

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.

Reference	Item	Place	Ward	Page
9/2007/1023	1.1	Newhall	Newhall	1
9/2007/1072	1.2	Findern	Willington/Findern	5

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. 9/2007/1023/O

Applicant:

Blue Square Projects Ltd
111 Hagley Road
Edgbaston
Birmingham
B16 8LB

Agent:

Intergrated Designs (Midlands) Ltd
38 Old Walsall Road
Birmingham
B42 1NP

Proposal: **Outline application (all matters reserved except for means of access) for the demolition of existing dwelling and the erection of a block of eight flats on land at 34 Oversetts Road Newhall Swadlincote**

Ward: **Newhall**

Valid Date: **07/09/2007**

Reason for committee determination

Councillor Mrs Mead has requested that this application be determined by the Committee due to the access being dangerous and that the previous application was determined by Committee and refused on access grounds.

Site Description

The site is currently occupied by a two storey detached house on the east side of Oversetts Road and is on the north corner of the Parliament Street/ New Road cross roads junction. Five dwellings are currently being built to the rear of the site.

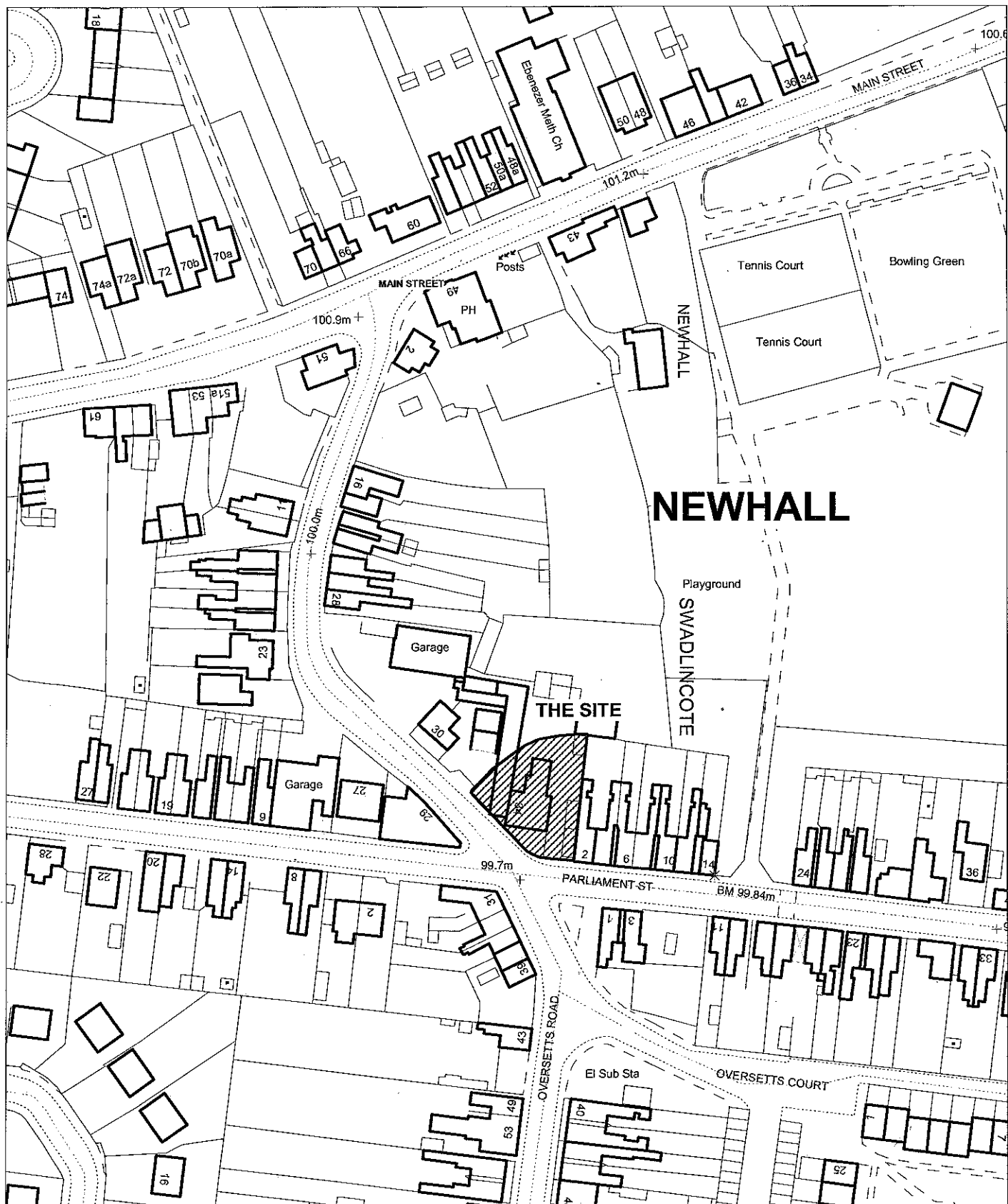
Proposal


It is proposed to demolish the existing house and erect a block of eight apartments. Layout and access are to be considered as part of this application and scale, appearance and landscaping reserved for subsequent approval.

The proposed building would be 21.5 m wide by 8.5 m deep and up to a height of 8.5 m to the ridge and set back some 3m from the carriageway edge. A parking area for eight cars would be provided at the rear of the building.

Applicant's Supporting Information

A design and access statement submitted with the application concludes that the site would improve prospects for first time buyers; eight apartments is below the density required by government guidelines; local services infrastructure would not be stretched



 <p>South Derbyshire District Council Civic Offices Civic Way Swadlincote DE11 0AH</p>		Date Plotted 19/10/2007	NORTH ↑
	<p>9/2007/1023/O Land at 34 Oversetts Road Newhall</p>	Plot centred at 428466 320763	Scale 1:1250
	<p><small>Crown Copyright. All rights reserved. South Derbyshire District Council OS Licence No. LA 100019461. 2006</small></p>		

by the development; the parking provision would meet present needs; the scale and mass conform to the existing street scene; there will be disabled access and compliance for DA requirements on the whole of the ground floor.

Planning History

Committee refused an outline application for the demolition of the existing dwelling and the erection of a block of eight flats in March last year on highway safety grounds, contrary to advice from the County Highway Authority.

Responses to Consultations

The Highway Authority accepts the provision of eight parking spaces and raises no objections to the use of the existing access, which has been created to serve the five dwellings to the rear of the site.

The Primary Care Trust requests a financial contribution of £444 per unit.

The Education Authority does not request a contribution.

The Council's Open Space Development Officer considers that a contribution towards play/recreation facilities at Newhall Park would be appropriate and that the site should be landscaped.

Development Plan Policies

The relevant policies are:

RSS8: Policies 2, 3 and 4

Local Plan: Housing Policy 4, Recreation and Tourism Policy 4.

Planning Considerations

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

- The visual impact of the development on the streetscene
- The impact on highway safety

Planning Assessment

The site is located within the main urban area and therefore its residential redevelopment is acceptable in principle.

The gable span of a building would generally determine its final scale and massing against neighbouring buildings and whether it would assimilate into the streetscene. The gable spans for buildings in the area range from between about 6.5m and 8m. The span of the proposed building is 8.5m and although this is slightly larger than others in the area it is unlikely to appear incongruous in the streetscene and subject to appropriate detailing and materials would be acceptable.

