages. Policy 16 calls for sustainable patterns of development and policies and proposals that will promote the use of public transport for both local and inter-urban movements. The use of the appeal building as permanent independent residential accommodation would not therefore support the objectives of these policies. Policy 25 focuses on tourism growth and provision for additional tourist facilities including accommodation close to popular destinations. However, given the fact that the tourist accommodation was permitted only in 2006, it cannot in my view be used to justify the discontinuation of that use on the grounds that it is inappropriately located, and in fairness the appellant has not so argued.

7. I therefore conclude that, although the appeal proposal would accord with LP Policies H5, H7 and H13 and with RSS8 Policy 4, it would not, if regarded as facilitating the use of the building as a separate unit of accommodation meet the sustainable development and transport objectives of more recent elements of the development plan in RSS8 Policies 1, 3, 6, 15 and 16. The proposal would also in that context be at variance with national planning policy, particularly in PPS1 *Delivering Sustainable Development* paragraph 5 (last indent), 7 and 16 (third indent), PPS3 *Housing* paragraph 38 (third indent), PPS7 *Sustainable Development in Rural Areas* paragraph 1(iii) and PPG13 *Transport* paragraph 4 (third objective). The question arises as to whether its association with the main house, in the manner of an annexe, would justify a different conclusion.
8. As the Council points out, there is no evidence to demonstrate that the use of the building as holiday accommodation is unviable, although I am unaware that the Council required such a submission. Nor has any specific evidence been provided as to why the proposed ancillary accommodation is needed such as, for example, staff accommodation. Yet the accommodation exists and PPG15 *Planning and the Historic Environment* indicates that the best way of securing the upkeep of historic buildings and areas is to keep them in active use. The use of the building as a self-contained annexe would in my view be as acceptable a use as is the permitted holiday use. The amount of vehicular traffic associated with ancillary accommodation may not be as great as that generated by a separate dwelling.
9. In these circumstances I consider the appeal proposal to be acceptable, subject to a condition preventing the building from being severed from the main house and used as an unconnected dwelling. I regard the second condition suggested by the Council withdrawing certain permitted development rights to be necessary on balance, in the interests of visual amenity and to ensure that any structure to be erected within the setting of the listed buildings can be properly considered, even though inappropriate attachments or extensions to the appeal building itself might be controlled through listed building control.
10. In the light of all the forgoing and having considered all other matters raised in the written representations, I conclude that the appeal should be allowed and a conditional planning permission granted.

Richard Ogier

Inspector



Appeal Decision

Site visit made on 7 May 2008

by **R Ogier BA MRTPI**

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

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Decision date:
12 May 2008

Appeal Ref: APP/F1040/A/08/2066055

Carlton Day Nursery, 2 Witham Close, Hilton, Derby DE65 5JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr A Blackwood against the decision of South Derbyshire District Council.
- The application Ref 9/2007/1066/F dated 6 September 2007, was refused by notice dated 11 December 2007.
- The development proposed is two retail units with first floor apartments.

Decision

1. I allow the appeal, and grant planning permission for two retail units with first floor apartments at Carlton Day Nursery, 2 Witham Close, Hilton, Derby DE65 5JR in accordance with the terms of the application, Ref 9/2007/1066/F dated 6 September 2007 and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) No part of the development hereby permitted 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 has been submitted to and approved in writing by the local planning authority.
 - 3) The car parking spaces and manoeuvring areas shown on submitted plan C7/34B shall be hard surfaced with a solid bound material and marked out prior to first use of the development, and thereafter retained for those purposes free of obstruction.
 - 4) Before the development hereby permitted is occupied, the new footpath shown on submitted plan C7/34B shall be laid out in accordance with detailed specifications that have received the prior written approval of the local planning authority, and shall thereafter be retained.
 - 5) Before the development hereby permitted is commenced, details of a fence around the proposed recycling area shall be submitted to and approved in writing by the local planning authority. The approved fence shall be erected prior to the first occupation of the development hereby permitted, and thereafter retained in place in accordance with the approved details.

- 6) If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then a written scheme to identify and control that contamination shall be submitted. The scheme 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.
- 7) No development shall take place until a scheme for the disposal of surface and foul water has been submitted to and agreed in writing by the local planning authority. The scheme shall be carried out in accordance with the approved details before the development is first brought into use.

Main issues

2. I have identified two main issues in this appeal. The first is the effect of the proposed development on public and private parking facilities serving the local centre facilities in Witham Close. The second is the effect of the proposed building on the visual character of the surrounding area.

