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Our Ref

Your Ref

Date: 19 February 2020

Dear Councillor,

**Planning Committee**

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, Civic Offices, Civic Way, Swadlincote on **Tuesday, 25 February 2020 at 18:00**. You are requested to attend.

Yours faithfully,



Chief Executive

To:- **Conservative Group**

Councillor Mrs. Brown (Chairman), Councillor Mrs. Bridgen (Vice-Chairman) and Councillors Angliss, Brady, Ford, Muller, Watson and Mrs. Wheelton

**Labour Group**

Councillors Gee, Dr Pearson, Shepherd, Southerd and Tilley

## **AGENDA**

### **Open to Public and Press**

- 1** Apologies and to note any Substitutes appointed for the Meeting.
- 2** To note any declarations of interest arising from any items on the Agenda
- 3** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 4** REPORT OF THE STRATEGIC DIRECTOR (SERVICE DELIVERY) **3 - 59**
- 5** TREE PRESERVATION ORDER NO. 517 – LAND AT CADLEY HILL **60 - 62**  
ROAD, SWADLINCOTE AND SWADLINCOTE LANE, CASTLE GRESLEY

### **Exclusion of the Public and Press:**

- 6** The Chairman may therefore move:-  
That in accordance with Section 100 (A)(4) of the Local Government Act 1972 (as amended) the press and public be excluded from the remainder of the Meeting as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that there would be disclosed exempt information as defined in the paragraph of Part I of the Schedule 12A of the Act indicated in the header to each report on the Agenda.
- 7** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.

# **Report of the Strategic Director (Service Delivery)**

## **Section 1: Planning Applications Section 2: Appeals**

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

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## 1. **Planning Applications**

This section also includes reports on applications for: approvals of reserved matters, listed building consent, work to trees in tree preservation orders and conservation areas, conservation area consent, hedgerows work, advertisement consent, notices for permitted development under the General Permitted Development Order 2015 (as amended) responses to County Matters and strategic submissions to the Secretary of State.

Reference	Item	Place	Ward	Page
DMPA/2019/1408	<a href="#">1.1</a>	Acresford	Seales	5
DMPA/2019/1196	<a href="#">1.2</a>	Willington	Willington & Findern	27
9/2019/0288	<a href="#">1.3</a>	Willington	Willington & Findern	48

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

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

**Item No.** 1.1

**Ref. No.** [DMPA/2019/1408](#)

**Valid date:** 10/01/2020

**Applicant:** B & E McDonagh

**Agent:** Alan Yarwood

**Proposal:** Change of use of land for the siting of two gypsy/traveller pitches in lieu of one pitch previously approved under application ref. 9/2018/0616, along with the erection of two amenity buildings, the creation of a hard surfaced parking area and access drive, engineering operations to amend the site levels, along with alterations to the site access on Land at SK2913 6212, Acresford Road, Netherseal, Swadlincote, DE12 8AP

**Ward:** Seales

### **Reason for committee determination**

The item is presented to Committee at the request of Councillor Wheelton on the basis that local concern has been expressed about a particular issue.

### **Site Description**

The application site comprises an area of land extending to approximately 0.2ha, situated within a larger field, also within the applicant's ownership. The field is situated to the south east of Acresford Road, approximately 120m south west of The Cricketts Inn public house. The A444 runs parallel with the north eastern field boundary. Access is via an existing upgraded field entrance, to the south western part of the site.

The site, in part, has consent for a single Gypsy and Traveller pitch, approved in October 2018. This pitch comprises an elevated area of hardstanding adjacent to the site's boundary with Acresford Road. Five touring caravans are currently stationed on the wider site. To the north-east of the authorised pitch are two concrete slabs, on which two sheds/amenity builds are sited. The existing access has been slightly widened and enclosed by solid fencing and gates and an internal driveway has been created, leading from the highway access point and continuing adjacent to the pitch.

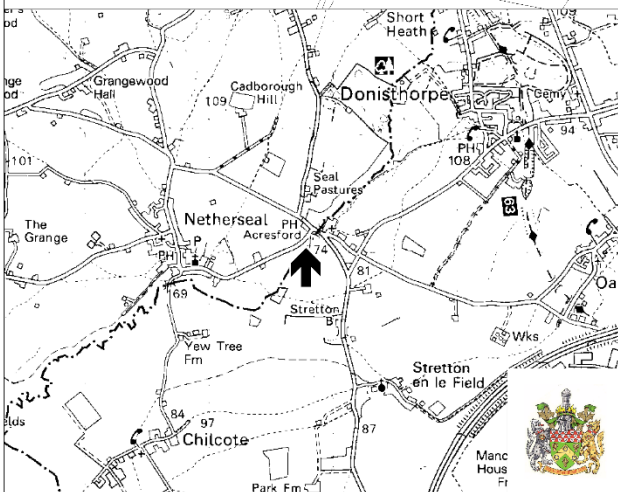
A native hedgerow forms the north western highway boundary, with the field boundary formed by the winding Hooborough Brook. The Hooborough Brook also defines the administrative boundary between South Derbyshire and North West Leicestershire. The site is within the countryside, and whilst it is not subject to any landscape designations, it is situated within the catchment of the River Mease Special Area of Conservation (SAC) and the National Forest.

### **The proposal**

This application is partly retrospective in that the majority of development applied for has already taken place. The application is therefore seeking to regularise (parts) of the currently unauthorised development (as set out above).

Consent is sought for two Gypsy and Traveller pitches (one in lieu of the existing pitch, to accommodate an amended layout) along with the erection of two amenity buildings, the creation of a hard surfaced parking area and access drive and engineering operations to amend the site levels.

The area of the approved pitch measured approximately 800 square metres, with an additional area of 600 square metres approved as garden/amenity land. The combined area for both pitches now proposed would extend to 1,050 square metres. In addition, a separate parking area is proposed



further to the north east. This would have an area of 320 square metres. The development would extend in an easterly direction, adjacent to the boundary with Acresford Road. Finally, it is proposed to re-grade the existing site, to the level on which the timber amenity buildings are currently sited. The re-grading works would include plateaus on which the caravans would be sited. Additional areas of on-site landscaping have been illustrated on the plan, although without specific detail at this time, these would comprise of a cluster of vegetation to the east of the site entrance along with a row of planting along the eastern boundary. In addition, a 2 metre high timber fence is proposed along the inner side of the of hedge bounding Acresford Road and a post and rail fence is identified along the field boundary to the south/south-east. No changes are proposed to the existing foul sewage arrangements – a connection to the mains sewer at the junction of the A444 and Acresford Road has been secured, and surface water would be disposed of via a sustainable drainage system (specific detail of which is to be confirmed).

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

The Supporting Design Statement provides an overview of the site's location, the background to the development, details of the applicable planning policy and of the personal circumstances of the proposed occupants. In this regard the site would be occupied by the applicants and their children. In terms of design and scale it is stated that the proposal seeks to extend the hard-surfaced area from 0.1 to 0.2ha, but at a reduced level, as illustrated on the cross-section plan. It is explained that the larger pitch is required to provide adequate space for the extended family. In terms of the separate parking area, it is stated that this is necessary to avoid danger arising during the manoeuvring of vehicles whilst children are present of the site. The statement continues that the applicants have experienced tragic circumstances at a previous site where a child was injured and wish to avoid any re-occurrence. The space proposed would accommodate the applicants' vehicles, including the vehicles used to undertake business activities (garden maintenance and landscaping). It is explained that the layout has been prepared to ensure that there would be no encroachment into the Flood Zone. In terms of the 'Gypsy Status' of the occupants, details of their names and ages are provided, and it is explained that they pursue a nomadic lifestyle travelling extensively throughout England, Scotland and Wales for work, trading in garden maintenance and landscaping and using their touring caravans to provide accommodation during their travels. The statement continues that they require a base from which to operate and from where they can access health care, schooling and other community services. The statement also acknowledges that traveling by some occupants is temporarily limited by the need to look after children.

It is argued that the site benefits from mature screening, which is to be retained and that extensive additional landscaping will be provided. In terms of the access, it is stated that the existing will be used, but that the applicants will be willing to undertake any alterations requested.

Under the heading 'policy' it is identified that part of the site already benefits from planning permission for a single Traveller Pitch and that this application merely seeks to retain that use, but on a larger area. The statement concludes that the development would secure an additional pitch to meet the current shortfall and will ensure that the site is retained as a Traveller site and contribute to District Council's supply of Traveller pitches.

An additional Planning Statement has been received from the agent which provides further details of the occupants' personal circumstances, including details of the children's schooling and health related issues. In terms of the family's 'travelling status', it is explained that the men will continue to travel for work purposes, for at least 16 weeks per year. To further ensure that any further occupants of the site accord with the criteria of the definition, it is suggested that a condition be imposed to restrict occupancy in this regard. In relation to lighting, boundary treatments and access design, it is suggested that conditions be imposed to control such. In relation to the proposed levels changes, it is explained that as the slope has a gradient of 1 in 20, there will be no problems caused in regards to the parking of touring caravans. It is proposed that the hard standings below the mobile homes would be levelled, but this would not significantly affect the cross section.

## Relevant planning history

9/1992/0231: Retention of shed, shelter and stable. Approved 24 July 1992.

9/2003/0748: Erection of block of 3 stables. Withdrawn.

9/2007/0243: Formation of vehicular access. Approved 30 April 2007.

9/2008/0829: Change of use of existing temporary stables and food store into permanent buildings with equine hardstanding. Approved 30 September 2008.

E/2011/00022: Enforcement Notice against breach of planning control relating to the use of the land as a Gypsy site, removal of the caravan, portable toilet, hardcore material and reduction in height of the timber close boarded fence at the access where adjacent to the highway. Appeal (APP/F1040/C/11/2158251 decided 17 February 2012) dismissed as a result of the absence of evidence to show that the development would not impact adversely on the River Mease SAC. The Inspector however, considered that the development would not cause any harm to the rural landscape or in visual terms subject to the imposition of conditions. The site was considered to be in a reasonably sustainable location and that there would be no material harm to highway safety from its limited usage.

9/2012/0570: Retrospective application for the change of use from equestrian land to residential gypsy site for one pitch. Refused 26 June 2013. This application was refused following the Council undertaking surveys of the site and drainage at the request of Councillors, for the following reason:

*"Insufficient detailed information has been submitted to demonstrate that connection to the mains sewer under the A444 is achievable. Without that connection it is likely that an alternative drainage system would be required for which no detail has been submitted, which could have an adverse impact on the integrity of the River Mease Special Area of Conservation and Site of Special Scientific Interest, contrary to Local Plan Saved Environment Policy 11 and paragraphs 7, 17, 109 and 118 of the National Planning Policy Framework."*

This decision was subsequently appealed (APP/F1040/A/13/2201414) and allowed 17 July 2014. The main issue considered by the Inspector was the effect of the development on the integrity of the River Mease SAC and Site of Special Scientific Interest (SSSI), having particular regard to whether a connection to the main sewer could be achieved. The evidence before the Inspector included no objections from the Environment Agency, Severn Trent Water and Natural England such that they were satisfied that a connection to the main sewer is feasible. Such a connection was considered sufficient to ensure the appropriate management of foul effluent from the development in accordance with the Water Quality Management Plan. This together with the removal of contaminated material and its replacement with clean inert material, the Inspector concluded that the development would ensure no adverse impact of the River Mease SAC and SSSI.

9/2018/0616: Change of use from equestrian land to residential gypsy caravan site with one pitch. Approved 17 October 2018

E/2018/00110: Stop Notice: The formation of a concrete base and engineering operations to alter the land levels both of which constitute unauthorised operational development, without planning permission. Served 29 August 2019.

E/2018/00110: Enforcement Notice: Without planning permission the formation of a concrete base and engineering operations to alter the land levels both of which constitute



unauthorised operational development, without planning permission. Served 29 August 2019.

DMPA/2019/1223: Extension of an existing gypsy and traveller pitch, the erection of an amenity block and an associated parking area. Withdrawn.

### **Responses to consultations and publicity**

The County Highway Authority notes the previous planning applications and appeals and raise no objections on these grounds.

The Environmental Health Manager has raised no objection.

The Environment Agency has confirmed that as the site lies fully within flood zone 1 there are no fluvial flood risk concerns. There are also no other environmental constraints associated with the site and therefore there are no objections to the proposed development.

Natural England provided initial comments requiring additional information. They stated that no assessment has been provided of the potential impacts that the proposal would have on the River Mease SAC and that there was insufficient information upon which to undertake a Habitat Regulations Assessment (HRA) of the proposed development. Advice has been provided detailing the additional information required. They continue that it is the Council's responsibility to determine whether the proposal is likely to have a significant effect on any European site, proceeding to the Appropriate Assessment stage where significant effects cannot be ruled out. In relation to foul drainage, it needs to be demonstrated that there would be no impacts on the water quality of the River Mease SAC. In terms of surface water drainage, advice is given that such should be dealt with by means of a Sustainable Drainage System (SuDS) scheme which incorporates ways to clean water. The long-term monitoring and maintenance of any surface water drainage system should be secured by condition or legal agreement. If it proves unfeasible to use a SuDS system, it is advised that advice from Severn Trent Water would be required to establish whether or not they object and whether an adjusted contribution under the Developer Contributions Scheme (DCS) will be required. To prevent any risk of direct surface water runoff into the River Mease from the application site, pollution prevention measures should be introduced to prevent substances such as petrol, oil or bankside material from entering the River Mease or its tributaries. These measures could include oil traps or petrol interceptors which are common practice on developments within the River Mease catchment.

In response to the carrying out of a HRA, Natural England has withdrawn their initial objection and have recommended that the suggested mitigation is secured by way of condition.

The National Forest Company has raised no objections and have confirmed that the site is of a scale that would not warrant a National Forest tree planting contribution.

Derbyshire Wildlife Trust have not provided any comments. Any comments received will be reported verbally to the Committee.

North West Leicestershire District Council have not provided any comments. Any comments received will be reported verbally to the Committee.

Acresford Parish Council have objected to the application on the following grounds:

- a. The proposal is highly visually intrusive in this sensitive rural landscape
- b. By virtue of the scale of the development it would appear intrusive and would be incompatible within the landscape.
- c. The site does not benefit from dense mature screening and is therefore visually prominent
- d. There is no landscaping detailed on the submitted plans
- e. There is no evidence that the development has been, or will be connected to the foul sewer.
- f. The submitted plans are of poor quality.

- g. If there is no foul sewer connection there will be clear risks to the River Mease SAC and the Hooborough Brook and this would be a serious breach of legislation.
- h. It is unclear as to whether the families occupying the site meet the definition of “Travellers” as set out in the Planning Policy for Traveller Sites
- i. Any consent granted should only be temporary – given the non-traveller status of site occupants.
- j. There are errors and misleading information in the application.
- k. There is no practical distinction between the mobile homes on pitches or touring caravans elsewhere on the site. All are being used for residential purposes and all have the same visual and environmental impact.
- l. The proposed development does not protect local amenity or the local environment but causes or has the potential to cause significant harm.
- m. The granting of planning permission would fail to 'respect the interests of the local community'.
- n. The development and any future approval discriminates against the settled community, who would be unable to implement a residential or equivalent development at this location or any similar location.
- o. No evidence has been provided that the development would comply with the Local Plan.
- p. If this development is granted planning permission, how will SDDC prevent further escalation of similar unacceptable development at this location?
- q. The plans are not to scale and do not reflect the actual area developed.
- r. The development encroaches the floodplain of the Hooborough Brook and is significantly closer than the stated 20m distance.
- s. No details of the surface water disposal have been provided.
- t. The proposed parking area is far too large and unjustified.
- u. There is concern that the touring caravans will be used to live in and not to tour in.
- v. The scale of development applied for is unjustified.
- w. There is no provision for the management of waste on the site.
- x. There are no details of the equipment to be stored on the site.
- y. If the scale of the development was to be reduced it could be permitted on the existing site.

Netherseal Parish Council have made the following comments on the application:

- a. Reference has been made to the previous appeal decision, in that whilst the inspector concluded that that one pitch would not appear intrusive and further hedge and tree planting is proposed, the volume of development now existing and proposed would have a very significant impact on the character and appearance of the surrounding countryside. They further considered that any proposed mitigation by way of additional planting would not address or mitigate these impacts.
- b. Reference is also made to the fact that the Council have not taken enforcement action in this case, despite the unauthorised expansion.
- c. It is identified that the that the Council, as role of the determining authority, under the Habitats Regulations must carry out an appropriate assessment of plans, projects and permissions to demonstrate that there would be no adverse effect on site integrity. Whilst foul waste may be discharged to the mains, queries are raised in relation to surface water drainage, for which there is not information.
- d. There are also concerns over the management of fuel and oils for the plant, machinery and vehicles on site, and other potentially polluting materials stored or used on the site.
- e. It is stated that the potential for harm to the River Mease SAC is consequently considerable, and the precautionary principle should apply at such a very sensitive location.
- f. Inadequate information has been provided to enable the Council to undertake an assessment and fulfil their obligations under the regulations.
- g. The visibility at the access to the site, noting the planned increase in activity, falls well short of the requirements of County Highways Authority.
- h. It is unclear how the required visibility splays would be achieved over land within the applicants ownership.