The previous scheme, which differs little from this proposal, was refused at Committee because the access was considered to be unsuitable to serve the proposed development. The County Highway Authority raises no objection to this proposal and it would therefore be difficult to substantiate an objection on highway safety grounds. The

Highway Authority considers that the 8 parking spaces, which have been proposed, are sufficient to serve the development.

In addition to the medical contribution, there would also be a requirement for a contribution of £5,712 for recreational facilities.

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

Recommendation

Subject to the receipt of a satisfactory Unilateral Undertaking or Agreement under Section 106 of the Town and Country Planning Act for the payment of contributions towards local medical and recreational facilities then, **GRANT permission** subject to the following conditions:

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

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

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

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

3. No part of the development shall be carried out until samples of the facing materials to be used in the construction of the external surfaces of the building have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved materials.

Reason: To ensure the materials are appropriate to safeguard the appearance of the area.

4. 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.

5. Further to condition 2 above, soft landscape details shall include planting plans; written specifications including cultivation and other operations associated with

plant and grass establishment; schedules of plants (noting species, plant sizes and proposed numbers/densities where appropriate) and the implementation programme.

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

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

Informatives:

The proposed development lies within a coal mining area. In the circumstances Applicants should take account of any coal mining related hazards to stability in their proposals. Developers must also seek permission from the Authority before undertaking any operations that involves entry into any coal or mines of coal, including coal mine shafts and adits and the implementation of site investigations or other works. Property specific summary information on any past, current and proposed surface and underground coal mining activity to affect the development can be obtained from the Coal Authority. The Coal Authority Mining Reports Service can be contacted on 0845 762 6848 or at www.coal.gov.uk.

Item **1.2**

Reg. No. **9/2007/1072/F**

Applicant:

Mr Mrs A Gouldin
41 Doles Lane
Findern
Derby
DE65 6AX

Agent:

Mr Mrs A Gouldin
41 Doles Lane
Findern
Derby
DE65 6AX

Proposal: **The erection of a dwelling in the garden of 41 Doles Lane Findern Derby**

Ward: **Willington & Findern**

Valid Date: **18/09/2007**

Reason for committee determination

The applicant is a member of staff.

Site Description

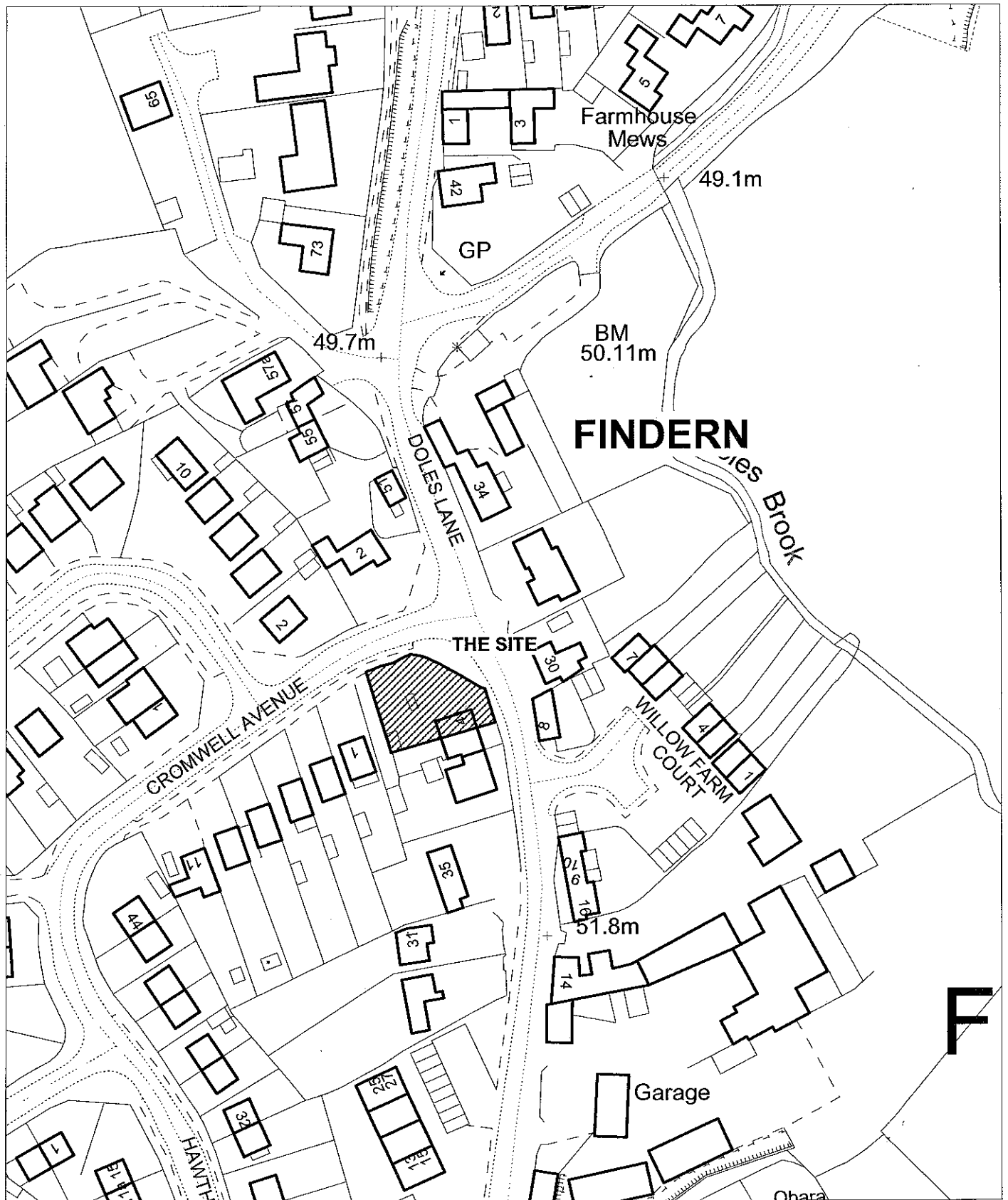
The site is the side garden of the house on the corner of Doles Lane and Cromwell Avenue. It sits at an elevated position above the road and gently rises to the rear up to a driveway shared between this and the adjoining houses on Doles Lane. Towards the rear of the site is a single garage. The dwellings on Cromwell Avenue date from the 1970s/80s and are therefore of a typical modern style. This part of Doles Lane dates from an earlier period and is therefore a mix of earlier styles. The main part of 41 Doles Lane appears to date from the first half of the last century.

Proposal

The submitted scheme shows a detached house made up of three elements sitting in an elevated position but at a lower eves level than no 41. It is similar in style to no 41 in that it is of a similar domestic scale with narrow gables, segmental brick arches, corbelled eaves and finished in white render and plain clay tiles. The house is shown turning the corner and is therefore dug into the site as it continues up Cromwell Avenue.

Applicants' supporting information

The applicant's design and access statement explains the scheme and its impact on its location and in particular demonstrates the similarity in design to the terrace of three earlier houses (dating from about 1650?) on the adjoining land and that windows would be similar softwood painted in a heritage colour, half-brick arches, brick corbels and masonry chimneys. The statement goes on to explain that there is a regular bus route



South Derbyshire
District Council
Civic Offices
Civic Way
Swadlincote
DE11 0AH

9/2007/1072/F 41 Doles Lane
Findern

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Date Plotted 19/10/2007

NORTH ↑

Plot centred at 430785 330712

Scale 1:1250

along Doles lane, easy access to A38 and A50, and rail access to Willington, Burton and Derby.