Reasons

3. The development plan includes saved policies of the South Derbyshire Local Plan 1998 (LP). Policy S3 states that proposals for small shops will be permitted provided they do not adversely affect the amenities of neighbouring properties and adequate access, car parking and servicing facilities are provided.
4. The proposed shops and apartments would be sited in a part of an existing car park attached to the Carlton Day Nursery which forms a group with other local centre buildings in Witham Close. It is evident that a number of existing parking spaces would be lost, although it is proposed to form new parking spaces in front of the Nursery with access directly off Witham Close. The local highway authority does not object to these arrangements, or to the shops in servicing terms.
5. General car parking facilities exist off Witham Close. Some of them appear to be public spaces associated with the supermarket and other shops there. A larger number of spaces appear to be within the demise of the *Hilton Brook* public house, although I did not sense that those spaces were unavailable to those visiting the other facilities in the Centre. At the time of my late afternoon visit the public and public house parking spaces which I estimated to be about 65 in number were about 50% full. The Nursery car park which contains a not insignificant number of spaces was almost empty at that time. The application site plan proposes 21 spaces which would be a combination of those to be retained and those, along the frontage, to be added. It is logical to assume that all these spaces would be available to those visiting or working at the Nursery and also those operating and patronising the proposed shops, together with the occupants of the two proposed first/second floor apartments.

6. No detailed evidence has been provided by the Council to support its car parking case. It is not demonstrated, despite the Council's contention, that there would be a net loss of spaces. Given the conditions I observed on my visit I am not convinced that the proposed shops/apartments would lead to parking congestion, either within the existing Nursery car park or in the other parking areas off Witham Close. Even if there were a net loss of spaces presently dedicated for Nursery use, neither my own observations nor anything in the Council's or Parish Council's representations convince me that that parking space is under strain from full use or overuse. Whilst there could be increased competition for spaces, they are not at present nor would be scarce spaces. Accordingly I conclude that the proposed development would so far as car parking is concerned, accord with LP Policy S3.
7. Turning to the second issue, Witham Close is characterised by a number of detached buildings and groups of shop units in a fairly loose configuration. The proposed block of two shops and two apartments would be a fairly dominant structure in its own right, but set well back from Witham Close and not, in my view such as to provide a harmful contrast to the Nursery building of lower height either in terms of scale, design or appearance. Although the proposed building would have dormers, lintels, sills and decorative shop fascias and pillars, I would not describe the building as being ornate in any harmful way. Existing trees would provide a partial backdrop, and I cannot conceive any manner in which the proposed building would be harmful to visual amenity across the western boundary of the appeal site in terms of bulk, outline or elevational appearance. Accordingly LP Policy S3 would also be satisfied on this count.
8. The Council has not referred to any development plan policy in support of its second reason for refusal. I conclude that the appeal proposal would result in no material harm to the visual character of its surroundings. Taking all other matters raised in the written representations into consideration including the question of residential amenity and matters raised by the Hilton Parish Council, I consider therefore that the appeal should succeed, subject to the consideration of appropriate conditions of planning permission.
9. I have therefore considered those conditions referred to in the Council officer report recommendation. I support conditions relating to the approval of external materials, the surfacing of the car parking area, the construction of a new footpath along the western side of Witham Close between Egginton Road and the site access, the fencing of a proposed recycling area within the car park, a scheme to deal with any possible ground contamination and a scheme for the disposal of surface and foul water, in the interests of visual and general amenity, highway safety and public health.

Richard Ogier

Inspector



Appeal Decision

Site visit made on 6 May 2008

by **Simon Hand MA**

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

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Decision date:

15 MAY 2008

Appeal Ref: APP/F1040/H/08/1202660

The Cottage Filling Station, Derby Road, Swarkestone, Derby, DE73 1JB

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by Primesight Advertising Ltd against the decision of South Derbyshire District Council.
- The application Ref 9/2007/1354/A, dated 22 November 2007, was refused by notice dated 16 January 2008.
- The advertisements proposed are two, single sided, internally illuminated, display units.

Decision

1. I dismiss the appeal.

Reasons

2. The petrol filling station is some way outside of the village of Swarkestone and the adjacent house is the only other building in the vicinity. Otherwise the site is surrounded by fields and hedgerows. From the east, the westernmost display unit will stand out against the backdrop of fields. From the west, the rear of the same display unit will be visible as will the face of the easternmost display unit, which will stand out against the adjacent cottage and cherry tree. Both display units will look out of place and harmful in the isolated rural context of the site.

Simon Hand

Inspector