60 letters of objection have been received raising the following concerns:

- a. The scale of the development would result in the application being intrusive in the landscape and would have detrimental impacts on the character of the area, the countryside and the National Forest.
- b. The site may not yet be connected to the mains sewer and on this basis there are concerns in relation to the potential impacts on the Hooborough floodplain and the protected River Mease.
- c. There is concern that there is no waste collection service for the site.
- d. Various developments have been undertaken without planning permission, including concrete bases, utility buildings and more caravans. This shows a disrespect for the Council and residents.
- e. There is concern that the site will keep growing.
- f. The occupants should not be allowed to continually breach the planning rules.
- g. The site is not clean or tidy
- h. There are concerns about water quality on the River Mease SAC.
- i. The occupants have no consideration for the community in which they live.
- j. There is noise and disturbance as a result of the use of the site.
- k. Different people have different laws that apply to them.
- l. No caravans have been connected to the foul sewer and there are concerns therefore over water quality in the Hooborough Floodplain and the River Mease.
- m. No waste collection has been set up for the site, meaning that there is rubbish littered throughout.
- n. The site will keep on expanding.
- o. There is no need for the expansion of this site as there are available sites within the area and the Council has met its pitch targets.
- p. The proposal fails to respect the interests of the local community
- q. We are supposed to be saving the planet, this proposal will not assist in achieving this aim.
- r. Concerns that pollutants are entering the watercourse.
- s. The site is within close proximity to a major gateway into both the village and the District of South Derbyshire.
- t. Within the 2014 appeal decision the Inspector said that a one pitch caravan site would not appear intrusive.
- u. Approving this application would be discriminating against others who would be likely to have similar developments refused.
- v. The development would be closer to the river Mease than stated on the plan.
- w. The land floods and this is not a suitable location for the proposed development.
- x. Checks from the council are necessary to ensure that the river hasn't already been polluted.
- y. Five large bright white caravans cannot be obscured by a hedge.
- z. Approving this site has created creates tensions because it is clear that no such equivalent development would have been granted to a local resident in a similar location.
- aa. The plans submitted provide no detail as to the management of the flood plain or the surface water.
- bb. Concerns that there are not adequate resources to ensure the site is properly managed.
- cc. The site is untidy and the residential paraphernalia and ancillary activities result in it being more inappropriate in this area.
- dd. It is unclear whether the two families on the site meet the definition of 'Travellers' as set out in the planning guidelines.
- ee. The original planning was granted because of the special circumstances of the applicant.
- ff. The plans are not to scale and don't reflect the existing developed area. It is estimated that the site would be three times the area.
- gg. The proposed parking area is larger than necessary.
- hh. On the basis of the development applied for, the site would be capable of accommodating far more families.
- ii. In the 2014 appeal decision the Inspector recognised that the site was visually sensitive but concluded "against the backdrop of the hedge a one pitch caravan site would not appear intrusive". Due to the scale of development proposed, this application would be.

- jj. The site emits a high level of light pollution, which is a danger to road users.
- kk. The boundary fencing is visually obtrusive and causes hazards at the site access.
- ll. There is no difference between a 'touring' caravan and a 'mobile home'.
- mm. The lack of foul sewage connection is a serious breach and will result in local pollution
- nn. If the occupants fail to meet the definition of 'Travellers' why should this application be considered to any other for non-travellers?
- oo. If new 'Travellers' wish to use the land, then the planning process should start from the basis that the land is equestrian land and evidence as to what special circumstances require such a settled development.
- pp. A 'Nomadic lifestyle' does not require a base.
- qq. They cannot use the provisions of 'Traveller' status whilst trying to integrate into a settled community.
- rr. We as members of the local community, along with others, do not feel respected, treated fairly and this certainly does not reduce any tension.
- ss. The proposal fails to conform with the local plan.
- tt. There are errors within the planning application documentation.
- uu. There would be increased vehicle movements from the site, which would cause highway safety issues.
- vv. Previously imposed planning conditions have not been upheld.
- ww. Has the sewer connection been tested?
- xx. South Derbyshire already has more gypsy and traveller sites than the whole of the rest of Derbyshire.
- yy. The layout and scale of the proposed development is inappropriate for the stated intended occupancy.
- zz. Is the proposed development within the local plan?
- aaa. The site is incapable of being effectively screened from the road.
- bbb. An overflow of effluents may find its way into the River.
- ccc. There will be additional dangers which will present themselves at the junction of Acresford Road onto the A444.
- ddd. There is no real distinction between mobile homes and touring caravans.
- eee. No additional planting is shown in this application
- fff. How will the Council prevent further escalation of similar unacceptable development at this location?
- ggg. The site has poor drainage and so becomes quickly boggy following heavy rainfall.
- hhh. No justification for the application or the proposed residents have been provided.
- iii. Waste is being dumped on the site.
- jjj. How is surface water to be managed?
- kkk. The management of fuel and oils for the plant, machinery and vehicles on site, and other potentially polluting materials stored or used on site requires assessment.
- lll. The Council are unable to fulfil their strict obligations under the Habitat Regulations as inadequate information has been provided.
- mmm. The previously required visibility splays can not be provided.
- nnn. The submitted application documentation is not to scale.
- ooo. The layout of the site is impractical.
- ppp. The applicants have failed to establish themselves as members of the community.
- qqq. The personal circumstances of the applicant have changed since the time of the previous approval and there is no justification for the development.
- rrr. The existing amenity buildings do not correspond with what is shown on the plans.
- sss. The concerns raised by Natural England have not be addressed.
- ttt. If consent it granted it should be for a temporary period only.
- uuu. There are no details of the equipment to be stored on the site.

1 letter of support has been received raising the following points:

- a. The application is fully supported.
- b. The letter received in relation to the application has severe racial undertones.

- c. Community is about coming together in society and showing humanity and kindness towards every single person and helping one another.
- d. If this traveller site is not built, where will the people go/live?
- e. By approving this site, there would be fewer travellers on the roadside, which would be beneficial.
- f. The site would provide the residents access to hot water, electricity and safe off-road parking and a place to call home.
- g. It is considered that a party should be thrown to welcome the new residents to the community.

### **Relevant policy, guidance and/or legislation**

The relevant Development Plan policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), H22 (Sites for Gypsies and Travellers and for Travelling Showpeople), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), INF7 (Green Infrastructure), INF8 (The National Forest); and
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE5 (Development in the Countryside) and BNE7 (Trees, Woodland and Hedgerows).

### National guidance and legislation

- National Planning Policy Framework (NPPF);
- Planning Practice Guidance (PPG);
- Planning Policy for Traveller Sites (PPTS);
- The Conservation of Habitats and Species Regulations 2017; and
- 'Designing Gypsy and Traveller Sites' Good Practice Guide (2008) (withdrawn)

### Local guidance and evidence

- Derby, Derbyshire, Peak District National Park Authority and East Staffordshire Gypsy and Traveller Accommodation Assessment 2014 (GTAA); and
- South Derbyshire Design Guide Supplementary Planning Document (SPD).

### **Planning considerations**

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

- Background and principle of development;
- Design and layout;
- Character and appearance;
- Flood risk and drainage and the impact on the River Mease SAC;
- Highway safety;
- Material considerations; and
- Personal need.

### **Planning assessment**

#### Background

As outlined above, this application is partially retrospective in that some upgrading works have taken place to the access and driveway, additional caravans have been station on the land, the site area



has been increased and two amenity buildings have been erected. Whilst this development is likely to be unauthorised in the sense that it hasn't the benefit of planning permission, the Town and Country Planning Act 1990 is clear at section 73A that planning permission can be obtained for development already carried out:

- (1) On an application made to a local planning authority, the planning permission which may be granted includes planning permission for development carried out before the date of the application.*

The application has arisen as the site has recently been sold to two families with differing personal circumstances, and so requirements to those of the former owner. The new families (the applicants in this case) are relatively young and have a number of children between them, so have a need for additional space, greater than that provided by the approved pitch. It is believed that the new occupants are keen to establish a home independent of their parents where they can safely raise their children in a stable environment and wherefrom they will be able to gain access to regular schooling and healthcare.

As this application relates to Gypsy and Traveller development, along with the relevant Local Plan policies and the NPPF, the Planning Policy for Traveller Sites (PPTS) is also a material consideration. This national policy document carries the same weight as the NPPF and sets out the Government's planning policy for Traveller sites, with the aim of ensuring the fair and equal treatment of Travellers, in a way that facilitates their traditional and nomadic way of life whilst respecting the interests of the settled community. As stated within the PPTS, to benefit those engaged in planning for Traveller sites the Government considered it necessary to identify specific planning policies for Traveller sites, which are clearly set out in this separate document.

Also relevant are the previous appeal and planning decisions which are material considerations, and may be referenced in the appraisal below.

It is also key to mention the Derby, Derbyshire, Peak District National Park Authority and East Staffordshire Gypsy and Traveller Accommodation Assessment 2014 (GTAA). This study identifies the future accommodation needs within the geographical area referenced, and covers the period 2014/15 to 2034/35. In the case of South Derbyshire there is an identified need for 14 new pitches over the period April 2014 to March 2019, with a subsequent need for 7 pitches between April 2019 to March 2024 and following that, for the provision of 8 and 9 pitches for each 5-year period thereafter, up to 2034.

### Principle of development

Insofar as the principle of development is concerned, in accordance with the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point for the determination of the application is the development plan, which in this case includes the adopted South Derbyshire Local Plan Part 1 and Part 2.

The application site is situated within the Countryside. Policy SDT1 'Settlement Boundaries and Development' explains that within Rural Areas "development will be limited to that considered acceptable inter alia by Policy BNE5.

Policy BNE5 'Development in Rural Areas' sets out that "*Planning permission will be granted where the development is*

- i) Allowed for by policies H1, H22, E7, INF10, H24, H26, H27 or H28...; and*
- v) will not unduly impact on: landscaping character and quality, biodiversity, best and most versatile agricultural land, and heritage assets."*

Policy H22 'Sites for Gypsies and Travellers and for Travelling Showpeople' is a two-part policy. The initial part sets out that the Council will establish targets for new pitches on the basis of 'need'

identified within the most recent GTAA and that this 'need' will be met through site allocations (identified within a Site Allocations Development Plan Document). The second part of the policy is criteria based for the purpose of assessing site allocations and individual applications. The specified criteria will be considered under the relevant headings, below.

In determining the 'in principle' acceptability of the proposal, criterion (v) is relevant. This seeks to ensure that developments would be reasonably accessible to local services including health services, shops, education, public transport and other community facilities. Whilst the site is technically within the countryside, it is situated just off a strategic highway route (A444) providing direct access to the motorway network and would be a short distance from the villages of Overseal and Netherseal, which are respectively defined by the Local Plan as a 'key service village' and a 'local service village' due to their level of facilities and service provision. On account of this, it is considered that the proposal would be compliant with criterion (v).

Policy H of the PPTS concerns decision taking and provides criteria against which to determine planning applications. In regards to the 'in principle' acceptability of the site, paragraph 25 (Policy H) advises that there should be very strict limits on new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan.

In regards to the sites countryside location, the 'in principle' suitability of this site has already been established through the granting of the 2018 planning consent and no objection (on these grounds) was raised by the Inspectors in the former planning appeals, furthermore, as explained, the proposal would comply with the relevant local plan criterion. Therefore, the sites location is considered acceptable and the proposal would be compliant with Local Plan Policy BNE5 and PPTS policy H in this regard.

### Design and layout

Local Plan Policy BNE1 seeks to ensure that all new developments are well designed and embrace the principles of sustainable development. Specifically in relation to Traveller sites, Criterion (iv) of Policy H22 requires that sites provide adequate space for parking, turning and servicing of vehicles.

The PPTS (para 26) Policy H suggests that positive weight should be attributed where an application promotes opportunities for healthy lifestyles, through ensuring adequate landscaping and play areas for children and by not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the wider community.

More detailed guidance on the specific design of Traveller sites is set out in the (now withdrawn) document 'Designing Gypsy and Traveller Sites' Good Practice Guide (2008). Whilst the Government has committed to providing an updated version of this, it has not yet done so, and therefore in the absence of any alternative, it is considered reasonable to make reference to the former publication, as a guide.

In terms of pitch size, paragraph 7.8 of the Good Practice Guide explains that *"in common with some other ethnic minority communities, some Gypsies and Travellers often have larger than average families, for instance where members of an extended family live together. For this reason there is likely to be a much greater demand amongst these communities for large family units, and small pitches may become quickly overcrowded. Larger than average family sizes, alongside the need for vehicles for towing trailers and for employment also creates particular requirements for parking"*.

Paragraph 7.9 continues: *"There is no one-size-fits all measurement of a pitch, as is the case with(housing) in the settled community, this depends on the size of the individual families and their particular needs..."*. However paragraph 7.12 states *"..as a general guide, it is possible to specify that an average family pitch must be capable of accommodating an amenity building, a larger trailer and touring caravan (or two trailers, drying space for clothes, a lockable shed, parking space for two vehicles and a small garden area..."* with paragraph 7.15 identifying that *"...where space permits the*

*inclusion of a larger garden or playspace is recommended".*

In regards to 'Amenity Buildings' the Good Practice Guide states:

*"It is essential for an amenity building to be provided on each pitch.... The amenity building must include, as a minimum: hot and cold water supply; electricity supply; a separate toilet and wash hand basin; a bath/shower room; a kitchen and dining area. The access to the toilet should be through a lobbied basin area or by separate access direct from the pitch"* (para.7.17), and paragraph 7.19 continues that *"the inclusion of a day/living room is recommended"*.

As illustrated on the block plan, the application proposes a separate vehicle parking area. This area would be directly accessed via the internal driveway, therefore reducing the need for vehicles to access the pitches. The proposed area is considered adequate to cater for the likely number of vehicles on the site and would also reduce the likelihood of potential conflicts (between occupants and vehicles). Areas of planting and play space, situated conveniently close to the caravans so as to benefit from natural surveillance is also proposed. The submitted landscaping and boundary treatments would be functional as well as sympathetic and the proposed coppice of trees would help minimise views of the site from the A444, along with aiding assimilation.

Whilst letters of objection have raised concerns over the scale of the development; on account of the advice contained within the 'Designing Gypsy and Traveller Sites' Good Practice Guide, both the scale, and combination of facilities proposed are considered reasonable and would be commensurate with the number of residents proposed to occupy this site. Furthermore, the proposed extension of the site in an easterly direction would ensure the developable area would remain outside of the land at a higher risk of flooding.

In terms of its design and layout, the site is considered compliant with the applicable local and national policies.

### Character and appearance

The site is located in a rural area and is within the National Forest but is not subject of any special landscape constraints, therefore impacts in terms of character and appearance will be assessed against policies H22, BNE4, BNE5 and INF8 of the Local Plan and the PPTS.

Specifically in regards to Gypsy and Traveller development, policy H22 (vii) seeks to ensure that sites have suitable landscaping and boundary enclosures, to provide privacy to both occupiers and local residents and to minimise impacts on the surrounding area; and the PPTS advises that sites should be well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness, but should not be enclosed with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

Policy INF8 'The National Forest' seeks (among other aims) to increase woodland planting cover within the designated area, through requiring on site tree planting.

Policy C of the PPTS advises that when assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.

On grounds of character and appearance, the Inspector in the former planning and enforcement appeals concluded that on the basis of the development proposed, there would be no adverse impacts on the character or appearance of the surrounding countryside.

The existing site runs parallel to Acresford Road, extending in a north eastern direction. The authorised pitch occupies a surfaced area on 'made' ground and is therefore elevated from the



remainder of the field, however it occupies a slightly lower level than the adjacent road. The roadside boundary comprises of a relatively dense native hedgerow, however there are some gaps whereby glimpsed views of the site are gained. More prominent views of the site are available from the A444, to the east.

When appraising character, the existing character of an area must be defined. An area's character is informed by land use, built form and natural features. The site's wider landscape setting in this case is predominantly rural and undeveloped, comprising of irregular parcels of agricultural land enclosed by native hedgerow, inter-dispersed with mature trees and coppices of varying size. Within the more immediate vicinity however there are examples of single houses set in spacious plots, small clusters of residential development, a large public house and adjacent surfaced car park and the existing traveller site, all of which contribute to, the area's character. Owing to the degree of variation in terms of built form and land use, it would be difficult to contend that, in principle, the development proposed would not be in keeping with the 'existing' character.

In terms of the development's specific detail however, owing to the increased number of caravans (over and above those previously approved), the amenity buildings, the associated residential paraphernalia and the additional hard surfacing, the resultant scale of development would be considerable and of a type uncommon within this landscape, thus resulting in a degree of harm. To reduce this harm, and to reinforce the site's setting within the National Forest, additional tree planting could be secured, replicating the existing pattern of trees within the wider locality. However, notwithstanding this, a degree of harm would remain.

In addition, works undertaken to enclose and widen the existing access would also result in some harm. The existing (unauthorised) access is of a more 'commercial' appearance, owing to its infrastructure and design and would not be in keeping with the types of residential accesses generally found in rural areas. Furthermore, due to its design, the access would also be contrary to national guidance, in that it would serve to fortify the development. To lessen this harm, the agent has confirmed that the panelled fencing could be reduced in height and painted green and that further landscaping could be introduced. Such measures could be secured through the imposition of a suitably worded planning condition and would serve to reduce the harm to an acceptable level in this regard.