Planning History

Permission for a modern style four bedroom house on the site was granted permission in 1977 but was never implemented.

Responses to Consultations

The Parish Council objects to the proposal and has made the following comments:

- a. The development would detract from the site by closing in the open aspect of the site adjacent to important historic buildings in the village and would be incapable of blending in. It would take up an imposing position in front of the building line on Cromwell Avenue.
- b. There is a danger that sewers may further overload.
- c. The access would create a significant hazard to road users from the additional traffic movements and a clash with the busy junction especially as vehicles may be forced to reverse on to the highway.

The County Highway Authority has no objection subject to conditions.

Responses to Publicity

Six objections have been received citing the following grounds:

- a. Adjacent dwellings which are in a dip and have low ceilings would suffer a loss of light and introduce a claustrophobic effect,
- b. The dwelling is tall and too large for the plot appearing cramped and would protrude in front of the building line on Cromwell Avenue,
- c. The appearance of the dwelling would detract from the adjoining 17th century cottages and would be out of keeping,
- d. The access would create a hazard for existing users of the adjoining access and users of Cromwell Avenue especially given its close proximity to the junction and lack of visibility for drivers and pedestrians, there have been several accidents in this small area,
- e. Parking on Cromwell Avenue causes highway problems already, double yellow lines are needed,
- f. The proposed dwelling would affect at least seven other properties removing what used to be a beautifully landscaped garden,
- g. Disruption would be caused during construction,

Development Plan Policies

The relevant policies are:

RSS8: Policies 3 and 4.

Local Plan: Housing Policies 5 and 11.

Planning Considerations

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

- The principle of development

- The impact on the street scene
- The impact on residential amenity
- The impact on highway safety

Planning Assessment

The saved local plan policy seeks to permit residential development in serviced villages of which Findern is one. The principle is underpinned by the draft RSS and national guidance. Therefore the principle of developing the site is acceptable.

Some concern has been expressed locally about the development of the site and its impact on the historic part of the village and in particular how it would affect the setting of the adjoining terrace of three cottages. Policy does seek to ensure that development is consistent with the scale and character of its locality. Therefore it could be argued that in this case the development should fit in with the main Doles Lane frontage which it would face. As previously described this frontage is predominantly characterised by the elevated position of the early terrace of rendered houses on the adjoining site (the junction with Cromwell Avenue being on the other). It is considered that the submitted design would blend in well with this context. The main roof of the proposed house would be lower than the adjoining site and the ridge is shown stepped down to reflect the transition of the building to the lower level on the corner. The rear section is shown utilising the roofspace resulting in the house being set well down below the level of Cromwell Avenue which has the effect of visually detaching itself so as not to compete with the modern dwellings which commence the estate to the rear. As such the design is considered to be well thought out and one which would respect the character of the more sensitive Doles lane frontage.

The main residential amenity impact of the proposed dwelling would be on the bungalow to the rear. This has two side windows facing the site above ground floor level and the bungalow itself stands at a higher level. (The Council's standards do not seek to protect side windows in the same way as main aspects but to deal with them on their merits). Given these windows are on the side and in an elevated position at least 15 metres from any new clear glazed windows, it is considered that there would be no undue detrimental impact on the occupiers as a result of the development. Some side windows on the applicants' existing house would also be affected but again they are on the side and they have the opportunity to adjust their accommodation as they see fit.

On the advice of the County Highway Authority, the alterations to the existing access are acceptable in term of impact on the existing highway subject to conditions to secure adequate visibility and off-street parking.

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 part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority.
Reason: To safeguard the appearance of the existing building and the locality generally.
3. 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.
4. Before any other operations are commenced the new vehicular access shall be created to Cromwell Avenue in accordance with the application drawings, laid out, constructed and maintained in perpetuity free from any impediment to its designated use.
Reason: In the interests of highway safety.
5. The access, the subject of condition 4 above, shall not be taken into use until 2m x 2m x 45° pedestrian intervisibility splays have been provided on either side of the access at the back of the footway, the splay area being maintained throughout the life of the development clear of any object greater than 0.6m in height relative to footway level.
Reason: In the interests of highway safety.
6. The premises, the subject of the application, shall not be occupied until space has been provided within the application site in accordance with the application drawings for the parking of vehicles for both the proposed and existing dwellings, laid out, surfaced and maintained in perpetuity free from any impediment to its designated use.
Reason: To ensure that adequate parking provision is available.
7. Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 1995, the dwelling hereby permitted shall not be enlarged or extended without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.

Reason: To maintain control in the interest of the character and amenity of the area, having regard to the setting and size of the development, the site area and effect upon neighbouring properties and/or the street scene.

Informatives:

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 6 weeks prior notification shall be given to the Environmental Services Department at County Hall, Matlock (tel: 01629 580000 Ext 7595) before any works commence on the vehicular access within highway limits.

The proposed access driveway should be surfaced with a solid, bound material (ie; not loose chippings) for the initial 5 metres measured back from the nearside highway boundary.

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

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/delegated
9/2005/1390	Linton	Linton	Allowed	Committee
9/2006/0623	Findern	Willington/Findern	Allowed	Committee
9/2006/1162	Castle Gresley	Linton	Allowed	Committee
9/2007/0171	Overseal	Seales	Dismissed	Delegated



Appeal Decision

Hearing held on 2 May & 27 June 2007

Site visit made on 27 June 2007

by **Claire Sherratt** DipURP MRTPI

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

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

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Date: 23 August 2007

Appeal Ref: APP/F1040/A/06/2032633

Land north of Cauldwell Road, Linton, Swadlincote DE12 6RX

- 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 Martin Smith against the decision of South Derbyshire District Council.
- The application Ref 9/2005/1390/U, dated 18 November 2005, was refused by notice dated 6 June 2006.
- The development proposed is the change of use to a gypsy caravan site for 3 families.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Application for costs

1. At the Hearing an application for costs was made by Martin Smith against South Derbyshire District Council. This application is the subject of a separate Decision.

Procedural Matters

2. I adjourned the hearing on 2 May 2007, as the Council had not given sufficient notification to interested parties of the hearing date and venue. I heard that a number of local residents were unable to attend as a result. The hearing reconvened on 27 June 2007.
3. Notwithstanding the description of development included on both the application forms and reason for refusal, I heard that the proposal is for 4 caravans (one of which would be a tourer) to accommodate one family. This was confirmed to the Council, during the application process, in a letter from the appellant's agent. I do not consider any interested parties would be prejudiced by this amendment and I have determined the appeal on this basis.

Main issues

4. I consider the main issue is whether future occupiers of the site would be at risk from landfill gas emissions and / or the presence of asbestos waste.

Reasons

5. The appeal site comprises an area of vacant land in open countryside, outside the settlement of Linton. The site, part of a former colliery railway line, has been subject to landfilling in the past. The appeal site relates to an area of land that has approximately 19m of road frontage and is about 40m deep. The appellant owns additional land adjacent to the site. It is proposed that there

would be a maximum of three caravans for occupation by the appellant and his family. In addition, a mobile toilet block is proposed, although no details accompanied the application.