In assessing whether or not the scale of the development proposed would dominate the nearest settled community, the scale of such would need to be defined. The 'nearest settled community' in this case would comprise the village of Netherseal. This village is designated in the Local Plan as a 'Local Service Village' on account of its scale and facilities. The proposed development would result in the provision of 2 pitches, which would equate to two households. As such, it could not be argued that the development would 'dominate' the nearest settlement community in any way.

Impacts in terms of appearance are assessed on the basis of views gained from public vantage points. As mentioned, the proposed development would continue the existing site further to the north east, with additional tree and hedgerow planting, post and rail and close boarded fencing proposed to define its boundaries. The application proposes a considerable increase in terms of 'built' development over and above that previously approved and so, would be more visible within the landscape.

The most visible public vantage point from which the development could be viewed would be the (A444) (which occupies a slightly elevation position in comparison to the site). The prominence of the development would be slightly reduced however by virtue of it being viewed against the backdrop of the existing approved caravans and as a result of the proposed reduction in site levels, however, until any perimeter and internal landscaping matured, views would remain. This said, the development would be a substantial distance from this road, which would in itself, be a mitigating factor and receptors using this road would be relatively fast moving (predominantly car borne) and so any views gained would not be sustained. From this stance, although there would be views of the site, the level of associated harm would be minimised (as explained above) and any outstanding harm could be further reduced through securing an appropriate scheme of landscaping and boundary treatment.

Since the time of the historic appeal decisions and previous planning approval, the site's visibility from Acresford Road has increased, as result of the thinning roadside hedge. This said, on the basis of the proposed site layout and the reduced site levels, it would be likely that only fleeting views would be gained. Furthermore, as above, predominantly receptors travelling along this road would also be fast moving, thus further reducing impacts. To help soften and assimilate the development from this stance, additional planting could be secured along the highway boundary.

As described, the area has a mixed character in terms of both its built form and land use and thus, in principle, the development would not be incompatible in this regard. However, there would be an element of remaining harm (in terms of character), associated with the scale of the development proposed, which would not be completely mitigated through the imposition of planning conditions. Furthermore, until such a time that any landscaping was to mature, the development and specifically the caravans would be apparent and fairly stark features within the landscape. For these reasons, there would be an element of conflict with the applicable Local Plan Policies. This harm would need to be balanced against the material considerations in favour of the proposal.

### Impact on the River Mease SAC

The application site is located within the catchment of the River Mease SAC, with the Hooborough Brook (a tributary of the Mease) forming the boundary of the applicants' ownership to the west of the application site.

The site is within influencing distance of the River Mease SAC and SSSI and therefore requires an appropriate assessment to be undertaken under the Habitats Regulations to determine whether, in view of the sites conservation objectives, the development (either alone or in combination with other developments) would have an adverse effect on the integrity of the site. If adverse impacts are anticipated, potential mitigation measures to alleviate impacts should be proposed and assessed. Development is only deemed appropriate if it can be demonstrated that there would be no adverse effect on the integrity of the SAC. Water quality is a key issue in relation to the River Mease SAC, with potential sources of pollution arising from discharges to the catchment from foul effluent and contaminants.

Various concerns have been raised within the letters of representation over potential impacts on the SAC and on grounds of pollution entering the nearby watercourse.

The provision of appropriate foul drainage was a key consideration in the former appeal decisions. The first appeal was dismissed on the basis of the lack of information provided to demonstrate that a connection to the foul water main in the A444 was feasible. The second appeal re-considered this issue; the appeal was supported by additional information from Severn Trent Water which demonstrated that a foul connection to the existing main drain in the A444 was feasible, and that their permission to connect had been granted.

The Inspector in the second appeal was content that sufficient information had been submitted to demonstrate, with a reasonable degree of certainty, that a sewer connection was feasible. This conclusion was based on the fact that all of the land necessary to provide the connection (i.e. across the field to the A444) was within the applicants control, and that no objections had been received from Severn Trent Water, the Environment Agency or Natural England. In addition, a financial contribution in line with the Developer Contributions Scheme (DCS) was made at the time of the appeal, to compensate for the additional foul sewer connection.

The Council have recently undertaken investigations and can confirm that the required apparatus have been installed to enable the site to be connected to the mains foul sewage network.

On the basis of the Habitats Assessment undertaken as part of this application, it is considered that, if unmitigated or poorly designed, the development could potentially lead to an increase in surface water runoff or sediment flows into the Hooborough Brook, which provides direct connectivity to the

SAC. However, in this case, the risks posed can be addressed through mitigation measures to positively drain the site and intercept any potential surface water flows through providing landscaping, reducing disturbance to the Brook and controlling the timing and method of development. Subject to ensuring such measures are incorporated, the proposed development would not have any effect on the SAC in isolation. Further, there are no major projects identified close to the site which would contribute towards ground water pollution.

In terms of mitigation, foul flows would need to be mitigated in accordance with the River Mease Developer Contribution Scheme (DCS). The financial contribution in this case would be £633.00. This would be secured by way of a unilateral undertaking or section 106 agreement, paid in advance of the proposed amenity blocks connecting to the foul sewer.

A number of measures would also be necessary to ensure the positive management of surface/ground water from and to reduce the risk of sediment and other contaminants entering the Hooborough Brook. These would be secured by way of condition and are as follows:

- The creation of a swale, shallow depression or scrape between the access track and parking/turning area to ensure any surface water flows and sediment supplied by areas of hardstanding can be intercepted.
- The creation of appropriate landscaping scheme on land between the development site and the Hooborough Brook including riparian/National Forest Planting to further reduce sediment supply to the Brook.
- The installation of a post and rail fence, or similar boundary treatment (reflecting flood risk) between the edge of the proposed site and the Hooborough Brook to minimise the potential for disturbance/bank erosion.
- The submission of a Construction Environment Management Plan (CEMP) prior to construction, to ensure that construction phase effects can be appropriately controlled and general best practice measures, such as pollution prevention can be secured.

Within their revised consultation response, Natural England have considered the additional information provided, including the Habitats Regulations Assessment and have withdrawn their previous objection.

On the basis of the stage 2 Habitats Regulations Assessment and the suggested mitigation, it is considered that the proposed development would not have a demonstrable impact on the River Mease SAC, and as such complies with the Conservation of Habitats and Species Regulations 2017 and the requirements of policies H22 and SD3.

### Highway safety

The existing vehicular access was approved in 2007, when associated with the equine use of the site. As mentioned, upgrading of the existing access has taken place without the benefit of planning permission. The entrance has been widened and enclosed by panelled fencing. Gates have also been erected, which are set back from the highway boundary by roughly 6 metres. On the basis that the development would result in a net gain of one additional pitch, the associated vehicle movements are not considered material; a position confirmed by the County Highway Authority within their response. Furthermore, the upgrading works would result in an improved access design in terms of highway safety. In regards to parking and turning provision, more than adequate space would be provided on the site for this purpose.

Within the letters of representation, concerns have been raised in regards to the ability of the site/proposal to provide adequate visibility splays at the site access. The County Highway Authority has considered the specific points raised and maintain their position of no objection.

It is noteworthy that both previous Inspectors concluded that the development would be unlikely to give rise to any material harm to highway safety. As such the proposal is considered to comply with the requirements of policies H22 and INF2.

## Other issues

Impacts on amenity: The site is such, that whilst not considered to be in an unsustainable location, would be sufficiently separated from existing dwellings and other land uses so as not to materially impact on their amenity. The application site is located such that the amenities of its occupiers would not be unduly impacted upon by noise and disturbance and would have sufficient space provided for amenity and play purposes. Concerns have however been raised within the letters of representation that the existing on-site lighting is unsympathetic, resulting in disturbances to nearby dwellings and road users. It is noted that some temporary lights have been installed around the perimeter of the site, which do result in an element of glare, and whilst no lighting scheme has been provided with the application, the agent and applicants have raised no objection to a condition being imposed to secure details of a more sympathetic scheme.

Biodiversity: The proposed development, subject to adequate control of on-site drainage and the provision of additional tree and hedgerow planting would result in benefits in terms of biodiversity.

Flood risk: The application site is located in Flood Zone 1, and as such is at a low risk of flooding. However, it should be noted that large part of the applicant's ownership i.e. the remainder of the field outside the application site does fall within high floodrisk classification and as such, any future development within this area would need to be supported by a comprehensive Flood Risk Assessment.

Definition of Caravan: this matter has been queried within various letters of representation. Section 29 (1) of the Caravan Sites and Control of Development Act 1960 defined a caravan as:

*"... Any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted..."*

Section 13 (1) of the Caravan Sites Act 1968, which deals with twin-unit caravans. Section 13 (1) provides that:

*"A structure designed or adapted for human habitation which:  
(A) Is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps and other devices; and  
(B) Is, when assembled, physically capable of being moved by road from one place to another (whether being towed, or by being transported on a motor vehicle or trailer), shall not be treated as not being (or have been) a caravan within the means of Part 1 of the Caravan Sites Control of Development Act 1960 by reason only that it cannot lawfully be moved on a highway when assembled"*

An amendment of the definition of caravan was made in 2006:

- (a) Length (exclusive of any drawbar) 20m (65.6ft)*
- (b) Width: 6.8m (22.3ft)*
- (c) Overall height (measured internally from the floor at the lowest level to the ceiling at the highest level) 3.05m (10ft)*

As per the above definition, touring caravans, static caravans and mobile homes (subject to their size) would all fall within the definition of 'caravan' as set out by the Act.

## Material Considerations

As set out within Policy H of the PPTS, the following matters should be considered in the determination process and be attributed weight accordingly:

- a) the existing level of local provision and need for sites;

- b) the availability (or lack) of alternative accommodation for the applicants;
- c) other personal circumstances of the applicant;
- d) effective use of previously developed (brownfield), untidy or derelict land.

#### The existing level of local provision and need for sites

Policy B, paragraph 10 (a) and (b) of the PPTS requires Local Planning Authorities' to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets and to identify a supply of specific, developable sites, or broad locations for growth, for years 6 to 10 and, where possible, for years 11-15. The PPTS continues that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission.

As previously stated, Policy H22 identifies that the Council will allocate sites to meet its identified 'need' through a Site Allocations Development Plan Document (SADP). A Scoping Report consultation for the SADP was undertaken in 2019. To date however, no SADP has been prepared and therefore no sites have been formally allocated. Since 2014, 21 pitches have been granted planning permission, however one pitch was lost in 2015, resulting in the net provision of 20 pitches. This falls short of the requirement for 21 pitches by March 2024.

In relation to the provision of a 5-year supply of deliverable sites, the 5-year supply requirement lies at 7.2 pitches based on the need identified within the GTAA. Despite the recent permissions, the Council is not currently able to demonstrate a 5-year supply of deliverable sites (as no sites are allocated).

#### Availability of alternative, suitable, acceptable and affordable sites

In assessing possible alternatives, the decision maker should assess not just availability but also the affordability, acceptability and suitability of sites. This formulation of words was upheld in the High Court (*Chapman ECHR 2001* paras 103 and 104). Furthermore, it is established case law (*South Cambs v SSCLG & Brown*) that there is no burden of proof on an applicant to prove that there are no alternative sites available.

The site occupants are currently residing on the site in an unauthorised manner and should planning permission be refused, half would have no authorised pitch of their own on which to reside. Furthermore, due to its size, the authorised pitch would not be acceptable/suitable for either of the families in question due their size and the lack of facilities provided by the authorised pitch (no amenity building).

Comments have been raised within the letters of representation querying availability on existing sites within the District/locality. Having investigated the availability of pitches within the area, the Council can confirm that there are no available pitches upon which the site occupants could reside. All the pitches within the District are private, meaning that the Council have no control over who occupies them. The nearby site at Lullington Crossroads has been specifically referenced within letters. This site is owned by Derbyshire County Council and was historically leased to the District Council as a public Gypsy/Traveller site. However, the site is currently, and has been for a number of years, subject of a long term (indefinite) lease to a Traveller family. Whilst queries have been raised in regards to potential availability at this site, it has been confirmed by the lessee that all the pitches are privately rented and that there is no spare capacity. It has also been verbally confirmed by Derby County Council and the Leicestershire, Leicester and Rutland Gypsy and Traveller Liaison Officer that there are no available public pitches within the wider area and there are currently no Gypsy/Traveller sites allocated by the Council.

It is clear from all the available information that there are no alternative, available or acceptable sites for Gypsies and Travellers within the District and there is limited prospect of their being so until such a time as new sites are allocated. Even if a site did however become available, it may not be suitable for the occupants in question, who wish to reside as a small family group, for cultural, health and



wellbeing reasons. The lack of any alternative, available, suitable, acceptable and affordable sites for the applicants in this case should be attributed significant weight in favour of the application.

#### Effective use of previously developed (brownfield), untidy or derelict land

The PPTS advises that weight should be attributed to developments occupying previously developed land or untidy/derelict sites. In this regard, some limited weight should be attributed on the basis that the application is essentially seeking to re-utilise and extend an existing site. On this basis, the 'undeveloped' character of the area has already undergone an element of change (associated with the development of one pitch) and, as such, the additional impacts associated with extending the site and creating an additional pitch would be reduced as a result.

#### Personal circumstances

Personal circumstances only need to be considered if the decision maker finds a departure from policy and/or other harm and then finds that the other material considerations are insufficient to outweigh the identified harm. In this case, officers consider that the material considerations in favour of the application (lack of five year supply and lack of alternative sites) are adequate to outweigh any harm caused.

Notwithstanding this, should the Committee take an alternative view, for completeness, the occupants' personal circumstances are outlined below:

- Pitch 1: This would be occupied by C and J McDonagh, with their 3 children all 8 or younger, with a baby due this year.
- Pitch 2: This would be occupied by B and S McDonagh, with their 6 children, aged between 4 and 13 and including a recently born baby.

The agent has explained that in addition to health care requirements one of the children has serious health issues requiring regular attendance at hospital. This is likely to be a long-term problem with the possibility of permanent disability. The school-aged children on the site attend a school at Measham and are believed to have settled in well.

The applicants have confirmed that they have no other pitch on which to reside. Whilst one of the families could occupy the existing pitch, it would be likely that the other family would be forced back onto the roadside.

Queries have also been raised within the letters of representations as to whether the site occupants meet the definition of 'gypsies and travellers' as contained within the Annex 1 Glossary of the Planning Policy for Traveller Sites (PPTS).

The definition is as follows:

*Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.*

The PPTS continues:

*In determining whether persons are "gypsies and travellers" for the purposes of this planning policy, consideration should be given to the following issues amongst other relevant matters:*

- a) whether they previously led a nomadic habit of life,*
- b) the reasons for ceasing their nomadic habit of life,*
- c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.*

As set out within the supporting statement, the occupants have previously had no permanent base and have continually travelled for the purposes of obtaining work. It is explained that due health needs of the families (as set out) and the schooling requirements of the children, a permanent base needed to be found and this resulted in the acquisition of the application site. It is explained that J and B McDonagh will continue to travel throughout England, Scotland and Wales for work, trading in garden maintenance and landscaping, using their touring caravans to provide accommodation during their travels and that they will be away travelling for at least 16 weeks every year. C and S McDonagh have temporarily ceased travelling due to the need to provide for the education and care of their children.

On the basis of the information provided it is considered that the occupants satisfy the definition as set out within the PPTS.

### Overall planning balance and conclusion

As required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990, development must be determined in accordance with the development plan, unless material considerations indicate otherwise.

When this site is considered against the relevant local and national planning policies the development is considered acceptable in principle and there is considered to be no outstanding harm in terms of design, flooding, drainage or ecologic impacts, impacts on the River Mease SAC, impacts on highway safety, pollution or residential amenity. There is however considered to be some residual harm in terms of character and appearance, which cannot be completely resolved through the imposition of conditions. The level of remaining harm is however considered to be limited. The material considerations relating to the proposal have been set out. As explained within National Policy, appeal decisions (relating to Gypsy and Traveller development) and case law, the weight to be attributed to the specified material considerations is defined as 'significant'. In this case it could not be argued that the adverse impacts associated with the development would significantly and demonstrably outweigh the benefits (material considerations in favour) and on balance, therefore, the development proposed is considered acceptable.

### Human Rights, best interests of the children and the Public Sector Equality Duty

The lead case on this matter is the decision of the Supreme court in *ZH (Tansania) v SoS* in 2011 and notably Lord Kerr's conclusions at paragraph 46, which makes clear that the best interests of the children should be a primary consideration. Lord Kerr's words are as follows:

*"In reaching decision that will affect a child, a primacy of importance must be accorded to his or her best interests. This is not, it is agreed, a factor of limitless importance in the sense that it will prevail over all other considerations. It is a factor, however, that must rank higher than any other. It is not merely one consideration that weighs in the balance alongside other competing factors. Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them".*

Under the Public sector equality duty it is essential that the decision maker also takes into account the protected characteristics in relation to race and disability that are raised in this case.

There is a clear obligation upon the decision maker to ensure that any decision made accords with the obligations under Article 8 European Court of Human Rights. Incorporated into that obligation are the obligations set out under the United Nations Convention of the Rights of the Child (specifically Article 3).

In this case the Article 8 Human Rights of the applicants are clearly engaged, for the planning decision will impact upon the ability of those individuals (who do not benefit from the authorised site) to use the land as their home, where there is no suitable alternative.

An assessment of Human Rights must be conducted on a proportionality basis, after the planning

balance has been undertaken, and must not be considered as part of it. In the assessment of proportionality there is an explicit requirement to treat the needs of the children who live on the site as a primary consideration, with the welfare and well-being of the children being safeguarded and promoted.

When undertaking the planning balance, there may be cases whereby the (planning) harm caused by the proposal is not outweighed by material planning considerations and cannot be mitigated by conditions, however when considering Human Rights, it would not be proportionate to refuse planning permission, in regards to the welfare of the children affected by the proposal.

As set out earlier in this statement, there would be a large number of children residing on the site and as a result of the stability this permanent site would offer, it would not be acceptable to deny these children of the opportunity of a happy family life. If this consent was to be refused, one of the families would continue to reside on the site, albeit in substandard conditions, due to the lack of facilities and space, but it is considered highly likely that the remaining family would end up leading an unauthorised existence, which would not only impact on the rights of the children, but would also raise issues on grounds of the protected characteristics of disability and race.

On account of the above, it is submitted that the welfare of the children could only be safeguarded by the grant of permanent planning and on these grounds, it would be disproportionate to refuse the application.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

## **Recommendation**

**A.** Delegate authority to the Strategic Director of Service Delivery to complete a Unilateral Undertaking under Section 106 to secure the River Mease Contribution; and

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

1. The use hereby permitted shall cease and all caravans, structures and equipment brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out below:
  - i) Within 3 months of the date of this decision the two amenity buildings shall be connected to the foul sewer and all foul drainage shall be disposed of via this connection thereafter;
  - ii) Within 1 month of the of the date of this decision a scheme for: tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities and all boundary treatments shall have been submitted for written approval to the Local Planning Authority and the scheme shall be implemented within the next available planting season;
  - iii) Within 1 month of the date of this decision, a sustainable drainage system for the disposal of surface water (including a swale, shallow depression or scrape between the access track and parking/turning area) and a riparian buffer/tree planting details shall have been submitted for written approval to the Local Planning Authority and the scheme shall be implemented within 3 months from the date of this approval and retained thereafter;
  - iv) Within 1 month of the date of this decision a Construction Environment Management Plan (CEMP) shall be submitted for written approval to the Local Planning Authority and shall be adhered to as soon as approved.

Reason: To ensure that necessary mitigation is secured, to protect the integrity of the River Mease SAC.



2. In reference to condition 1, if any trees, plants or shrubs approved as part of the landscaping scheme, within 10 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and species, unless otherwise approved by the Local Planning Authority.

Reason: To safeguard the character and appearance of the surrounding countryside.

3. Notwithstanding the details provided, within 1 month of the date of this decision, details/samples of the materials for the construction of the amenity buildings, along with updated elevation plans shall be submitted to and approved in writing by the Local Planning Authority and the approved details shall thereafter be implemented.

Reason: To safeguard the character and appearance of the surrounding countryside.

4. Notwithstanding the submitted details, within one month of the date of this decision detailed information on the existing and proposed site levels, including a cross section at a scale of 1:100 shall be submitted to and approved in writing by the Local Planning Authority. The approved levelling works shall be undertaken within three 3 months of their approval.

Reason: To safeguard the character and appearance of the surrounding countryside.

5. Within 1 month of the date of this decision, a lighting scheme shall be submitted to and approved in writing by the Local Planning Authority and the approved details shall thereafter be implemented.

Reason: To safeguard the character and appearance of the surrounding countryside and in the interests of residential amenity and highway safety.

6. Within 1 month of the date of this decision, details of the access including any form of enclosure along with details of heights and colour finishes shall be submitted to and approved in writing by the Local Planning Authority and the approved details shall thereafter be implemented and retained as approved.

Reason: To safeguard the character and appearance of the surrounding countryside.

7. The development hereby permitted shall be carried out in accordance with the Block Plan drawing ref. M.19.024 and the Site Location Plan received with the application unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

8. The site shall not be occupied by any persons other than gypsies and travellers as defined in the Government guidance 'Planning Policy for Traveller sites' (August 2015) or any Government guidance which amends or replaces that guidance.

Reason: The creation of a residential use in this location would not normally be permitted and an exception has been made to provide accommodation solely for gypsies/travellers who satisfy these requirements.

9. There shall be no more than two pitches on the site and no more than 5 caravans, as defined in the Caravan Sites and Control of Development Act 1960 (as amended) and the Caravan Sites Act 1968, shall be stationed at any time of which only two caravans may be residential mobile homes/static caravans.

Reason: The creation of a residential use in this location would not normally be permitted and an exception has been made to provide accommodation solely for gypsies/travellers who satisfy these requirements and to the number that has been justified, so to preserve the character of the locality and ensure the occupation of the site does not dominate the nearest settled community.

10. There shall be no caravans, as defined in the Caravan Sites and Control of Development Act 1960 (as amended) and the Caravan Sites Act 1968, stationed on the identified parking and turning area.

Reason: To ensure adequate parking and turning space for vehicles associated with the use, in the interests of highway safety.

11. No more than a total of three commercial vehicles shall be kept on the land for use by the occupiers of the pitches hereby permitted, and they shall not exceed 3.5 tonnes in weight.

Reason: To safeguard the amenities of nearby occupiers and/or in the interests of highway safety.

12. No commercial activities shall take place on the land, including the storage or burning of materials.

Reason: To safeguard the amenities of nearby occupiers and/or in the interests of highway safety.

Informatives:

- a. This project has been screened to assess its impact on the River Mease SAC under the Conservation of Habitat and Species Regulations 2010.
- b. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990. All formal submissions to discharge obligations of the undertaking or agreement, or queries relating to such matters, must be made in writing to [s106@southderbyshire.gov.uk](mailto:s106@southderbyshire.gov.uk) with the application reference included in correspondence.
- c. The Environment Agency requires that there should be no discharge of any trade or sewage effluent to any watercourse.
- d. All building work should be in compliance with best working practices so to avoid pollution of the water environment. Advice is available from the Environment Agency in the 'Construction, inspection and maintenance' section of their website at [www.gov.uk/guidance/pollution-prevention-for-businesses](http://www.gov.uk/guidance/pollution-prevention-for-businesses). The developer is recommended to contact the Environment Agency so to arrange a site meeting and agree the necessary measures to prevent pollution of the water environment during the construction phase of their development. Please contact [EastMidWaterQuality@environment-agency.gov.uk](mailto:EastMidWaterQuality@environment-agency.gov.uk) for further information and advice.

**Item No.** 1.2

**Ref. No.** [DMPA/2019/1196](#)

**Valid date:** 16/10/2019

**Applicant:** Monument 4 Ltd

**Agent:** Robert Bailey-English

**Proposal:** Outline application for 60 extra care flats and two bungalows along with ancillary shop, hairdressers, restaurant, parking provision and garages (appearance and landscaping reserved for later consideration) on Land at SK2829 0730 off Ivy Close, Willington, Derby

**Ward:** Willington and Findern

### **Reason for committee determination**

This item is presented to Committee as the Council has an interest in part of the application site.

### **Site Description**

The site is situated to the west of the settlement of Willington. The land is triangular in shape and is bound by the Trent and Mersey Canal to the north-west, the Derby to Birmingham Railway line (which is on a raised embankment) to the south, Derbyshire County Council's Environmental Services Depot to the north east and residential garages to the east. The site area is approximately 1ha, is fairly flat and comprises of unmaintained grassland. To the north, the application site is enclosed by a mature hedgerow alongside the canal, predominantly of hawthorn. The western stretch is quite high, whilst to the east it is lower, with open views across the site.

The site is accessed off a priority junction within Ivy Close, via a separate two-way access road, which has a length of approximately 60 metres, to entering the site. The access road has a carriageway width of up to 7.0 metres and a short northern section of footway. Adjacent to the access road, on either side (also falling within the application site) are a row of Council owned residential garage blocks and off-street parking spaces. There are currently 6 no. garage blocks on its northern side and 11 no. garage blocks with open gravel areas used for car parking. Further afield, to the north of the canal are paddocks, and linear residential development along the A5132.

### **The proposal**

This is an outline application for 60 extra care flats and two bungalows along with ancillary shop, hairdressers, restaurant, parking provision and garages. Information received throughout the course of the application has confirmed that the scheme would be 100% affordable, but no detail has been provided to clarify the tenure mix. Matters of access, layout and scale have been submitted for detailed approval, whilst matters of appearance and landscaping have been reserved for later consideration. The proposal splits the 60 apartments across two blocks of accommodation, one of 54 and one of 6. The block of 6 is two storey, whilst approximately half of the larger block is 3 storey. There would be 10 apartments and a staff rest area at second floor level. In places this 3 storey, pitched roof block would be approximately 1.8 metres away from the site boundary and the canal tow path.

Access would be taken from the western end of Ivy Close, a small residential cul-de-sac off The Castle Way. To facilitate this, a row of pre-fabricated garages would be demolished.

**DMPA/2019/1196 - Land at SK2829 0730, off Ivy Close, Willington, Derby  
DE65 6BS**



## **Applicant's supporting information**

The Design and Access Statement identifies that the development proposes the erection of 62 Supported Living units consisting of 9 one bedroom apartments, 51 two bedroomed apartments and two bungalows along with communal areas consisting of a restaurant, bistro, activity area, hairdressers and site shop. 55 parking spaces are also identified including 12 garages and visitor/staff parking. Staff areas to include a managers offices, meeting rooms and staff refuge areas along with plant rooms, a/c rooms, a buggy store, lift access and reception area. Photographs are presented to illustrate the site context. In terms of the access, the following information is provided:- the site is accessed off a priority junction within Ivy Close via a separate two way access road, which has a length of approximately 60 metres before entrance to the site. This access road has a carriageway width of up to 7.0 metres and a short northern section of footway. This access road currently has a separate row of council owned residential garage blocks on its northern and southern sides including off street parking spaces. There are currently 6 No. residential garage blocks on its northern side and 11 No. residential garage blocks with open gravel areas used for car parking. Two access roads connect the accommodation units. One east/west linear access and one north/south access, incorporating parking, delivery and refuse collection points.

In terms of the proposal it is explained that the main accommodation unit is structured around east/west and north/south axis, joining at the central communal areas incorporating vertical access cores of two lifts and staircases, opening up onto the southerly facing garden in a pavilion style structure. In reference to design it is explained that the units are designed to take advantage of the adjacent canal to the north, whilst providing a court style inner garden area to the south with direct access to all units. A secondary smaller accommodation unit houses 6 further flats, along with two bungalows with gardens and parking, to provide varied outlooks. The scale of the proposal is stated to be predominantly two storey with ten units located on the second floor along with staff areas and utility provision with stair and lift access.

In regard to landscaping it is confirmed that the canal side northerly hedging is to be retained, with the main building set back 2-3 m to provide outdoor areas to the ground floor northerly flats to retain privacy. To the south, a courtyard style garden linking through to the activity area provides a buffer zone between the building and parking areas off the east/west access road, with planting along the linear southern edge of the site, providing noise reduction and privacy from the adjacent railway.

An Employment and Social Benefits Statement outlines the general economic and social benefits associated with how a specific housing provider (Housing 21 in this case) operates.

A Transport Statement provides an explanation of the site in relation to the existing and wider highway network, national and local planning policy, existing access arrangements, including a proposed highway improvement scheme between site and Ivy Close, parking standard requirements, road accident data review, assumed proposed multi-modal traffic impact generation, junction modelling and capacity at nearby junctions and means of access by sustainable modes of travel. The statement concludes that the impacts of the anticipated vehicular traffic flows associated with the proposals and the resulting analysis has outlined that a minimal traffic impact is expected from the proposals on the local road network. It continues that Paragraph 109 of the NPPF states that 'Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'. Based on the scale of the impact of the proposals, there are stated to be no overriding reasons in transportation terms why the development proposed should not be approved.

A Contaminated Land Risk Assessment sets out that the site historically formed part of a rail track – to its north east from pre 1880 to 1937 and that the site does not occupy a groundwater source protection zone.

A Preliminary Ecological Appraisal explains that the appraisal survey revealed numerous habitats on site. Mixed Scattered Trees, Marsh Grassland, Poor Semi-improved Grassland, Hedge and Trees and Dry Ditch were recorded on site. The appraisal continues that no designated sites were revealed from



the Ecological Data Set. It is however stated that there are designated sites or potential designated sites that lie within close proximity to the site. Therefore, it is highly possible that rare and protected species may be present on the site, which require further assessment. Finally, it is stated that no habitats of conservation concern were located on the site itself. Therefore it is contended that the proposed scheme of works will not impact upon any rare or valuable habitats.

The assessment contains a number of recommendations, the most notable relates to Amphibians. This states that due to the known population of great crested newts adjacent to the site, a full presence/absence survey of the waterbodies within 500m is necessary. This would be in the form of six survey efforts between March and June, with at least two of the surveys being undertaken between mid-April and mid-May and that following this, a full assessment of the impacts can be made.

The survey also suggests a number of site enhancements:

- Flora: at present the site is not considered to have a diverse range of flora. Therefore it is recommended that a small section of the site is converted into a 'wild meadow' that uses native wildflower seed mixes.
- Invertebrates: at present the site is not considered to be of any importance to local invertebrate populations. In conjunction with the wildflower planting it is recommended that two Bumblebee Boxes are incorporated into the scheme, along with two Bug Hotels. This will enhance the site for the local invertebrate populations, which will thus attract species further up in the trophic level.

A Noise Impact Assessment sets out that the noise recordings were undertaken at locations which would result in a worst-case scenario. Continuous automated monitoring was undertaken for the duration of the survey. The assessment identifies the applicable policy and legislation and provides specifications for the building fabric, glazing and ventilation. On the basis of the survey it is concluded that measured noise levels allowed a robust glazing specification to be proposed which would provide internal noise levels for all residential environments of the development commensurate to the design range of BS8233:2014 and that no further mitigation measures should be required in order to protect the proposed habitable spaces from external noise intrusion.

A Flood Risk Assessment (FRA) sets out the following:

- That the proposed development is categorised as 'more vulnerable'.
- The nearest Main River from the site is the River Trent.
- According to the information available from the SFRA, there were no records of flooding events at the site.
- The Environment Agency's Flood Maps show that the site lies within the Flood Zone 1 (low probability flooding).
- The Environment Agency's flood risk map indicates that the site is located outside of the flood risk zone.
- The overall risk of surface water flooding to the site is 'low'. The flood risk from other sources including underground water, sewer and reservoir is low.
- Based on the general assessment of the potential SuDS measures, it has been found that several types of SuDS measures may be feasible such as soakaways, permeable paving and attenuation storage pond. However, for the assessment of the applicability of the SuDS, filed infiltration test will be required.
- A site-specific Surface Drainage Strategy (SuDS) will be developed in the next phase of the proposal.
- The development will not give rise to backwater affects or divert water towards other properties.

The report concludes that it has been demonstrated that the proposal will be safe in terms of flood risk for its design life and will not increase the flood risk elsewhere.

An FRA Addendum addresses comments raised by the LLFA. The document contains information on:

- The impermeable area of the proposed development.

- Basic calculations of the greenfield run-off rates.
- A quick storage estimate to show the required storage volume of surface water on the site and an indication of the likely location. (40% climate change and 10% Urban Creep)
- Appropriate evidence to support how the site will drain.
- Where surface water will outfall to.

The addendum also provides additional information regarding the specific SuDS to be utilised and their maintenance requirements. The summary identifies that the proposed impermeable area of the development is 7,807sqm; the flows which do not permeate will discharge to the canal via Ivy Close; the greenfield Qbar calculation for this site is 2.27l/s; the storage calculation using the minimum practical flow as 5 l/s is 359 cubic metres; it is considered that climate change should be set at 30% for this site and urban creep is not possible due to the design of this development, therefore the storage should be set at 291 cubic metres; and SuDS will be used extensively throughout the site to discharge and improve the quality of the storm water.

### **Relevant planning history**

There is no relevant planning history for the site.

### **Responses to consultations and publicity**

The Canal and River Trust has objected to the application on grounds that it would have an adverse impact on the character and appearance of the conservation area and also in terms of the biodiversity importance and value of the Trent and Mersey Canal. Further concerns have been raised over the potential discharge of surface water to the Canal. In this regard it is stated that the Trust is not a land drainage authority and consent to discharge is not granted as a right. The applicant should not therefore make any assumptions as to the likelihood of obtaining the Trust's consent at this stage.

The Environmental Health Officer (EHO) has raised no objections subject to the imposition of conditions to ensure that the glazing and ventilation provisions set out within the submitted noise report are implemented and retained thereafter, that electric vehicle charging points are installed and that further contamination investigations and associated reports, are provided.