6. Policy 8 of the Derby and Derbyshire Joint Structure Plan stipulates that provision will be made for both permanent and transit caravan sites for gypsies and travellers which should normally satisfy a number of criteria. Housing Policy 15 of the South Derbyshire Local Plan supports gypsy caravan sites provided that, amongst other criteria, it would be acceptable in environmental terms.
7. The Government's core policies and principles contained in Planning Policy Statement 23 'Planning and Pollution Control' (PPS23) and the advice in the accompanying Annex 2 'Development on Land Affected by Contamination' are also material to my decision. When considering development on land affected by contamination, the principal planning objective is to ensure that any unacceptable risks to human health, buildings and other property and the natural and historical environment from the contaminated condition of land are identified so that appropriate action can be considered and then taken to address those risks. An assessment of risk should be carried out by the applicant for consideration before the application is determined. The potential for contamination to be present and any risks arising should be properly assessed and any necessary remediation and subsequent management measures to deal with unacceptable risks, incorporated in the development.
8. It is understood that tipping probably ceased on the site in 1989. According to the Environment Agency records the former cutting was filled with commercial and non-hazardous waste and asbestos. The site was subsequently capped with clay and covered with top soil.
9. Two previous applications for use of the site as a gypsy site have been refused. The first was subject to an appeal in 2003. The previous Inspector identified the most significant implications for the occupation of caravans on the appeal site as being the potential presence of landfill gas (principally methane), the risk of underground combustion and the presence of asbestos. I consider these are the key matters that also require consideration in this appeal.

Landfill Gas

10. The first application and appeal were supported by a site investigation report completed in November 2002. This was an interim report, requiring further monitoring to confirm the extent of any contamination. The findings of the 2002 report were based on the whole of the appellant's land (this includes the appeal site edged red and adjoining land edged blue on the application plans). It found that landfill gas emissions were low. However my colleague, who determined the appeal in 1993, did not consider that recorded levels and flow rates observed in the spike tests gave a reliable conclusion that the wastes were stabilised. He considered that there remained the possibility that trapped pockets of gas may exist or be developing, particularly under the area of hard surfacing. A sample of surface water collected from the landfill site and analysed in February 1993 conformed to European drinking water standards.
11. Further ground investigation was carried out between November 2003 and January 2004. This included measurement of Methane, Carbon Dioxide and

Oxygen levels on three separate occasions. These tests showed that the area of gas emissions was smaller than previously identified and occupied only the central area of the site. Methane was not encountered at the southern end of the site that relates to this appeal.

12. In 2005, a further gas emissions and soil contamination survey was carried out by the Centre for Land Evaluation and Management, of the University of Derby (CLEM). This comprised gas monitoring carried out on four occasions over two months and five samples were collected for containment analysis. Initially CLEM had intended to carry out the monitoring over 3 months. Analysis of soil samples from the site indicated an absence of significant levels of contamination.
13. A series of fixed spike holes were monitored for landfill gas on the entire area of land owned by the appellant. Gas monitoring of pre-existing standpipes and knock-in pipes adjacent to the site was also carried out. Whilst Methane and Carbon Dioxide were detected across the central part of the appellant's land and on adjoining land to the east, the appeal site itself was again found to be unaffected by gas emissions.
14. The spike hole surveys revealed that in a number of places where methane was being emitted, it was at greater than 1% by volume although the level of flammability of the gas emissions at those points is likely to be reduced by the presence of the high CO₂ and low O₂ concentrations also recorded in most cases. In addition, measured flow rates of gas were generally low with a maximum in any survey of 3.4 l/hr, below the thresholds considered for the safe completion of landfill sites.
15. The Council's witness suggested that permanently instated boreholes monitored over a 24 month period would be an acceptable monitoring regime. This is contrary to the findings of the Council's Environmental Health Officer who found the monitoring exercise carried out to be acceptable. I heard that he was satisfied with the investigations carried out and considered monitoring could cease after only two months. He consequently raised no objections to the application.
16. I am mindful that monitoring exercises have now been carried out on three separate occasions. The wider site is still gassing and this has been recorded in the same general vicinity on each occasion. The available information indicates that the first 50 or so metres of the site had been tipped with inert material and topped with a clay seal at the end of the first phase of tipping. This is supported by the records from the County Council and Environment Agency. Furthermore, the lack of any gas being released on the appeal site (the first 40m of the site) would also appear to support the likelihood of the material in this area being mostly inert in nature. The appeal site is located approximately 18 metres south of the closest extent of any found gas emissions recorded.
17. The most recent CLEM report recommends, as a precaution, a shallow gas collection pipe system should be installed to vent any gas from the site and measures taken to prevent gas accumulation in buildings by maintaining sufficient natural ventilation. Disturbance of the restored landfill surface should be avoided, as should the cultivation of the site and the consumption of any

associated crops and the lighting of fires. It also recommends that foul sewage should be dealt with by the installation of an above ground collection tank.

18. When considered in isolation, I consider the occupation of the appeal site would not result in unacceptable risks to the appellant and his family or to others. The appellant has addressed effectively the issue of potential contamination on the appeal site. Furthermore, the appeal site has been subject to development in the past as it was the location for the vehicular access to the tipping areas beyond, a site office and cabins. On the land beyond, where landfill gas is still evident, the risks associated with occupation obviously become greater than on the appeal site, albeit that those risks would still be relatively low. I consider that it is an advantage that the appellant is also the owner of the adjoining land and would therefore have control over its use, given that he is aware of the landfill issues and results of the surveys carried out to date. The physical separation of the appeal site could potentially be achieved through the erection of fencing or a hedge on top of a bund of imported top soil, thereby avoiding any breach of the clay cap. The Council accepts in its statement that a hedge could ultimately enclose the site but that it would take time to mature. This would satisfactorily protect against future occupiers of the site, children in particular, or visitors, inadvertently entering the site and using it inappropriately.
19. There was some discussion at the hearing about whether a condition preventing fires would be difficult to enforce. It is not a condition suggested by the Council in its statement of case. Nevertheless, I consider it would be reasonable as a precautionary measure in light of the recommendations by CLEM and enforceable by a Council representative asked to investigate such a breach. I am also mindful that the recommendations set out in the report are relevant to the whole area monitored and not simply the appeal site where no gas emissions were detected. Services could be provided above ground to avoid new pathways being introduced. No details of the proposed toilet block are included in the application and these would need to be agreed including construction methods to ensure sufficient ventilation would be retained around and beneath it.

Presence of Asbestos

20. According to site license asbestos should have been sealed in red plastic bags. Records show that asbestos was placed towards the rear of the site low down. During the infill operations, asbestos was a concern, as evidenced from parish council records at the time. Monitoring was carried out by Council officers and I have no substantive evidence before me to suggest that the operators were in breach of the site licence. If any asbestos is exposed underground, I heard that it would be contained under the clay cap. I concur with the view of my colleague in the previous appeal that so long as the asbestos remains buried and undisturbed it should not present a significant health hazard.

Underground Combustion

21. In 2003, my colleague concluded that, having regard to the wider site, there was a substantial possibility that an appreciable amount of combustible material remains, albeit that it would have decomposed considerably in the period since the site closed. Given the nature of the infill material in the first

50 metres or so of the cutting, and having established that there is no gassing on the appeal site, concerns about underground combustion would not, in my view, justify planning permission being withheld subject to a physical barrier being erected between the appeal site and adjacent land.