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

Derbyshire Wildlife Trust (DWT) has objected to the application on grounds that inadequate ecological surveys have been provided with the planning application. They have identified that the Preliminary Ecological Appraisal (PEA) submitted with the application identifies the need for further surveys to be carried in respect of great crested newts, reptiles, bats and birds and that in accordance with CIEEM's Guidelines for Ecological Report Writing; a PEA should not be submitted as part of a planning application unless it can be demonstrated that the proposal would have no significant ecological effects; no mitigation would be required and that no further surveys are required. DWT have stated that this is clearly not the case with this current submission and accordingly expect the submitted Preliminary Ecological Appraisal to be superseded by an Ecological Impact Assessment (EclA) to include the results of further surveys for great crested newt, reptiles, bats and birds together with any required mitigation upon which an informed planning decision can be made.

They conclude (in this regard) that the application as submitted is not accompanied by sufficient information to demonstrate the presence or otherwise of protected species and the extent that they may be affected by the proposed development. In the absence of adequate ecological information it is not possible to make an informed assessment of whether the proposal would have any adverse ecological impacts and to advise the local planning authority accordingly as to whether the proposal complies with relevant legislation and policies relating to biodiversity.

They further note that the proposal will require the removal of a section of native hedgerow to allow access to the restaurant from the canal towpath and state that it is important that this hedgerow removal avoids the bird breeding season and that the scheme includes the planting of sufficient new

native hedgerow to ensure that there is no net loss of hedgerow priority habitat. Similarly the landscaping of the proposed development needs to demonstrate that the proposal will result in a net gain for biodiversity.

Finally they advise that the landscaping, which should be dealt with by a planning condition should include the creation of areas of wildflower meadow grassland to suitably compensate for the loss of grassland and that all areas outside the curtilage of domestic properties should be covered by a Landscape and Ecological Management Plan condition.

The Environment Agency have provided no comments. Any comments received will be verbally reported to the Committee.

Network Rail have raised no objection to the principle of the development, subject to the imposition of a number of conditions. The suggested conditions would cover the following issues, drainage, boundary fencing, Armco barriers, method statements, soundproofing, lighting and landscaping. The reasons for which are suggested as being to ensure the safety, operational needs and integrity of the railway.

The Lead Local Flood Authority (LLFA) initially advised that they were unable to provide an informed comment until the applicant had provided additional information:

- Impermeable area of the proposed development
- Appropriate evidence to support how the site will drain, including confirmation of where the surface water will outfall to (photographs / maps / a confirmation letter from a water company)
- Basic calculations of the greenfield runoff and rates
- A quick storage estimate to show the required storage volume of surface water on site and an indication of the likely location
- Calculations should include allowances of 40% for climate change and 10% for urban creep

The applicant has since provided some additional information and the LLFA have provided the following comments:

- Infiltration testing does not appear to have been completed to confirm that ground conditions on the site provide suitable infiltration rates to allow the discharge of water from the Highway and paths to drain via this method. Infiltration testing to BRE365 methodology will be required at the detailed design stage in order to confirm that this is a viable outfall.
- If testing demonstrates the ground conditions to not be suitable for infiltration, can the applicant confirm where the additional storage volume required as a result would be attenuated prior to discharge at the restricted rate?
- The FRA notes that ground water is expected to be high on the site, and BGS mapping we have access to also suggests that ground water in this area is expected to be less than 3 metres below ground level for at least part of the year. As such this could limit infiltration and affect the design of the attenuation tanks.
- Can the applicant confirm if any testing or investigation regarding the ground water level on site has been undertaken?
- It is noted that the site is proposed to outfall to the Trent and Mersey Canal, but that the Canals and Rivers Trust have not yet been consulted regarding this. If outfall to the canal is not possible, can the applicant confirm how it would be proposed to convey and attenuate flows from the site before outfall into the existing system at Ivy Close, and can evidence be submitted to show the location of this outfall in ivy close? (i.e. Public Sewer Map)

Severn Trent Water has provided no comments. Any comments received will be verbally reported to the Committee.

The Strategic Housing Manager has objected to the application on grounds that there remain outstanding issues (as follow) which haven't been addressed, which are imperative to enable support to be offered for the proposal:



- Clear viability evidence to show the increase in numbers of the extra-care flats; whilst data has been provided, written commentary is also required to provide further explanation.
- Clear identification that the bungalows are to provide replacement facilities for the Council in return for access to the land
- Further information as to how the design of the facility would encompass dementia friendly design, especially given the close proximity of the canal and railway.
- Further clarity and information to illustrate that the scheme would provide 24/7 on-site care provision.
- Details of the proposed tenure split.

In addition, further consideration has also been given to the detail, size and location of the ancillary facilities, in particular the shop and further clarity has been requested as to why this is separate to the extra-care development and of the size it is - especially if, as stated, this is for residents' use only. Given that the residents within such a scheme would have low levels of mobility, it is not considered logical for this facility to be outside of the main development area.

The County Education Authority has requested no contribution towards the provision of additional school places.

The NHS Derby and South Derbyshire CCG has requested a contribution of £11,904. This has been calculated on the basis of 62 dwellings. It has been stated that the contribution would ideally be invested in enhancing capacity/ infrastructure within existing local practices, such as Willington Surgery in this case. They have suggested that additional facilities at Willington are likely to take the form of a first floor extension.

The Police Architectural Liaison Officer has raised concerns on the basis of the boundary treatment proposed and the fact that no lighting scheme has been provided (although such details could be secured by way of condition). The concerns have been raised on grounds that the protection of security for elderly residents, who have a raised fear of crime and nuisance means that a more robust canal side boundary treatment than proposed, remains necessary. It is acknowledged that the revised site plan shows a 1.2m high rail along most of this boundary, with 1.8m high gates at the main access point. To improve this, it is suggested that a compromise would be to layer the existing hedge and to supplement with additional planting, to provide a protective buffer in front of the rail, then provide a 1.5m high rail, if there is strong resistance to railings of 1.8m. The comments also identify that a securing schedule for the access gates would be required.

The British Transport Police have commented that secure fencing would need to be implemented along the boundary with the Railway Line and have advised that Network Rail would request a condition to this effect.

Willington Parish Council has objected to the application on the following grounds:

- That the proposal falls outside of the settlement boundary
- The implications of the proposal on landscape and heritage
- Implications on the Trent and Mersey Conservation Area, which is directly adjacent
- The unsuitability of the site access
- Parking issues
- The increased number of vehicle movements
- Flooding issues

Within their objection the Parish Council have also included extracts from a transport assessment they have commissioned within the area, which they would like to be taken into consideration in the determination process. Willington Parish Council have also appointed a consultant to object on their behalf. The objection initially provides an overview of the site and the applicable planning policies. The accuracy of the plans and some of the supporting documentation are also challenged and queries are made relating to site ownerships and necessary consents. The main planning concerns are subsequently set out, which will be identified below:

- The principle of the development. Given the scale and countryside location of the proposal it would be contrary to LP policies SDT1, H1 and BNE5.
- There are no material considerations that would warrant a departure from the Plan. A five year supply can be demonstrated and no specific justification has been provided of the need for the proposal.
- Traffic and Access concerns. The ability for the development traffic to be accommodated on the immediate highway network, the parking provision within the site and the turning ability for emergency and refuse vehicles within the site.
- The TA identifies the number of vehicle movements associated with the proposed development and this number is considered significant in the context of the locality. Many of the houses on Ivy Close have limited or no parking, resulting in more on street parking. This effectively reduces the width of the carriageway to single width. Given the road alignment and visibility restrictions, it is not considered that the specified roads could accommodate the additional movements caused.
- The local road network is already congested and the development would add to this.
- There is a mature tree, outside the application site on the junction between the access road and Ivy Close which would restrict visibility.
- There are inconsistencies in terms of the number of parking spaces to be provided.
- The lack of parking provision would further exacerbate the existing on street parking problems.
- Noise – the development would be contrary to Local Policy SD1 and guidance within the Noise Policy Statement for England. The proposed mitigation is not considered acceptable and would have an adverse impact on the living conditions of the future occupants. The noise assessment fails to provide analysis of the noise in outdoor areas.
- Ecology – No further surveys for Great Crested Newts have been provided. Impacts on Great Crested Newts should be provided upfront with an application and it is not possible for additional surveys to be conditioned. In the absence of the required surveys the application should either be put on hold until the information is provided, or refused.
- Heritage – the characteristics of the conservation area are initially described. It is subsequently identified that no arboricultural report has been provided and that there is no certainty as to whether the hedgerow along the canal boundary is to be retained, or not. It is identified that the proposed building would be quite tight to this boundary. If it is assumed that this boundary is to be lost, this would result in a lack of enclosure and harm to the setting of the Conservation Area. The design, scale and character of the building would be contrary to the character of the Conservation Area and at odds in this regard. Overall the proposal would result in less than substantial harm to the Conservation Area. Therefore great weight should be attributed to its conservation.

24 letters of representation have been received raising the following concerns:

- a. The entrance to Ivy Close is inadequate to cater for the proposed development.
- b. Heavy construction and other traffic may block the access onto Ivy Close.
- c. Emergency access vehicles may be prevented to accessing Ivy Close.
- d. An insufficient number of new garages have been proposed to replace those lost.
- e. Ivy Close is already congested with cars of people using facilities in the locality and so could not cope with any additional traffic.
- f. Who will be responsible for the removal of the existing garages, which have asbestos roofs?
- g. More congestion would be caused to the surrounding road network and there are concerns with the access onto Castle Way.
- h. There is currently and would still be an insufficient number of parking spaces to accommodate existing residents.
- i. The proposed planting scheme will eventually block light and views and cause overshadowing of the dwellings.
- j. What impacts will the proposed foul drainage system have on the existing properties and their drainage systems, which are all interlinked?
- k. What guarantees are there that the existing biodiversity and geographical conservation will be maintained?

- l. What measures are in place to compensate if existing cars are damaged by construction vehicles.
- m. How much pollution will the proposal cause to the residents of Ivy Close?
- n. The access has not been properly thought out, the road will have even more potholes.
- o. The local property values will be greatly reduced.
- p. Ivy Close wasn't originally designed to cater for cars or a large volume of traffic.
- q. Is the proposed shop solely for residents of the facility?
- r. The site notice was displayed in an inappropriate location.
- s. There are concerns that some families will end up occupying the development, thus causing more congestion.
- t. There are inadequate school places within the vicinity to cater for any school children from the proposed development.
- u. The site has been susceptible to flooding in the past.
- v. As much green space as possible should be preserved to benefit wildlife and the villagers and to prevent Willington from being over-developed.
- w. The tight road alignment proposed wouldn't allow for two vehicles larger than a car to pass one another.
- x. The village facilities are inadequate to cater for the existing population never mind those proposed by this application.
- y. The size of the development is out of keeping with the size of the village.
- z. The height of the development is out of keeping with the look or feel of the area and conservation area.
- aa. The development is contrary to the character of the area and would have a negative visual impact on the village.
- bb. How will the doctor's surgery cope with an additional 60 patients?
- cc. Queries raised over the destruction of existing habitats and vegetation.
- dd. Queries relating to the potential of surrounding development sites.
- ee. The site is currently bound by mature hedgerows and the site plan shows no hedge along the towpath and the proposed development. This will result in the loss of enclosure along this part of the canal.
- ff. This application falls outside of the settlement boundary for Willington and as such the site is considered to be within the countryside.
- gg. It is expected that this proposal will generate 248 vehicle movements a day to and from the proposed site (Transport Statement, Table 5.2). This is a hugely significant figure for a road of Ivy Close's constraints and the local highway context will not be able to accommodate this.
- hh. Will the Ivy Close residents be guaranteed parking for our vehicles considering non-residents frequently park on our road? Some residents have more than 1 car so this needs to be factored in.
  - 1. ii. Concerns as to how foul sewage will be dealt with, as the system is already delicate.
- ii. What guarantees are there that no further development in Willington will take place as there is already a strain on local infrastructure?
- jj. Concerns that in the very near future an accident will happen, as there are a large number of vehicles that use Ivy Close as a turning point off Castleway every day and added traffic will only cause more problems.
- kk. What measures are in place to deal with surface water flooding?
- ll. The environmental impact of the development would be devastating.
- mm. The doctor's surgery is struggling to cope and the development would make this worse.
- nn. If the development goes ahead there needs to be adequate infrastructure and parking to cater for its needs.
- oo. The increased traffic would lead to the road being unsafe for children that currently use the railway underpass.
- pp. What are the plans for the existing garages?
- qq. The restaurant, shop and hairdressers won't be able to be used by local residents.
- rr. The current vehicle tracking doesn't take into account any vehicles parked on Ivy Close, which is where the problem for access is.
- ss. Are there any proposals for the existing depot to be demolished and housing built on that site?

## **Relevant policy, guidance and/or legislation**

The relevant Development Plan policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), E7 (Rural Development), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE2 (Conservation), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport) and INF7 (Green Infrastructure); and
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE5 (Development in Rural Areas), BNE7 (Trees, Woodland and Hedgerows) and BNE10 (Heritage).

### National Guidance

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

### Local Guidance

- Design Guide Supplementary Planning Document (SPD)
- Affordable Housing (SPD)
- Section 106 - A Guide for Developers (2010)

## **Planning considerations**

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

- Principle of development;
- Design, character, appearance and conservation;
- Residential amenity and noise;
- Ecology and trees;
- Drainage and flood risk; and
- Highways and parking.

## **Planning assessment**

### Principle of development

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, requires all planning decisions to be made in accordance with the Development Plan unless material considerations indicate otherwise.

The application site lies outside but adjoining to the Willington settlement boundary. Policy H1 'Settlement Hierarchy' identifies Willington as a Key Service Village. The Policy states that in Key Service Villages "development of all sizes within the settlement boundaries will be considered appropriate and sites adjacent to settlement boundaries as exceptions or cross subsidy sites as long as not greater than 25 dwellings." Throughout the course of the application, additional detail has been provided to confirm that the development would be 100% affordable, however there is no detail on the specific tenure split. On this basis the development would be regarded as an 'exception site'. Notwithstanding this however, the application proposes 62 residential units which would considerably exceed the policy allowance of 25 units for sites within rural areas. On this basis, there would be significant conflict with Policy H1 and considerable harm caused.

Policy SDT1 'Settlement Development states "*Outside of settlement boundaries and allocated sites, within the Rural Areas as defined in Policy H1, development will be limited to that considered acceptable inter alia by Policy BNE5.*" Policy BNE5 'Development in Rural Areas' provides circumstances in which planning permission will be granted. It is not considered that the proposal complies with any of the exceptions identified by Policy BNE5.

Whilst the proposed use is not specifically an employment generating use, it would result in employment opportunities and has therefore been considered against Policy E7 'Rural Development'. This states that "*Development proposals which diversify and expand the range of sustainable employment activities on land outside of settlement boundaries will be supported by the Council provided they support the social and economic needs of the rural communities*". As the supported living facility would create employment, primarily for care staff, and also through an ancillary shop, hairdressers and restaurant and would also help to meet the social needs of the community by providing for older people, it is considered that the proposal would meet some of the intentions of this Policy. It should be noted however that Policy E7 continues, that development of new buildings must meet the following criteria:

- i) Supported by a sound business case;
- ii) The local highway network is capable of accommodating the traffic generated;
- iii) Development will not give rise to any undue impacts on neighbouring land;
- iv) Development is well designed and of a scale commensurate with the proposed uses
- v) Visual intrusion and the impact on the character of the locality is minimised.

Despite continual requests, no substantial justification, by way of a business case has been provided in support of the proposal. As such, only very limited weight can be attributed to the benefits gained in respect of this Policy.

As a result of the scale of development proposed, there would be a significant conflict with policy H1. Furthermore, the proposal would not meet any of the identified exceptions within policy BNE5 and the development would therefore be unacceptable in principle, further conflicting with policies SDT1, E7 and S1.

#### Design, character, appearance and conservation

Policy BNE1 expects new development to be well designed, visually attractive and appropriate having regard to existing characteristics. The principles underpinning this policy are expanded upon within the South Derbyshire Design SPD. The NPPF highlights that good design is a key aspect of sustainable development and that new development should respond to local character and be visually attractive. Policy BNE4 sets out that the character, local distinctiveness and quality of South Derbyshire's landscape will be protected and enhanced through the careful design and sensitive implementation of new development. Policy H20 seeks to "*promote a mix of housing that is suitable and adaptable for different groups of people*" including "*the ageing population of the District*". Policy BNE2 seeks to protect, conserve and enhance heritage assets and their settings in accordance with national guidance and SPDs. Criterion B(i) makes specific reference to Trent Valley, including the Trent and Mersey Canal.

The application site lies immediately south and east of, but not within, the linear Trent and Mersey Canal Conservation Area, as such the statutory duty within section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 does not apply. However, the requirement within the NPPF (paragraphs 189, 190, 194) to consider the impacts on heritage assets, including development within their setting, remains necessary.

Matters of access, layout and scale have been submitted for detailed approval at this stage, whilst matters of appearance and landscaping have been reserved for later consideration. As such, fundamentals including the overall height, form and massing of the buildings are fixed whilst details of external architectural finishes and materials are reserved. That said, the noise report does highlight



that its findings are based upon the assumption that external wall fabric will be 'masonry', therefore limiting the options available for external treatments to be proposed as reserved matters. Illustrative plans have also been provided which detail how the development could appear once constructed (as outlined within the introduction).