Conclusions

22. It is clearly essential that if the development proceeds, the clay cap should remain intact and the appeal site separated from the land beyond, where any risks to the occupiers, albeit low, are of greater concern. This would prevent the residential use of the site spilling out beyond the appeal site and being used inappropriately. To conclude on the main issue, I am satisfied that the proposal would deliver an appropriate development and that the risks are sufficiently well known to render the proposal acceptable. It would not conflict with Housing Policy 15 of the South Derbyshire Local Plan in that I find it acceptable in environmental terms.

Other Matters

23. In addition to the only concern of the Council about the implications of the former landfill operations on the safe occupation of the site, other interested parties raised additional concerns. There are a number of authorised traveller sites in the locality. The need for a further site was queried. Residents referred to an outdated policy (Policy H11¹) that was not adopted. This required, amongst other criteria, a need for sites to be demonstrated. However, the adopted LP policy makes no such provision, although SP Policy makes reference to need.
24. The Council has not carried out a needs assessment to date although it has joined with a number of other authorities to produce one. It is hoped that the results of the assessment would be available in the autumn of this year. In the meantime the Council accepts that there is an unmet need for gypsy sites in the area.
25. Although some representations alluded to the site being in the Green Belt, I established at the hearing that this was not the case. It is however in the National Forest. Circular 01/2006 accepts that gypsy sites would be acceptable in rural locations in principle. The site is situated outside the settlement boundary of Linton, in the countryside. Circular 01/2006 specifies that local landscape and local nature conservation designations should not be used in themselves to refuse planning permission for gypsy and traveller sites.
26. Mature hedges adjacent to Caldwell Road offer some screening of the site. However, I do not dispute that any caravans and associated paraphernalia would be visible from certain viewpoints, particularly from the bridleway to the west of the site and at the entrance. The site would be occupied by one family and conditions were suggested to restrict the number of caravans that could be accommodated on the site and the number of commercial vehicles. Additional landscaping could be incorporated within the site providing top soil is imported to ensure roots did not breach the existing clay cap. This would provide further mitigation against any impact that the development would have.

¹ Document 5

27. I acknowledge that the site has been subject to unauthorised camping in the past and was untidy in appearance. It continues to look unattractive now as it has been subject to substantial fly tipping. I agree that this is not a reason to permit the use of the site as a gypsy site. Nevertheless, overall, I am satisfied that a well kept and tidy gypsy site, would not unduly harm the character and appearance of the surrounding area or unacceptably undermine the objectives of the National Forest.
28. Although situated outside the settlement boundary of Linton it is within walking distance of it. The same services and facilities would therefore be available to any future occupiers of the site as are currently available to occupiers of properties in Linton. Circular 01/2006 is clear that matters of sustainability should not only be considered in terms of transport mode and distances from services. Local planning authorities should first consider locations in or near existing settlements with access to local services. In my view, the appeal site is reasonably well located being within walking distance of the local facilities in Linton but also reasonably accessible to the varied services at Swadlincote.
29. Concern was expressed that government policy favours the gypsy and traveller community as members of the settled community would not be able to obtain planning permission for a dwelling outside the defined settlement boundaries. This, it was argued, does not foster good relations between the settled and gypsy community. However, contrary to the concerns expressed, it is intended that the advice contained in the Circular 01/2006 *'will help to promote good community relations at a local level, and avoid conflict and controversy associated with unauthorised developments and encampments.'* It recognises the conflict and distress associated with unauthorised encampments, and the anti-social behaviour that sometimes accompanies such sites.
30. It is accepted that gypsies and travellers in rural areas often face difficulties in securing an adequate supply of affordable land for their needs. In settlements where residential development would be acceptable in principle, land is unlikely to be affordable to the gypsy community. Where there is a lack of affordable land to meet local gypsy and traveller needs, Circular 01/2006 advises that local planning authorities should include a 'rural exception site' policy in the relevant Development Plan Documents. Similar exceptions for the provision of 'affordable housing' for the settled community outside defined settlement boundaries is often addressed in development plans.
31. I have also had regard to concerns in relation to the impact of the proposed development on highway safety. The section of Cauldwell Road from which the appeal site is accessed is subject to the national speed limit. Shortly after, on entering the village, it is reduced to 30mph. I heard that cars regularly speed along this road. Nevertheless, I saw that visibility on leaving the site was reasonable. I consider the traffic movements associated with one family would not be significant. Whilst the appellant may have commercial vehicles associated with his business, this would not necessarily increase the number of vehicle movements from the site. I saw the proximity of the site to the bend. I would expect vehicles to be slowing down on the approach to the bend and I am satisfied that sufficient distance remains to allow vehicles to have regard to vehicles entering or leaving the site. I am not aware of any accidents that have occurred that could be attributed to the previous unauthorised occupation of the site or the landfill operations. Furthermore I am mindful that the

highway authority raises no objections to the proposal in terms of highway safety. I give their views substantial weight. Whilst not more than two commercial vehicles may be parked at the site as discussed at the hearing, I do not consider this would justify the need to provide an oil interceptor on the site as suggested by the Council. The use of the site would not be for commercial purposes.

32. I agree with the Council's assessment of the planning merits of the case that the decision turns on whether the site would be acceptable in environmental and safety terms. This is consistent with the findings of my colleague in 2003.

Conditions

33. The Council suggested that a number of conditions should be imposed if the appeal is allowed. I have already made reference to many of those suggested and why I agree each to be necessary, or not, within the reasoning of my decision. In addition to those I have referred to, I agree that a remediation validation report should be submitted to the Council to ensure those recommendations set out in the CLEM report are adhered to. In the interests of highway safety, the access shall be surfaced.

Overall Conclusions

34. To conclude overall, I consider that the proposed development would not result in an unacceptable risk to the health and safety of the appellant and his family or others. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Formal Decision

Appeal Ref: APP/F1040/A/06/2032633

35. I allow the appeal, and grant planning permission for the change of use to a gypsy caravan site for 1 family at Land north of Cauldwell Road, Linton, Swadlincote DE12 6RX in accordance with the terms of the application, Ref 9/2005/1390/U, dated 18 November 2005, and the plans submitted with it, subject to the following conditions:
- 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
 - 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
 - 3) No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which at least 1 shall be a touring caravan) shall be stationed on the site at any time.
 - 4) Notwithstanding the application plans, no development shall commence until a scheme for the clearance of the site and details of all proposed surfacing materials have been submitted to and approved in writing by the local planning authority. The site shall not be occupied until the agreed scheme has been implemented in accordance with the approved details.
 - 5) No commercial activities shall take place on the land, including the storage of materials.