The main building would have an 'L' shaped layout, with the most extensive run of development extending parallel with the eastern canal boundary; this run would also be of the greatest scale. The footprint would subsequently turn at 90 degrees, projecting back into the site. A smaller cluster of development comprising of a two storey block of flats, a pair of semi-detached bungalows and a detached shop would be sited adjacent to the north eastern boundary, shared with the Council Depot. The internal access road would continue from Ivy Close, running parallel to the site's western boundary, shared with the railway line. There would be various parking solutions situated either side of this road, at several intervals, with the road culminating in a turning head within the southern tip of the site.

A selection of communal amenity areas are illustrated. There would be an garden within the inner side of the 'L', flanked by the building to two sides and a row of parking to the remaining side, along with a further area to the southern tip of the building, situated alongside the turning head and a cycle storage area. To the very tip of the site, an area of wildflower planting is proposed.

To enable an assessment in terms of character and appearance and to consider heritage impacts, the character of the surrounding area and the wider character of the canal, along with key viewpoints must be established and appraised. The Conservation Area Character Statement highlights that where existing dwellings are arranged in close proximity to the canal, their relationship is unusual in that they turn their backs on the canal, instead fronting a network of narrow lanes to the south. By turning their backs to the canal their gardens provide some space to soften their presence and impact; the properties are in the most part detached, and two storey and thus of a small and domestic scale. Where a short terrace (4 dwellings at 17-23 Canal Bridge) exist, their narrow gable ends face the canal, rather than the length of the terraced row. There are no existing buildings of approaching comparable scale to what is being proposed by this application, either in terms of footprint or height, within the vicinity of the canal as it passes through Willington.

The submitted heritage statement does identify that Willington is the only substantial settlement along the canal as it passes through South Derbyshire, citing Shardlow (a settlement built to service a wharf for the canal) as the only other significant settlement along its route. Whilst there is nothing of comparable scale to the proposal in Willington, even in Shardlow where large canal warehouses - some of 3 stories sit alongside the basin; none of the individual buildings are of a scale which compares with this proposal. Whilst the application site sits alongside a stretch of canal which appears, at least on plan, closely related to dwellings and the built edge of development, on the ground it is difficult to find vantage points where significant quantities of this proximate development can be viewed together, and what can be seen has a broadly domestic scale. As such, the stretch of the canal to the west of Canal Bridge is one where the proximity of scattered buildings is apparent, but the presence of the edge of a sizeable settlement is not.

Immediately to the north-east of the site is the highways depot. The structures on this site comprise a loose arrangement of predominantly single storey buildings (some of reasonable height with pitched roofs, and others low-lying) and substantial areas of hard-standing with relatively little built form against the boundary with the canal side. The depot is most apparent in the elevated view from the bridge over the canal just to its east, however the low-lying buildings never break the line of the horizon, which might otherwise lead to a greater visual impact. When viewed from this elevated position the three storey development proposed would break the horizon line and would be significantly prominent and thus have a greater visual impact than what currently exists at close range. From a short distance further west along the canal, views towards the depot reveal little to give the site away; the most prominent feature suggesting any non-rural activity within the site is the palisade fencing which forms the site boundary which, despite being painted green, is visible within the landscape.

Within the submitted heritage statement it is agreed that the application site itself makes only a limited contribution to the character of the canal, as the relatively robust boundary hedge limits the ability to perceive the site itself from further west. The hedgerow is lower and thinner at the eastern end of the site, however the gently sinuous route of the canal means that the eastern part of the northern site boundary is visible over only a relatively short stretch of the towpath, whilst the more robust hedgerow along the western part of this boundary is visible from greater distances to the west. From this same position to the west, the village itself could easily not exist, with the only apparent development being the houses along The Castle Way on the opposite side of the canal and some 150 metres away.

Whilst the open and undeveloped nature of the site is therefore not widely apparent along the towpath, there are glimpses through breaks in the hedgeline and even where the hedge limits views, it must be recognised that neither is there any apparent sense of the presence of development beyond the hedge, aside from when a train passes on the adjacent rail line. One of the positive features of the canal conservation area is its presence within a landscape which is also a transport corridor featuring roads which follow the lines of Roman routes and railway lines. The supporting heritage statement suggests the contribution from this wider transport corridor would not be impacted upon, however the site is between the canal and the rail-line, and therefore this stance cannot be agreed with. It would remain possible to appreciate the presence of the rail line further to the west along the towpath and as such this aspect of value and contribution to significance would still exist. However, the extent to which it can be experienced would be diminished and deserves to be given some degree of consideration. A large unbroken mass of a 2-3 storey structure would have an unavoidable imposition on the character of the canalside and it is difficult to see what kind of finishes and materials could secure a finished appearance which might lessen that imposition to the point at which it might not be 'harmful' to the established character of the conservation area and its setting and the wider landscape.

The layout attempts to break up the massing by use of articulation along the long elevations and staggering of the footprint; however there is a limit to what this can achieve and the mass of a circa 108 metre long building along the canal side is not effectively broken down into separate blocks by even the reasonable degree of articulation which the proposed plans would achieve.

In terms of non-visual aspects of the conservation area's setting, it is acknowledged that there is a degree of intrusion on the tranquillity of the canal arising from nearby major road routes which generate a background drone of traffic. However, rural sounds such as those of birds can be heard above this and after a period of time, the sound of the road disappears into the background. There are occasions where the sounds of conversations amongst boaters and other pedestrians intrude upon tranquillity; however there is little audible intrusion from dwellings where these back onto the canal. It is accepted that the daytime and autumnal season of the visit would have increased the likelihood that many occupants would have been out and that gardens may have been used less than in mid-summer, but even so, it is considered that there would be relatively limited intrusion into the relative tranquillity of the canal from domestic activity. If the proposed outdoor amenity areas were to receive a fair degree of use, then the wildflower meadow garden immediately alongside the tow path boundary could result in a spill of noise into the conservation area, although it is considered that this would likely be conversational noise and so has been attributed limited weight in the assessment. The position of the kitchens means it is likely that extract equipment would be on the canal side of the building and could create odours not currently experienced along this section of the canal, although this could be avoided through either filtered extraction equipment, or routing extraction to the south side of the buildings. Given that this could be effectively mitigated through details yet to be submitted, this has been attributed no weight in the assessment.

The submitted heritage statement makes reference to the current best practise guidance for assessing the setting of heritage assets and impacts upon that setting and summarises the four steps involved. The Heritage Statement contends that the assessment described in paragraph 190 of the NPPF is a task for the Council to undertake. Despite this however, an assessment has been included. Agreement is not however shared on all conclusions drawn. When the nature of the proposed development is considered, the assessment focuses on whether or not the proposed development would impact upon, or detract from, the identified positive characteristics of the conservation area (as

identified within the Conservation Area Character Assessment). Whilst these are legitimate and reasonable considerations, the content of the statement is scant on its consideration as to whether or not the proposal would introduce new characteristics, which are currently alien to the established character, which could therefore be intrusive upon that character.

The assessment continues, including the following statement *“Given that the proposed development would be an extension of an already built-up area, it may be concluded that the overall experience of the canal would be little affected by the proposed development”*. This stance is not agreed with. It is not considered that a parallel can be drawn between the nature of the existing pattern of development within Willington, and the nature of the development being proposed. What is proposed would not be a continuation or extension of the existing built up area, but would instead be a new and different form of development as well as being a more intensive and a larger scale form of development, not compatible with the existing built form within Willington and atypical of the kind of development that can be seen to form the immediate context of the canal and its conservation area.

The fourth step of the best practice guidance on the setting of heritage assets is to consider steps and methods to reduce or avoid harmful impacts, with mitigation as a last option (mitigation is addressed in this way as avoiding harm is preferable to trying to mitigate it). In this case, given the scale the proposal it is difficult to see how it could be revised whilst retaining the number of units, quantum of car parking and a degree of outdoor amenity space. The site's triangular shape leaves little scope for rearranging structures, particularly given that moving the building nearer to the rail line is likely to make achieving acceptable indoor noise levels more complicated. There would be little prospect of creating screening to mitigate the visual impacts and relationship with the canal, without that screening being imposing in its own right and also having an impact upon the amenity of occupants of the proposed buildings.

The submitted heritage statement ultimately concludes that there could be less than substantial harm arising from the proposal. This opinion is not shared. The details remaining for consideration at reserved matters would have relatively limited potential to influence the proposals insofar as heritage, or design related impacts are concerned, particularly given the assumptions within the noise impact assessment relating to wall construction.

Whilst it is considered that the proposal would result in harm to the conservation area as a result of development within its immediate setting, it is not considered that this harm could be described as falling at the lower end of the 'less than substantial harm' scale (as concluded within the applicant's heritage statement). The term 'less than substantial harm' is a blunt tool covering a vast span of 'shades of grey' between 'no harm' and 'substantial harm', which itself is acknowledged as representing a high test. Simply stating that harm is 'less than substantial' is therefore of limited utility to the decision maker in applying the test under paragraph 196 of the NPPF. In this case it is considered that the level of harm would fall into the second quartile of the range, below the midpoint but certainly above the lower end of the scale suggested within the applicant's heritage assessment. This is on the basis that the proposal would have an imposing and very different relationship with the immediate boundary of the conservation area than what is seen within Willington, whilst acknowledging that the majority of the conservation area would not be adversely affected and that the immediate context of the application site is not necessarily the most significant section of the linear conservation area.

In considering whether the 'less than substantial harm' identified would warrant refusal of the application, there are two requirements under National Planning Policy that would need to be addressed.

The first of these is set out at paragraph 194: *“Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification”*. The second test is that, if justified and less than substantial harm is to be permitted, then the wider public benefits of the scheme must outweigh harm (paragraph 196).



The legal decision in *R (on behalf of Forge Field Society et al) v Sevenoaks DC* makes the point that when considering harm to heritage assets and their settings it is legitimate to consider alternative sites where the development and its benefits could be delivered while avoiding that harm entirely:

*"If there is a need for development of the kind proposed [a scheme of affordable housing], which in this case there was, but the development would cause harm to heritage assets, which in this case it would [as in this case acknowledged by the applicants own heritage assessment], the possibility of the development being undertaken on an alternative site on which that harm can be avoided altogether will add force to the statutory presumption."*

In this case there is no statutory presumption arising from the 1990 Act, as the site falls just outside of the Conservation Area meaning that section 72 does not strictly apply; only the requirements in the NPPF, that the preservation of heritage assets and their settings be given 'great weight' (paragraph 193) and that harm can arise from impacts upon setting (paragraphs 189, 190, 194 and 200) are relevant. Notwithstanding this, there remains a duty (albeit not statutory), to provide great weight to the preservation of heritage assets and their settings.

The observation in the legal decision is linked to the need to provide a clear and convincing justification for harm, as if it is the case that the development could reasonably be delivered via alternative means, including delivery elsewhere, whilst avoiding that harm, it would be difficult to provide the convincing justification as to why the harm needed be tolerated on the specific site (para 194 NPPF). As the requirement for a clear and convincing justification (para 194) precedes the test for cases of less than substantial harm, it is questionable as to whether that test can reasonably be applied where the scheme lacks the clear and convincing justification – it would seem wrong to conclude that harm which has not been adequately justified and which can potentially be avoided should be permitted owing to the generation of benefits which could be delivered without causing the harm at all. Whilst the proposal would produce notable benefits, in that the scheme would provide a fully affordable 'Extra Care' facility, a refusal on the basis that the development of this site is not provided with a clear and convincing justification for the harm which it would cause to the settings of heritage assets, is maintained.

The proposed layout has been heavily influenced by the site constraints; the railway line running parallel to the eastern boundary and the Canal running parallel to the western boundary, along with the Council Depot to the north west. To mitigate against noise the internal road and parking areas would be to the west of the site, thus resulting in the bulk of the building's footprint being closer to the canal and consequently, the conservation area, noting however that this arrangement would result in an amenable outlook for rooms facing towards this feature. By virtue of their enclosed nature, the amenity spaces would feel oppressive and the building, due to its scale and proximity, would be overbearing, a feeling which would be augmented as a result of their relatively small size. In terms of the ancillary facilities, whilst the hairdressers would be internal to the main block, the shop would be detached and a considerable distance from the main bulk of accommodation, with no direct access route provided. Furthermore, the scale of the shop would be considerable and so, not commensurate with the scale of facility provided. Whilst a logical approach has been taken to the layout, the overall scale and size of the buildings footprint is considered too great for this specific site, resulting in overdevelopment.

In terms of housing mix, as the proposal is for 'Extra Care' housing, offering accommodation with a number of bedroom sizes, and as a general need for such accommodation has been identified across the District, it is considered that the development applied for would be partially compliant with the intension of policy H20. That said however, information is lacking as to the specific tenure mix, which would reduce the weight associated with this benefit.

Overall, the application proposes an imposing structure facing out onto the canal and as such would be contrary to the character of any other type of development found along this stretch of the canal. Its height, which would in places be three storey, along with its density and design would completely alter the nature of the canal in this location. This site provides an entrance into Willington from the west and the development would significantly alter the canal users appreciation of the canal environment

its historic significance and its relationship with the townscape of the settlement. The development is therefore considered to be harmful (less than substantial) to the character and significance of this heritage asset, which is of national importance and as such great weight should be attributed to its conservation. Overall, as a result of its layout and scale, the development would be contrary to policies BNE1, BNE2, BNE4 and BNE10 of the Local Plan and paragraphs 127, 193 and 194 of the NPPF.

### Residential amenity and noise

Policy SD1 is supportive of development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments. To ensure this, criterion B(iii) acknowledges the need for strategic buffers between conflicting land uses in respect of amenity issues, such as odours, fumes or dust and disturbance such as noise, vibration or light. Paragraph 190 of the NPPF states that Planning Policies and decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment.

On the basis of the proposed layout it is not considered that the development would result in any adverse impacts between future occupants in terms of privacy or overshadowing. As mentioned however, by virtue of its scale (on grounds of both its footprint and height) the proposed development would result in overdevelopment of the site, placing undue pressure on the boundary trees and resulting in oppressive and unwelcoming amenity spaces.

The main impact on the residential amenity of the future occupants would however be noise. The application site is bound to the south by the main Derby-Birmingham Railway Line. A noise assessment has been undertaken as part of the planning application. This identifies that the daytime noise level on the south façade is expected to be 62 dBA and at night-time 60 dBA. On the northern façade this is expected to be 60 dBA and 58 dBA respectively. At paragraph 4.2 of the noise assessment the internal noise levels recommended in BS8233:2014 are set out, and on the basis of the recorded levels, the report identifies that 'the external building fabric would need to be carefully designed to achieve the recommended internal levels'. Due to the anticipated noise levels, mitigation is proposed. This would take the form of mechanical ventilation a requirement of which would be for windows on the southern elevation of the building and the southern and western elevations of the bungalows to be non-opening. Whilst this approach to noise mitigation might be reasonably expected in some urban environments, the location of the site is on the edge of a more rural village and as such residents should expect to be able to open their windows. Furthermore, due to the specific nature of the accommodation provided, it would be more likely for residents to spend longer periods indoors, in their rooms and as such, opening windows for ventilation purposes would be essential. In these circumstances it is likely that the health and well-being of future occupiers would be harmed as a result of them being unable, or potentially unwilling, to open windows due to experiencing relatively high levels of noise and disturbance, particularly during the night. The reliance on mechanical ventilation to gain fresh air in this case, rather than opening a window would not represent an acceptable or reasonable choice for future occupiers. Whilst the EHO has acknowledged that suitable internal noise levels could be achieved through the imposition of conditions (requiring mechanical ventilation), given the specific circumstances relating to the site's location and the nature of the occupants in this case, the proposed solution would not be acceptable on residential amenity grounds.

The PPG states that *"it is important to consider noise in the context of the wider characteristics of a development proposal, its likely users and its surroundings, as these can have an important effect on whether noise is likely to pose a concern"*. The PPG also states that *"Increasing noise exposure will at some point cause the 'significant observed adverse effect' level boundary to be crossed. Above this level the noise causes a material change in behaviour such as keeping windows closed for most of the time or avoiding certain activities during periods when the noise is present. If the exposure is predicted to be above this level the planning process should be used to avoid this effect occurring"*. Paragraph 2.22 of the Noise Policy Statement for England 2010 (NPSE) also states that development should avoid significant adverse impact on health and quality of life from environmental, neighbour

and neighbourhood noise.

The submitted noise report fails to make any reference to noise levels in outdoor amenity areas. It is noted that the orientation of the building means that any proposed outdoor amenity space is to the south of the site and will also be dominated by noise from the railway line. WHO guidelines identify a noise level of up to 50dB in private gardens, which should be considered as the maximum allowable sound pressure level for all new development, where feasible. At 62dBA at the southern façade of the building, the noise levels here would be significantly higher.

Taking into account the development type proposed, the level of noise present on site and the mitigation proposed, which would result in a material change in behaviour of the residents, it is considered that the development would result in a harmful impact on the residential amenity of future occupants. On this basis, the proposal would be contrary to policy SD1, paragraph 170(e) of the NPPF, guidance within the PPG and the NPSE.