- 6) Not more than two commercial vehicles, which shall not exceed 3.5 tonnes in weight), shall be stationed, parked or stored on this site.
- 7) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the exact position, design, materials and type of boundary treatment to be erected including the precise method of construction and details of associated earth works and measures to ensure that there shall be no breach of the clay cap. The boundary treatment shall be completed before the use hereby permitted begins in accordance with a timetable agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) No development shall take place until there has been submitted to and approved in writing 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. All planting, seeding or turfing comprised in the approved details of landscaping, which shall include details of associated earth works necessary to avoid any breach of the clay cap, 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 5 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 approval to any variation.
- 9) Prior to the occupation of the caravans hereby approved a remediation validation report along with a signed copy of the attached certificate shall be submitted to the local planning authority.
- 10) No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the local planning authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.
- 11) Prior to the first occupation of the site, the access shall be surfaced in a bound material for a distance of 5 metres back from the highway, the precise details of which shall be first submitted to and approved in writing by the local planning authority.
- 12) No development shall take place until details of the proposed toilet/shower block have been submitted to the local planning authority together with the proposed method of construction of any necessary hardstandings. The block shall be erected in accordance with the approved details.
- 13) No burning of materials shall take place on the site or adjoining land shown edged in blue on the application plans.
- 14) No caravans shall be brought onto the site until details of their intended siting and any associated hardstandings have been submitted to and approved by the local planning authority in writing. The caravans shall

only be positioned in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

- 15) Any caravans positioned on the site shall be capable of being towed on the public highway, in accordance with the relevant Highways Act legislation, without division into separate parts.
- 16) No development shall take place until details of and the methods by which all services (i.e. electric, water, telephone) are to be provided on the site. The services shall be provided fully in accordance with the approved details.

Claire Sherratt

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Philip Brown	Philip Brown Associates Ltd; 74 Park Road, Rugby, Warwickshire CV21 2QX,
Peter Jones	Centre for Land Evaluation and Management University of Derby
Dr. H R Fox	Centre for Land Evaluation and Management University of Derby

FOR THE LOCAL PLANNING AUTHORITY:

Mary Gibson	Area Planning Officer
Russell Corbyn	Independent Environmental Chemist, CMT (Testing) Limited, Prime Parkway, Derby DE1 3RS
Councillor Jones	Ward Councillor for Linton
Councillor Wheeler	Ward Councillor for Linton

INTERESTED PERSONS:

Deborah Brogan	Acting on behalf of Local Residents objecting to the proposal (47 Cauldwell Road, Linton)
John Bloor	Local Resident & Engineer (47 Cauldwell Road)

DOCUMENTS

- 1 Attendance List.
- 2 Copy of Appeal notification letter and list of persons notified.
- 3 Statement from John Bloor BEng (Hons) DipComp (open)
including attachment '*Environment Agency: Guidance on the
management of landfill gas*'.
- 4 Statement from Deborah Brogan.
- 5 Draft Policy H11 (referred to by D Brogan).
- 6 Plan showing location of gypsy sites in the area.

PLANS

A1-A2 Application Plans



Appeal Decision

Site visit made on 20 August 2007

by Anthony Thickett BA(Hons) BTP
MRTPI Dip RSA

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for Communities and Local Government

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Date: 30 August 2007

Appeal Ref: APP/F1040/A/07/2042722

Land at The Old Hall, Lower Green, Findern, Derbyshire, DE65 6AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by J A Ball New Homes Ltd against the decision of South Derbyshire District Council.
- The application Ref 9/2006/0623/O, dated 23 May 2006, was refused by notice dated 10 October 2006.
- The development proposed is the demolition of single storey outbuildings and erection of 3 dwellings; erection of double garage for The Old Hall, new vehicular access. The application is in outline with all matters bar siting and means of access reserved for subsequent approval.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Procedural Matters

1. The description of development set out above is not that given on the planning application form. The appellant initially sought to build 4 dwellings but the proposal was amended to the development described above prior to the determination of the application by the Council. The appeal proposal is shown on drawing number 05_2086_05E.
2. Following the refusal of the appeal application, the Council granted planning permission for the siting of the dwellings on Plots 2 and 3. The appellant argues that, as a consequence, I need only concern myself with Plot 1. That is not the case, the whole of the appeal application is before me.

Main Issue

3. The main issue is the impact of the proposal on the character and appearance of the area and the setting of All Saints Church (a Grade II listed building).

Planning Policy

4. The Council's reason for refusal does not allege any conflict with national or local policy but a number of policies are set out in the Council's statement. The development plan for the area includes the Derby and Derbyshire Joint Structure Plan 2001 and the South Derbyshire Local Plan 1998. Housing Policy 5 of the Local Plan lists Findern as a village where new housing will be permitted provided it would be in keeping with the scale and character of the settlement. This aim is reinforced by Housing Policy 5 of the Structure Plan. Environment Policies 10 and 16 of the Structure Plan and Local Plan

Environment Policies 9 and 13 seek to protect trees and the setting of listed buildings.

Reasons

5. The 3 dwellings would be built within the grounds of The Old Hall. The site lies to the east of and adjoins the churchyard to All Saints Church. Access is currently from Lower Green alongside the churchyard but this would be retained for use by pedestrians only. A new vehicular access is proposed from Sycamore Avenue which adjoins the north eastern boundary. The appeal site, the church and the buildings enclosing Lower Green are part of the attractive historic core of the village.
6. The attraction of this part of the village is also due to the mature trees around the church and within the appeal site. The centre of the site is dominated by a large horse chestnut and the drive leading to The Old Hall is lined by an avenue of lime trees. All these trees make a positive contribution to the character of the historic core of the village. The Council argue that it will come under pressure from prospective occupiers to carry out works to these trees. This is not a concern shared by The County Council's Tree Preservation Officer who has no objection to the proposal. From what I have seen and, in the absence of any technical evidence to the contrary, I share the County Council's view that the proposal would not lead to the loss of these trees.
7. The County Council's Conservation and Design Officer is also satisfied that the proposal would not have an adverse impact on the relationship between the church and The Old Hall. It must follow, from the grant of planning permission for Plots 2 and 3 that the Council are satisfied that buildings sited here would not harm the setting of the church (or have an adverse impact on the trees within the site). I agree, the buildings would be set well back from and would not affect the integrity of the churchyard. From Lower Green, views of the dwelling on Plot 1 would be obscured by the horse chestnut and the limes. I am satisfied that the proposed siting would respect the historic core of the village and the relationship between the church and The Old Hall.

Other matters

8. The Highway Authority do not share residents' concerns regarding the ability of local roads to accommodate the traffic generated by the proposal. In the absence of any technical evidence to the contrary, I see no reason to take a different view. I am satisfied that the proposed dwellings could be designed in such a way so as to safeguard the living conditions of adjoining occupiers.

Conditions

9. I have considered the Council's suggested conditions in light of the advice in Circular 11/95. It is necessary, in the interests of the visual amenity of the area, to impose conditions regarding tree protection and floor levels. As external appearance is a reserved matter, there is no need for a condition relating to the type and colour of gutters and down pipes. Findern is recorded in the Domesday survey and, given the location of the site in the historic core of the village, a condition regarding a programme of archaeological work is necessary.

10. I shall impose a condition regarding the access to Sycamore Avenue but the dimensions of the visibility splay required by the Highway Authority are probably based on advice now superseded by Manual for Streets. Manual for Streets may specify a visibility splay of a smaller magnitude which could reduce the amount of hedge lost fronting Sycamore Avenue to the benefit of the character and appearance of the area. In order to safeguard the trees on the site, I shall require the new access to be created before any site clearance or construction. Car parking and manoeuvring spaces are shown on the submitted drawings and I have no reason to believe they will not be provided. I have seen nothing to indicate that parking on the street would be detrimental to highway safety and see no need to require parking spaces to be provided on site.
11. The drawing upon which this decision is based is set out in paragraph 1 above and a condition restricting the permission to that drawing is not required. In the absence of anything from a statutory undertaker to indicate a lack of capacity, I see no reason why drainage cannot be dealt with under Building Regulations.