### Ecology and trees

Policy BNE3 is supportive of development which contributes to the protection, enhancement, management and restoration of biodiversity ...and that delivers net gains in biodiversity, with criterion B of this policy specifically advising that planning proposal that could have a direct or indirect effect on sites with potential or actual ecological importance, including those with priority habitats or species need to be supported by appropriate surveys or assessments sufficient to allow the Authority to fully understand the likely impacts and the mitigation proposed. Policy BNE4(B) expects key valued landscape components such as mature trees and established hedgerows to be retained, unless it can be demonstrated that the loss of features will not give rise to unacceptable effects on local landscape character.

The application is accompanied by a Preliminary Ecological Appraisal (PEA). This identifies that further surveys are required in respect of great crested newts, reptiles, bats and birds. Industry guidance on the use of such assessments states that a PEA should not be submitted as part of a planning application unless it can be demonstrated that the proposal would have no significant ecological effects, no mitigation would be required and that no further surveys would be necessary. This is clearly not the case here and Derbyshire Wildlife Trust have objected to the application on such grounds. The Trust have advised that the Preliminary Ecological Appraisal needs to be superseded by an Ecological Impact Assessment (EclA) to include the results of further surveys for great crested newt, reptiles, bats and birds together with any required mitigation, upon which an informed planning decision can be made.

The agent has been advised of this and has entered into direct dialogue with the Trust in an attempt to resolve the issue. The agent has specifically queried as to whether the additional survey work could be conditioned. In response, the Trust have commented as follows:

*"Paragraph 99 of ODPM Circular 06/2005 states "it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances".*

*It is not considered that this development would qualify as an exceptional circumstance. The preliminary ecological appraisal was undertaken in November 2018. The applicant has had a year to undertake the further survey work that was recommended within the PEA Report, but this work has not been completed and consequently the survey season for reptiles and great crested newt has been missed.*

*There are numerous great crested newt records for the local area, including a record from 2011 that relates to a location only 50m from the site. It is considered highly likely that great*

*crested newt will be present on site, given the suitability of the grassland habitat, the proximity of the railway line and the proximity of a number of recent great crested newt records. The proposed development is highly likely to have an impact on great crested newt and therefore the necessary survey work, mitigation, compensation and enhancement measures and any necessary licensing measures need to be provided as part of a planning submission.*

*The application as it currently stands is not accompanied by sufficient information in order to demonstrate the presence or otherwise of protected species and the extent that they may be affected by the proposed development. In the absence of adequate information on European Protected Species, great crested newt, the Local Planning Authority is unable to discharge its duties in respect of the Habitats Regulations 2017 (as amended)".*

It is concluded (in this regard) that the application as submitted is not accompanied by sufficient information in to demonstrate the presence or otherwise of protected species and the extent that they may be affected by the proposed development. In the absence of adequate ecological information it is not possible to make an informed assessment of whether the proposal would have any adverse ecological impacts and whether the proposal would comply with relevant legislation and policies relating to biodiversity.

In regard to trees, the topographical survey shows a number of trees along the canal-side frontage of the site, outside of a fence line. Trees in similar positions are shown on the proposed site layout plan suggesting these may be retained, possibly because they grow on land outside of the applicants control. The trees are shown on the layout plan with canopies physically connecting, or even overlapping, parts of the building. Whilst it may be possible to construct the building and retain the trees, it would be likely, owing to their proximity to the building that the proposed occupants would apply pressure for these trees to be removed. It is also considered likely that such demands would be exacerbated as the nature of the occupants suggests they will spend more time at home during the daytime than would be the case for typical family housing. Given that the trees are in positions where they would obscure light and views to the only habitable windows of some rooms, this demand would be predictable and reasonable. On this basis, it is not considered realistic that these trees would be retained and if they were, it would be likely that they would result in adverse impacts on the amenity of the future occupants. Similarly the new tree planting indicatively proposed along the canal-side boundary would have limited space and as such would be restricted to either small species, or species which grow upright canopies with little spread, thus resulting in limited screening or softening benefits.

It is further noted that the proposal would require the removal of a section of native hedgerow, to allow access to the restaurant from the canal towpath. DWT acknowledge that in an ecological sense, this is an important hedgerow and that any removal should avoid the bird breeding season. They further recommend that the scheme includes the planting of sufficient new native hedgerow, to ensure that there is no net loss of hedgerow priority habitat.

Although matters of landscaping have been reserved, given the loss of various natural habitats that would occur as a result of the development, the Trust have also stated that it would need to be demonstrated that the proposal would result in a net gain for biodiversity.

Overall, the applicant has failed to demonstrate the following:

- Whether or not the development would result in an adverse ecological impact.
- Whether or not the proposal would result in a biodiversity netgain, and
- The likely loss of the boundary trees and the associated impacts on the character of the area in general and the conservation area more specifically.

In this regard the proposal would therefore be in conflict with policies BNE3 and BNE4 of the Local Plan, paragraphs 170(d) and 175 of the NPPF and the Habitats Regulations 2017 (as amended).



## Drainage and flood risk

Policy SD2(C) states that suitable measures to deal with surface water will be required on all sites to minimise the likelihood of new development increasing flood risk locally and that any development that could lead to increased flood risk should be managed through the incorporation of a Sustainable Drainage System, which mimics natural drainage patterns, unless this is not technically feasible, or where it can be demonstrated that ground conditions are unsuitable for such measures. SD3(A)(iii) seeks to ensure that new developments incorporate sustainable drainage schemes as a means of managing surface water to improve river quality and reduce pressure of drainage infrastructure.

The site is situated in flood zone 1, however due to its scale, a flood risk assessment has been required. Furthermore the site sits adjacent to the Trent and Dove Canal, which is known to flood. The LLFA initially commented that they were unable to provide a response on the proposal, on the basis of a lack of information. They have also raised that within the submitted FRA, it is stated that ground water is expected to be high on the site and that following further investigation, they can confirm that ground water is expected to be less than 3 metres below ground level, for at least part of the year, which could limit infiltration and affect the design of the attenuation tanks.

During the course of the application, additional information has been provided by the applicant and the LLFA has been re-consulted. In their most recent response however, concerns and queries have been maintained. These relate to the ground's suitability for infiltration and the lack of evidence to confirm where the additional storage volume would be attenuated, if infiltration was not feasible. Queries have also been raised in regards to the proposed outfall; if outfall to the Trent and Mersey Canal was denied by the Canal and Rivers Trust and evidence has been requested to illustrate the location of the outfall at Ivy Close.

On the basis of the information provided it is not considered that the applicant has adequately demonstrated that there would be suitable measures to deal with surface water or that a Sustainable Drainage System, which mimics natural drainage patterns would be feasible. On this basis the application would therefore be contrary to policies SD2 and SD3 of the Local Plan.

## Highways and parking

Policy INF2 of the Local Plan seeks to ensure that that travel generated by development has (a) no undue detrimental impact upon local amenity, the environment, highway safety; (b) that appropriate provision is made for safe and convenient access to and within the development; and (c) that development should include the appropriate level of parking provision.

Numerous concerns have been raised within the letters of representation on grounds of highway safety and parking issues, specifically stating that there is insufficient capacity within the existing highway network to cater of the additional trips created by this development and on grounds of lack of parking provision, which would place additional pressures on the already congested, Ivy Close. The Parish Council have also commissioned an independent Transport Statement, on which they have requested comments. The agent has been advised of this but has not provided any response in this regard and the County Highway Authority have raised no concerns on grounds of existing and future highway capacity issues.

The County Highway Authority initially raised concerns over the submission, and particularly in reference to the inadequacies of the proposed access. To address this, the application site was amended and the access design, revised. In response to the amended details, the County Highway Authority has raised no further issues, subject to the imposition of conditions. The conditions would secure details of construction compound and wheel cleaning facilities, parking and turning facilities, access layout, design and gradient. Notwithstanding the significant level objection raised by residents on this matter, it has been concluded that subject to the imposition of conditions, the proposal would not result in any harm in terms of highway safety. The development would therefore be in accordance with policy INF2 of the Local Plan.



## Other Issues

Pollution and Contaminated Land: The application has been accompanied by a Contaminated Land Risk Assessment. This document concludes that there are plausible pollutant linkages and significant uncertainties as a result of on and off-site sources. A moderate risk is evident and therefore an intrusive investigation is considered to be necessary. The EHO has considered the content of the report and has advised that the development shall not begin until a scheme to deal with the contamination of land/ground gas/controlled waters has been submitted to and approved in writing by the local planning authority. The detailed scheme can be secured by way of condition.

Air Quality: The EHO has requested a condition be imposed on any approval to secure electric vehicle charging points.

Developer Contributions: The CCG has requested a contribution of £11,904. This has been calculated on the basis of 62 dwellings. It has been stated that the contribution would ideally be invested in enhancing capacity/ infrastructure within existing local practices, such as Willington Surgery in this case. It is suggested that the additional facilities at Willington are likely to take the form of a first-floor extension. From a planning perspective, legislation identifies that there are legal tests for when a section 106 agreement can be utilised to secure developer contributions. These are set out in regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010, as amended (and within para. 204 of the NPPF). The contributions sought must address the specific mitigation required by the new development. To ensure this, contribution requests must meet the following tests, they must be:

1. Necessary to make the development acceptable in planning terms
2. Directly related to the development; and
3. Fairly and reasonably related in scale and kind to the development.

In this case it is considered that the contributions requested would meet the identified tests and therefore they could be imposed.

## Overall planning balance and conclusion

As required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990, development must be determined in accordance with the development plan, unless material considerations indicate otherwise. When the proposed development is considered against the relevant Local Plan Policies, it is considered to be in conflict within the following:

- Policies H1, BNE5, SDT1 and S1, as a result of its location and scale, rendering the development unacceptable in principle;
- Policies BNE1, BNE2, BNE4 and BNE10 as a consequence of its design, scale and layout. Resulting in harmful impacts on grounds of character and appearance and the heritage impacts associated with the conservation area and its setting;
- Policy SD1 as a result of unacceptable impacts on the residential amenity of future occupiers, on grounds of noise;
- Policies BNE3 and BNE4 on grounds that inadequate information has been provided to robustly assess impacts on biodiversity/ecology and trees; and
- Policies SD2 and SD3 on grounds that inadequate information has been provided to robustly assess drainage and flooding implications.

The referenced conflicts would result in a considerable level of harm in this case. As per section 38(6), however, it must be considered whether any material consideration could overcome this harm. The main benefit of this scheme would be directly derived from the specific form of development proposed, in that it would provide an affordable 'Extra Care' facility. However, whilst a general need for such a facility has been identified within the District, there are other more suitable and less constrained sites which could meet this need. On balance therefore this material consideration is not

considered to outweigh the considerable harm identified.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

## **Recommendation**

**REFUSE** permission for the following reasons:

1. By virtue of its significant quantum and scale and its countryside location, the development proposed would be unacceptable in principle and contrary to policies S1, E7 and H1 of the Local Plan Part 1, and policies BNE5 and SDT1 of the Local Plan Part 2.
2. By virtue of its design, scale and layout, the proposal would result in a development of considerable built form and mass which would be contrary to the established and predominantly undeveloped character of the area and the setting of the Trent and Mersey Canal Conservation Area. The development would therefore be contrary to policies BNE1, BNE2 and BNE4 of the Local Plan Part 1, policy BNE10 of the Local Plan Part 2 and paragraphs 127 (a, c and f), 193 and 194 of the NPPF.
3. On the basis of the specific type of accommodation proposed and by virtue of the design and layout of the buildings in close proximity to the railway line, the development would result in significantly harmful impacts on the residential amenity of future occupants by way of noise and disturbance. The development would therefore be contrary to policy SD1 of the Local Plan Part 1, paragraph 170(e) of the NPPF and the Noise Policy Statement for England and Planning Practice Guidance.
4. The applicant has failed to demonstrate the presence or otherwise of protected species and the extent by which they may be affected by the proposed development. In the absence of this information, it is not possible to make an informed assessment as to whether the proposal would have any adverse ecological impacts. The applicant has also failed to demonstrate that there would be a biodiversity net gain and failed to demonstrate the likely impacts in regards to the loss of trees on the site. The development would therefore be contrary to policies BNE3 and BNE4 of the Local Plan Part 1, policy BNE7 of the Local Plan Part 2, paragraphs 170(d) and 175 of the NPPF and the Habitats Regulations 2017 (as amended).
5. The applicant has failed to demonstrate that there would be suitable and feasible measures to manage surface water arising from the development or that a Sustainable Drainage System could be developed. In consequence, it cannot be concluded that the proposal would not result in harmful flooding implications both on and off the site. The development would therefore be contrary to policies SD2 and SD3 of the Local Plan Part 1 and paragraph 163 of the NPPF.

**Item** 1.3

**Ref. No.** [9/2019/0288](#)

**Valid Date** 18/03/2019

**Applicant:** Mr P Hammond

**Agent:** Mr Michael Congreve  
bi Design Architecture Ltd

**Proposal:** THE ERECTION OF AN EXTENSION TO PROVIDE ADDITIONAL BAR AREA AND COVERED EXTERNAL SEATING AT 11 THE GREEN WILLINGTON DERBY

**Ward:** Willington and Findern

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

This item is presented to Committee at the request of Cllr MacPherson as local concern has been expressed about a particular issue.

#### **Site Description**

The application site is the Dragon public house adjacent to the canal on The Green, Willington. The site forms a parcel of land between the Green, the Canal towpath and Canal Bridge and includes a collection of buildings which make up the public house and bed and breakfast accommodation and is enclosed by the beer garden to the north and the car park to the south. The Dragon itself is attached to a small terrace of residential dwellings to the east.

#### **Proposal**

This application is for the erection of an extension to provide additional bar area and covered external seating at the front of the public house (i.e. facing The Green to the south).

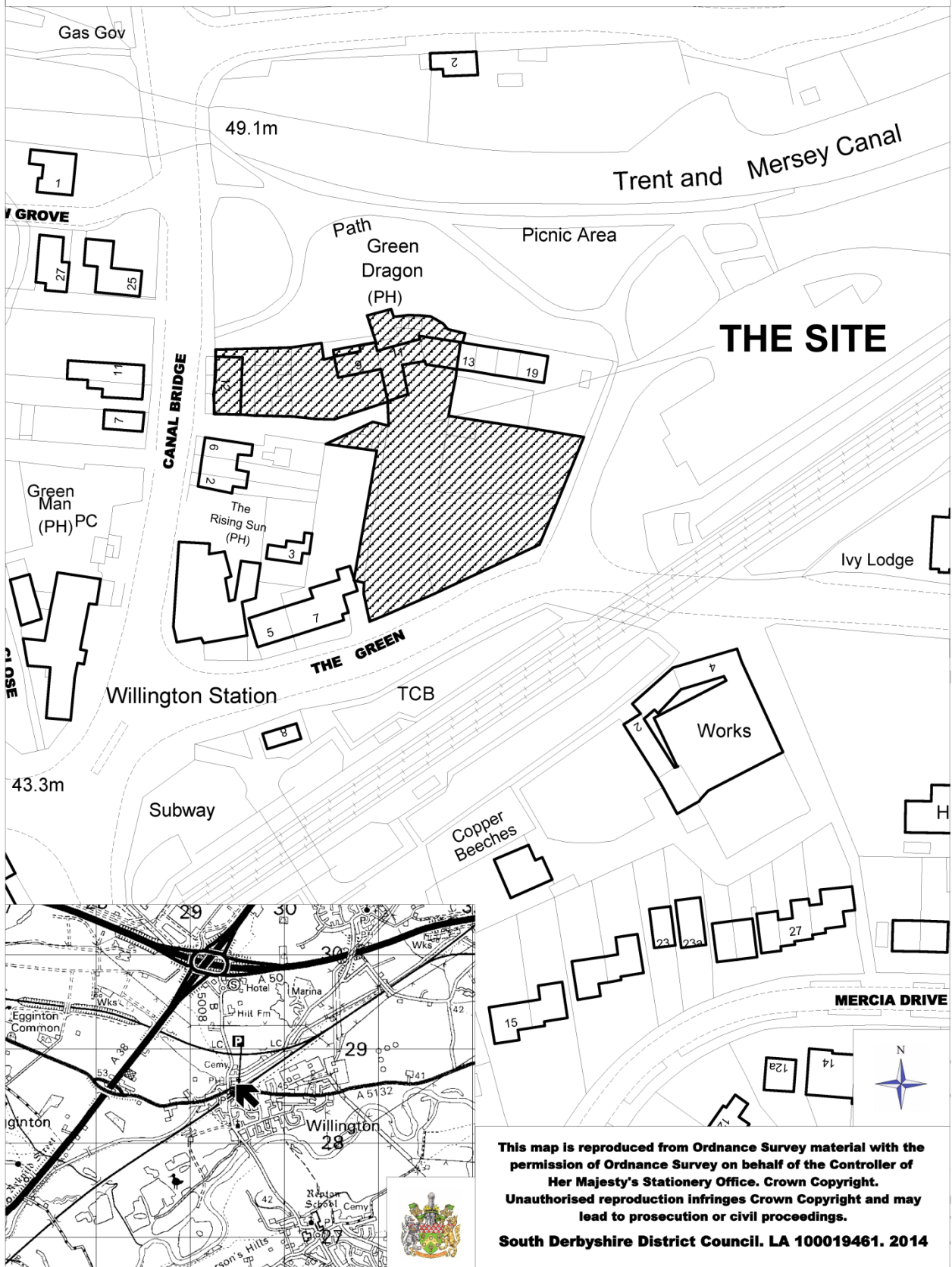
#### **Applicant's supporting information**

The applicant has submitted a Design and Access Statement in addition to the relevant plans and elevations of the proposed extension and outside seating area which attempts to demonstrate the suitability of the proposal.