Conclusions

12. For the reasons given above and having regard to all other matters raised, I find that the proposal would not have an adverse impact on the character and appearance of the area or the setting of All Saints Church. I conclude that the proposal complies with the development plan policies set out above and that the appeal should be allowed.

Formal Decision

13. I allow the appeal, and grant outline planning permission for the demolition of single storey outbuildings and erection of 3 dwellings; erection of double garage for The Old Hall, new vehicular access at land at The Old Hall, Lower Green, Findern, Derbyshire, DE65 6AD in accordance with the terms of the application, Ref 9/2006/0623/O, dated 23 May 2006 and the plans submitted with it, subject to the following conditions:
- 1) Details of the design, external appearance of the buildings and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
 - 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
 - 3) The development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
 - 4) No development shall take place, nor any demolition works or site clearance, until there has been submitted to and approved in writing by the local planning authority details of a scheme for the protection of trees

- to be retained on the site during the demolition of the buildings and throughout the course of the development.
- 5) No development shall take place until details of the method of the construction of the access road within any tree protection zone approved under condition 4 above have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 6) No development shall take place, nor any demolition works or site clearance until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.
 - 7) No development shall take place until details of ground and floor levels have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 8) Notwithstanding the access and visibility details shown on drawing number 05_2086_05E, no development shall take place, nor any demolition works or site clearance until details of a visibility splay have been submitted to and approved in writing by the local planning authority. The approved visibility splay shall be maintained free of any obstruction exceeding 1m in height for as long as the development hereby permitted remains in existence.
 - 9) No development, nor any demolition works or site clearance, other than works required to create the access to Sycamore Avenue, shall take place until the access to Sycamore Avenue has been constructed in accordance with the details shown on drawing number 05_2086_05E and the visibility splay approved under condition 8 above.

Anthony Thickett

Inspector



Appeal Decision

Site visit made on 24 September 2007

**by Philip Crookes BSc (Hons) DipTP
MRTPI**

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**Decision date:
2 October 2007**

Appeal Ref: APP/F1040/A/07/2047649

Site on corner of Cadley Hill Road and Appleby Glade, Swadlincote DE15 9DB

- 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 (Adam) Cooper Homes against the decision of South Derbyshire District Council.
- The application Ref 9/2006/1162/F, dated 28 September 2006, was refused by notice dated 29 May 2007.
- The development proposed is demolition of existing workshop and site clearance and development of site with the construction of 7 dwellings and parking, access and gardens.

Decision: I allow the appeal subject to the conditions set out in the Formal decision below.

Main Issues

1. The site currently comprises a motor vehicle repair workshop with associated yard in a predominantly residential area with houses fronting the A414 to the west and Appleby Glade a residential cul-de-sac to the east. Whilst the proposal would involve the loss of employment land the Council accepts that it would not conflict with Economy Policy 1 of the Local Plan. The latter allows for the loss of employment land where the current use is incompatible with existing uses. Accordingly I consider the main issues to be:-
 - (i) the effect of the development on the character and appearance of the surrounding area
 - (ii) whether the proposed access arrangements would be detrimental to highway safety and the free flow of traffic.

Reasons

Character and appearance

2. The proposed development would comprise seven houses in total arranged as a terrace of five units and a further pair of semis running on a north-south alignment across the site. The dwellings would face Appleby Glade from which two accesses would be formed across the highway verge leading to frontage car parking areas serving the two rows of dwellings. The dwellings would be two storey in height with steeply pitched roofs. A further floor of accommodation would be incorporated in the semis, articulated by dormer windows and roof lights in the front and rear roof slope respectively.

3. In visual terms the proposed development relates most closely to Appleby Glade, a 1960's suburban housing development comprising mainly detached and semi detached chalet bungalows. The proposed dwellings, with a ridge height of approximately 9.5m, would be taller and of a markedly different design than most in the immediate area. However, the height would be broadly comparable with the recent development of three storey dwellings beyond Appleby Glade that are clearly seen in the backdrop to the estate. Furthermore the wider area that includes Appleby Glade has no strong visual character or particularly noteworthy design attributes that would render the form of development proposed, including its use of dormer windows, out of place.
4. I do not consider the siting of the car parking and vehicle hardstanding at the front of the dwellings to lack imagination or be out of keeping in this context. I am mindful that the car parking areas would be located at least 13m from Appleby Glade and would be viewed across a well vegetated verge that would both soften and screen any unacceptable visual harshness caused by the area of hardstanding/parking.
5. It is difficult to see how the Government aims of making more efficient use of previously developed land by increasing densities would be achieved if, as the Council seems to suggest, new development must follow the historically lower density pattern that abounds the site. High density development will, it seems to me, almost always appear different, the real test is whether through design, the effects of that difference on the character and appearance of an area can be made positive, or at worst neutral. In my view the proposal exhibits a standard of design that allows it to accord with the latter classification. The appeal proposal would increase visual interest given that the much of the housing in the locality exhibits a standardised suburban layout. In this context the proposal would be appropriate to its surroundings. On this issue I therefore conclude that the proposal would not harm the character and appearance of the surrounding area. I therefore further conclude that it would accord with the objectives of Policy H4 of the Local Plan and with national policy guidance that seeks to encourage creative and responsive design that can ensure the more efficient use of previously developed land by increasing densities.

Highway safety

6. The Council considers that the additional traffic generated by the development using the junction of Appleby Glade and Cadley Hill Road would result in further right turn manoeuvres in close proximity to the A444, a major road. This is contrary to the views of Derbyshire County Council as local highway authority which raised no objections to the proposal subject to the imposition of a number of planning conditions. No assessment of traffic generation or movements has been submitted and it appears to me that the Council's objections reflects little more than a subjective judgement that is unsupported by any evidence. Having regard to the position of the highway Authority I consider that the additional traffic generated by 7 dwellings would not be so great as to prejudice highway safety in the vicinity of the A444. Moreover the development would replace an existing motor vehicle repair workshop that undoubtedly generates a significant number of vehicles movements that using a less satisfactory point of access onto Cadley Hill Road within approximately

30m of the roundabout junction with the A444. Overall, it is my view that the proposal would represent a reduction rather than an increase in highway safety concerns.

Planning Obligations and Conditions

Planning Obligation

7. The Council's policy adopted towards developer contributions to additional educational and health care facilities accords with the general principles set out in PPS1: *Delivering Sustainable Development*. The general principle is to seek developer contributions to help ameliorate the impact of development on people and communities, where appropriate. This can be achieved through planning obligation made under section 106 of the 1990 Town and Country Planning Act. The developer has provided a signed S106 unilateral undertaking to make a financial contribution to education (£3,108) and health care facilities (£23,336) in accordance with the Council's standards. I consider that this is a proper, proportionate and necessary provision. I see no reason why the undertaking should not be binding or fail to deliver these benefits.
8. The position is less clear in respect of a financial provision as a contribution to the provision of public open space. The appellant has submitted a unilateral undertaking (making provision for a contribution of £11,456) to open space but has questioned its need. Unlike contributions to education and health care, the Council considers a contribution is required on the basis of interim measures being used at the time the application was determined in May 2007. I am told that, at this time, when informal open space requirements (calculated on the basis of 0.8 hectares per 1000 population) are less than 200sqm no contribution is required. The Council does not seem to dispute that, on the basis of the formula used for calculation purposes, the appeal scheme would yield a requirement for only 128 sq.m of informal open space. The Council has more recently revised its approach and now says that a contribution towards open space is necessary in respect of all new housing developments that generate 5 or more units. However, whilst I acknowledge the Council present position, I have no information to show that the revised requirement has been the subject of public consultation or formal adoption by the local planning authority. I can therefore give little weight to the more recent basis for the identification and specification of any contribution to open space provision. Accordingly, I can find no reason, including any based on adopted development plan policy to require a contribution to informal open space. The proffered unilateral undertaking in this respect is therefore unnecessary.
9. Although none is before me, the Council has also suggested that a planning obligation should be sought to secure funding towards a pedestrian crossing across Cadley Hill Road. The highway authority makes no reference to the need for such a facility. I have come to the conclusion that there are no highway safety reasons to resist the development without any new pedestrian crossing being provided. It seems to me that the Council's request is somewhat opportunistic and I can find no development plan or other reason to support it. Notwithstanding this, I can only determine the appeal on the basis of the written material put before me. This does not include a planning obligation relating to a pedestrian crossing.

Conditions

10. In addition to the standard time limit condition, I agree that a condition is necessary to clearly identify the amended plan to which the decision relates. Conditions are also necessary in respect of materials, finished levels and boundary treatment to ensure that the development is properly assimilated into its surroundings. In the interest of highway safety conditions are also necessary to specify design details appropriate to the new accesses, the provision of a footway along Appleby Glade, closure of the access onto Cadley Hill Road and the provision and retention of the proposed parking spaces and manoeuvring areas. In view of the past commercial use of the site, I agree that investigation of possible contamination is necessary with the implementation of any remedial works found to be required. However, I have replaced the wordy condition suggested by the Council with another based on the model conditions found in Circular 11/95: *The Use of Conditions in Planning Permissions*. I do not intend to impose the suggested condition removing certain permitted development rights as I do not find that exceptional circumstances exist that might otherwise justify such a restriction.

Formal Decision

11. I allow the appeal, and grant planning permission for demolition of existing workshop and site clearance and development of site with the construction of 7 dwellings and parking, access and gardens at site on corner of Cadley Hill Road and Appleby Glade, Swadlincote DE15 9DB in accordance with the terms of the application, Ref 9/2006/1162/F, dated 28 September 2006, and the plans submitted with it, as amended, subject to the following conditions:
- 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
 - 2) Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no. C766/1 revision B.
 - 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 4) Prior to the development hereby approved commencing, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to and approved in writing by the local planning authority. Thereafter the development shall be constructed in accordance with the agreed levels.
 - 5) Notwithstanding any detail 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 have first been agreed in writing with the local planning authority.

- 6) Prior to any other works commencing, (excluding demolition and site clearance), the new accesses shall be formed to Appleby Glade. Each access shall have a minimum width of 4.1m, be constructed as 2m x 2m x 45° splayed vehicular crossover, be surfaced in a solid bound material and be provided with measures to ensure that surface water does not flow from within the site onto the footway.
- 7) Notwithstanding any detail submitted, prior to occupation of the first dwelling hereby approved, the existing footway shall be extended along the entire Appleby Glade frontage in accordance with a scheme to be submitted to and approved in writing by the local planning authority. The new footway shall be laid out and constructed in accordance with Derbyshire County Council's specification for adopted highways.
- 8) Prior to the occupation of the first dwelling hereby approved, the existing access onto Cadley Hill Road shall be permanently stopped up and the footway reinstated in accordance with a scheme first submitted to and approved in writing by the local planning authority.
- 9) Prior to the occupation of the first dwelling hereby approved, the car parking and manoeuvring areas shall be laid out in accordance with the drawing no. C766/1 Revision B and maintained thereafter free of any impediment to its designated use.
- 10) Before the development hereby permitted begins, a desk study to identify and evaluate all potential sources of contamination shall be undertaken and as found to be necessary, a soil survey of the site shall be undertaken and the results submitted in writing to the local planning authority. The survey shall be taken at such points and to such depth as the local planning authority may stipulate. Where recommended a scheme for decontamination of the site shall be submitted to and approved in writing by the local planning authority and the scheme as approved shall be fully implemented and completed before any residential unit hereby permitted is first occupied.

Philip Crookes

INSPECTOR



Appeal Decision

Site visit made on 24 September 2007

**by Philip Crookes BSc (Hons) DipTP
MRTPI**

**an Inspector appointed by the Secretary of State
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**Decision date: 1st
October 2007**

Appeal Ref: APP/F1040/A/07/2049062

30 Main Street, Overseal, Swadlincote DE12 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 Stuart Clark against the decision of South Derbyshire District Council.
- The application Ref 9/2007/0171/FH, dated 13 February 2007, was refused by notice dated 11 April 2007.
- The development proposed is formation of vehicular access.

Decision

1. I dismiss the appeal.

Reasons

2. Main Street (A444) is a narrow and busy highway as it passes through Overseal and has a 30mph speed limit. Outside peak periods I saw a consistent volume of traffic including a considerable number of HGVs using the road. Whilst a two way flow of vehicles remains possible even when a vehicle is parked on the highway, the restricted width of the highway means that vehicles wider than the average private car may have to wait to let oncoming vehicles pass.
3. The appeal property is a terraced house set with a narrow front garden some 1.8m in depth back from the highway. There is therefore insufficient frontage depth to enable vehicles to turn within the site. The use of the proposed access to enable the proposed parking parallel to the highway would therefore mean that vehicles would have to make an awkward manoeuvre across the footway. Whilst the length of the 9m long dropped crossing proposed would ease the manoeuvre somewhat, without utilising part of the curtilage of No 32 it remains likely that vehicle would have to reverse either onto or off the highway. Such vehicles are likely to present a slow moving or stationery obstruction to passing drivers. The presence of other parked vehicles on the highway would also obstruct the visibility of drivers emerging from the appeal premises and would result, on many occasions, in drivers being unable to make a spontaneous manoeuvre off Main Street. These conditions would cause passing or following vehicles to slow or stop abruptly causing confusion, congestion and additional danger to passing road users. I also agree with the highway authority that the length of dropped kerb proposed, about three times that of a conventional domestic crossing, and the need to utilise much of the adjacent pavement area

to manoeuvre vehicles on and off the hardstanding would represent a significant danger to pedestrians, including children and the less able.

4. I accept that the proposal would enable a vehicle to be parked off the highway. However, given the above difficulties I consider that reversing into longitudinal on-street parking spaces, as occurs at the present time, is likely to be more obvious to passing road users and significantly safer than manoeuvring on and off the forecourt hardstanding.
5. I note the references made to other instances where similar access arrangements have been dismissed on appeal. However, no two situations are the same and I have based my decision on the particular merits of the appeal proposal. I have also noted a number of other properties along this section of Main Street that have created parking space parallel to the highway in their front garden areas. I have no evidence that any of these have received planning permission and it seems to me that the same highway safety concerns apply to many.
6. Given the above considerations, I conclude that the proposed access would cause unacceptable prejudice to the safety and convenience of all road users and should be resisted.

Philip Crookes

INSPECTOR