#### **Planning History**

- |             |  |
|-------------|--|
| 9/2010/0982 | Alterations to existing public house to rearrange kitchen, toilets and living accommodation, provision of new access from canalside including new external eating/dining/drinking area, erection of a smoking shelter and alterations to car parking layout – Approved 23-12-10  |
| 9/2010/1012 | The demolition of rear toilet block and store, porch and bay window to allow for alterations – Granted 23-12-10  |
| 9/2011/0461 | Retrospective application for the erection of front & rear extensions and alterations to canal side ground levels to form new seating area. The erection of smoking shelter, fencing to rear seating area, external lighting, timber bin store, rebuilding of existing garage and installation of ventilation duct indicated – Approved 18-01-12 |
| 9/2012/1037 | The erection of a glazed verandah and retention of minor landscaping works – Approved 01-02-13   |

9/2019/0288 - 11 The Green, Willington, Derby DE65 6BP



9/2013/0627	Shed demolition, store extension, glazed screen, patio extension, wickerwork screening & kitchen/cellar extension – Approved 16-10-13
9/2013/0966	Change of use of existing dwelling to public house with extensions and alterations (retrospective in part) to provide for relocated kitchen, additional seating, external terrace and smoking shelter at ground floor, and offices, welfare facilities and 2 units of independent accommodation at first floor; along with conversion of existing garage to ancillary accommodation, conversion of existing prep room to micro-brewery, and relocation of vehicular access and reconfiguration of car parking – Approved 13-02-14
9/2015/0130	Change of use of land to extend beer garden, rep of retaining wall, formation of pathway and steps, and erection of gate on land to the canal side – Approved 22-04-15
9/2015/0375	Single storey extensions to the kitchen and restaurant areas – Approved 24-06-15
9/2017/0520	The retention of fixed external bar – Approved 11-07-17
9/2017/0649	The erection of an extension to the restaurant – Approved 09-08-17
9/2017/1357	The erection of a sun canopy – Approved 16/03/2018
9/2018/0449	The retention of fixed external bar (revised scheme to that approved under application ref. 9/2017/0520) – Refused 20-07-18
9/2018/0503	The retention of a sun canopy (revised scheme to that approved under permission ref. 9/2017/1357) Approved 03-07-18
9/2018/0959	The variation of conditions 1 & 3 of planning permission ref: 9/2018/0503 (relating to the retention of a sun canopy (revised scheme to that approved under permission ref. 9/2017/1357) – Approved 28-11-18
9/2018/1192	The retention of a sun canopy – Refused 24/12/2018
E/2018/00205	Enforcement notice requiring the removal of the structure - upheld on appeal Inspectors decision notice dated 3 October 2019 giving the applicant two months notice to remove the structure
9/2019/0699	The variation of condition 1 and removal of condition no. 4 of permission ref. 9/2018/0959 (relating to the erection of a sun canopy) – Pending
9/2019/0741	The variation of condition no. 1 of permission ref. 9/2018/0503 (relating to the retention of a sun canopy) – Withdrawn 18/12/2019

## Responses to Consultations

The Environmental Health Officer no objection to the proposal.

The County Highway Authority initially requested clarification that the proposal did not require the loss of car parking spaces to the front of the Dragon. Once clarification was provided that no loss of parking spaces is required the Highway Authority commented that, whilst concerns exist regarding the additional demand, it is not considered that an objection could be sustained.

No response has been received from the Trent and Mersey Canal Society.

Willington Parish Council notes that The Dragon has undergone significant development in recent years resulting in the *taking over several neighbouring properties to expand their business, which*



*includes sleeping accommodation, function rooms, a restaurant, kitchen area, additional bar areas and outdoor beer garden. The existing car park is not considered big enough to serve the current needs of the pub and vehicles can be found abandoned at every available location throughout the village centre - on double yellow lines, on grass verges and parked across pavements. Willington Parish Council has, for a number of years, raised concerns regarding parking to Derbyshire Police and Derbyshire County Council. These ongoing parking issues have a significant impact on the health, safety and welfare of the community as a whole and particularly those residents who live in close proximity to the pub. Road safety and traffic congestion are extremely serious issues within the village and Willington Parish Council has and will continue to lobby at both District and County levels in the interest of parishioners. Granting permission in these circumstances where the Councils policies INF2 and SD1 relating to parking and neighbour amenity including noise vibration air quality and traffic generation would be contrary to policy.*

Five letters of objection have been received, raising the following concerns:

- a) Additional floorspace will increase demand without addressing existing problems with parking.
- b) No additional parking to be provided.
- c) This proposal will reduce the number of spaces available within the Dragon car park.
- d) The number of cars parked both dangerously and inconsiderately in and around the village centre has led to near misses.
- e) The Willington Picnic site car park is always full.
- f) Building out towards the road will increase noise in the neighbourhood.
- g) More tables will bring more traffic to the areas that are already busy.
- h) The number of extensions and use of former dwellings as part of this business should be sufficient.
- i) The business has an enforcement order against them which they have completely ignored.
- j) Please ensure that access to nos 13, 15, 17 and 19 The Green is retained.

### **Relevant policy, guidance and/or legislation**

The relevant Development Plan policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), E7 (Rural Employment) SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE2 (Heritage Assets), INF2 (Sustainable Transport).
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE10 (Heritage), RTL1 (Retail Hierarchy).

### National Guidance

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

### Local Guidance

- South Derbyshire Design Guide SPD
- Trent and Mersey Canal Conservation Area Character Statement (CACS) 2013

### **Planning Considerations**

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

- Principle of development
- Design and Impact on the Character of the Conservation Area
- Highway Impact

## Planning Assessment

### Principle of development

Willington is a key service and as such Policy RTL1 states that development within use classes A1, A2, A3, A4 and A5 will be permitted provided that:

- i) It is appropriate with the scale and function of the centre; and*
- ii) it would not lead to unsustainable trip generation or undermine the vitality and viability of a neighbouring centre; and*
- iii) it does not adversely impact on neighbour amenities.*

The proposal seeks to provide additional internal floorspace to an existing public house which has previously had several additions including the change of use of domestic dwellings to create additional floorspace for expansion of the bar, restaurant and kitchen space as well as providing bed and breakfast accommodation. Whilst the pub has been incrementally extended it is not at a size where the proposal is considered to lead to unsustainable trip generation. Indeed, Willington is a highly sustainable location being a key service village and served by bus and rail services and is a growing settlement in its own right. This modest proposal will provide additional internal space within the bar area and, following a reduction in the size of the proposal, no longer means the reduction in number of existing parking spaces within the pub car park. The proposal is therefore considered to comply with S2 and RTL1 of the Local Plan.

### Design and impact on the character of the Conservation Area

The initial design of the proposal showed the extension protruding well beyond the main frontage of the pub and also saw the outdoor seating area encroach onto the car park with the potential loss of two car parking spaces. The Conservation Officer was concerned that this would have an adverse impact on the conservation area. An amended design however has been submitted significantly reducing the size of the proposal to approximately a third of the originally proposed additional internal floorspace. The front elevation now runs parallel with the rest of the frontage, the ridge extending in line with a previous extension to the west of the bay window, the new floorspace filling in the south eastern corner and reconfiguring the eastern elevation providing a more balanced frontage. The Conservation Officer comments that these plans represent an improvement upon what had originally been proposed and considers the revised proposals to be satisfactory. The proposal therefore now complies with BNE1, BNE2 and BNE10.

### Highway Impact

As noted above, the proposal provides a modest increase in overall floorspace of the pub but it does not impact on existing car parking provision. Whilst the proposal does not provide additional parking, and the Highway Authority has some concerns regarding additional demand, it states that it is considered that an objection could not be sustained. These comments were received based on the original proposal which has now been significantly reduced. The proposal is therefore considered to comply with INF2.

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

## Recommendation

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

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

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

2. The development hereby permitted shall be carried out in accordance with drawing ref. 31E, received on 23 January 2020, unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

3. Notwithstanding the submitted details, the eaves and ridge treatments, the rainwater goods and their mounting brackets, as well as the external facing materials used in the development shall match those used in the existing building and once provided these shall be retained as such throughout the lifetime of the development.

Reason: In the interests of visual amenity.

4. Prior to their installation detailed drawings of cross sections of the roof system, windows and doors to a scale of 1:20, the materials of the frames, type of glazing and their colour and finish, shall have been submitted to, and approved in writing by, the Local Planning Authority and the works shall then be carried out in accordance with the approved details and these features shall be retained as such throughout the lifetime of the development.

Reason: In the interests of visual amenity.

## **2. Planning and other Appeals**

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

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Outcome</b>	<b>Decision level</b>
9/2019/0583	The Castle Way, Willington	Willington and Findern	Allowed	Committee



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## Appeal Decision

Site visit made on 17 December 2019

by **S J Lee BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5<sup>th</sup> February 2020

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**Appeal Ref: APP/F1040/W/19/3239004**

**The Castle Way, Willington, Derbyshire DE65 6BW**

- 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 Ben Golding of G. D Golding Skip Hire against the decision of South Derbyshire District Council.
  - The application Ref 9/2019/0583, dated 24 May 2019, was refused by notice dated 7 August 2019.
  - The development proposed is development of a B1(c)/B8 unit.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the erection of a light industrial and storage and distribution unit (use classes B1(c) and B8) at The Castle Way, Willington, Derbyshire DE65 6BW in accordance with the terms of the application, Ref 9/2019/0583, dated 25 May 2019, subject to the following conditions in the attached schedule.

### Preliminary Matters

2. The description of development given in the appeal form differs slightly from that on the original application. I have used the revised description in my formal decision above as it provides a full and accurate description of the development.

### Main Issue

3. The main issue is the effect of the development on the character and appearance of the area.

### Reasons

4. The appeal relates to part of a predominantly vacant and cleared plot. Planning permission exists on an adjacent part of the wider site for a skip hire business. This did not appear to be operational at the time of my visit. The wider site also contains a water pumping station. The site sits at the junction between The Castle Way and A38 dual carriageway which continues along the western boundary of the site. The Castle Way runs to the north and east. The A5132 runs to the south. On the opposite corner to the site is a petrol filling station and a diner. A short row of semi-detached and detached dwellings run from the petrol station along The Castle Way. These are well separated from any other dwellings and the start of the main built form of Willington.



5. On the opposite side of the dual carriageway is another petrol filling station and, directly opposite the site, is a car auctioneer. This contains a large commercial building set back from the road and a substantial area of hardstanding where cars are prominently stored.
6. Although set in a wider context of open countryside, the area around the highway junction has a distinctly different character. The site itself is physically and visually contained by roads and landscaping, with little visibility from medium and longer distances. The site is clearly separate and distinct from open fields which characterise the area beyond the junction and toward Willington. As such, the site does not make a positive contribution to the rural open countryside character of the wider area.
7. The building would be located at the western end of the site, nearest to the dual carriageway. Due to its height, it would be visible on the approaches to the A38 along The Castle Way and from some nearby dwellings. There would also be fleeting views from passing traffic along the A38, including through gaps in the landscaping. However, the building would generally be seen in the context of the road infrastructure around the site and the nearby commercial uses. I am also mindful of the permission which exists on the remainder of the site for another form of commercial activity. The implementation of this would also alter the character and appearance of the site to some extent.
8. The development would be of a simple functional design typical of many buildings of this type of use. It would also differ in design to other buildings in the vicinity of the site. Nevertheless, this does not mean it would be harmful to local character in principle. The other commercial buildings are similarly of simple designs which reflect their functions. In this context, and having regard to the immediate character of the area, I am satisfied that a building of this use and design would not be incongruous in this location.
9. The tightly constrained and self-contained nature of the site within the road network also ensures that any visual impact would be localised in nature. Further mitigation could also be secured by condition for additional landscaping. As a result, I consider that the impact on the wider countryside character of the area would be minimal.
10. In coming to this conclusion, I have had regard to the effect on the private views of nearby residents. The appearance of the site would undoubtedly change. However, change does not always equate to harm. Similarly, being able to see a building does not mean it is unacceptable in principle. Overall, I am satisfied that the development would not result in unacceptable harm to the character and appearance of the area. Accordingly, there would be no conflict with Policy BNE1 of the South Derbyshire Local Plan – Part 1 (LP1)(2016), the South Derbyshire Design Guide (2017) or paragraph 127 of the National Planning Policy Framework. These seek, amongst other things, to ensure all development is well designed and responds to local context.

#### **Other Matters**

11. The development would utilise the existing access into the site. There would clearly be some intensification in the use of this access, but no objections were raised by the Council, the Highway Authority or Highways England. I consider this to be a material consideration of significant importance. There is good visibility in both directions from the access and sufficient distance between the

site entrance and the junction with the A38 to ensure there should be no undue risk.

12. I have noted the concerns and evidence provided by local residents. However, there is nothing to suggest that any accidents referred to related to the use of the existing access to the site or that the junction with the A38 is inherently unsafe. There is therefore no substantive evidence to suggest the development would lead to unacceptable safety risks.
13. The Highway Authority's concerns over pedestrian safety were addressed through the submission of revised plans during the consideration of the application. I therefore have no concerns over pedestrian safety.
14. The Council raised no objections on the grounds of noise or disturbance. I have seen nothing that would lead me to a different conclusion. Uses within the B1 use class are those which can be carried out in a residential area without detriment to its amenity. The Council has also suggested conditions on the hours of operation for the units if in B8 use. This should provide a degree of comfort. The development would likely lead to an increase in comings and goings and use of the access. However, it is likely that any additional noise from this source would be subsumed within existing noise levels associated with the A38 and other passing traffic. With appropriate conditions in place, I am not therefore persuaded that the development would result in a harmful increase in noise or disturbance.
15. The development would be a sufficient distance from any dwelling to ensure it would not have an overbearing impact on outlook. For the same reason, there would be no tangible impacts on privacy or on daylight or sunlight. I have noted Highways England's comments in relation to drainage matters. These can be adequately addressed by condition. There is no other substantive evidence to suggest the site would be affected by flooding or that the development would cause or exacerbate problems elsewhere. In addition, there is no reason to assume that the operation of the units would result in harm in terms of air pollution.
16. I note from the officer report that the Council concluded the development would not be fully compliant with policies E2 and E7 of LP1. These control the location of employment related development in the countryside. The development would not meet the specific locational requirements of Policy E2. Although I am satisfied that criteria ii) – v) of Policy E7 are met, a specific business case for the development has not been submitted. There is therefore some conflict with this policy. Notwithstanding this, I am mindful that the Council did not object to the development on locational grounds and neither Policy E2 nor Policy E7 appear on the decision notice.
17. The appellant has submitted evidence, undisputed by the Council, which suggests there is a need for additional employment uses in the area. The development would help to meet this need. It would also provide additional job opportunities in the rural area. There would therefore be clear economic and social benefits associated with the development. On balance, I therefore concur with the view that the benefits of development, and lack of any additional harm, are sufficient to outweigh any conflict with policies E2 and E7 that may exist.

18. A number of concerns raised by residents relate to the earlier permission for the skip hire business and are thus outside the scope of this appeal.

### **Conditions**

19. I have considered the suggested conditions from the Council in accordance with the Planning Practice Guidance (PPG). In addition to the standard condition which limits the lifespan of the planning permission, I have imposed a condition specifying the relevant drawings as this provides certainty.
20. I have imposed conditions requiring the approval of materials and a landscaping scheme in the interests of the character and appearance of the area. For the same reason, I have also imposed a condition limiting the height at which goods might be stored. In light of the reasons given for the condition, I have amended the suggested wording to make it clear that this relates only to areas outside the building.
21. I have imposed a condition requiring the laying out of the parking and manoeuvring spaces in the interests of highway safety. I have amended the suggested wording to remove unnecessary reference to the General Permitted Development Order. I have imposed the suggested condition limiting the operation of any B8 unit in the interests of the living conditions of nearby residents.
22. A condition is necessary to require the approval of a scheme to address surface water drainage. This is by necessity a pre-commencement condition to ensure the development is carried out in accordance with the approved details. The appellant has confirmed their acceptance of this condition. I have amended the Council's suggested wording to remove reference to Highways England. It is not necessary for the condition to refer to this organisation.
23. I have not imposed a condition removing permitted development rights to use the building for any other purpose. Considering the changes of use allowed under such rights, I do not consider that sufficient evidence has been provided to demonstrate that such a condition would be necessary.

### **Conclusion**

24. For the reasons given above I conclude that the appeal should be allowed.

*S J Lee*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: VC0034 101 Rev B, C9881.PL.200, C9881.PL.120 Rev D.
- 3) Prior to their incorporation into the building hereby approved, details and/or samples of the facing materials to be used shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be constructed using the approved facing materials.
- 4) Prior to the occupation of the unit a scheme of soft landscaping shall be submitted to and approved in writing by the local planning authority. All planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of the unit or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period.
- 5) Prior to the occupation of the building hereby permitted the parking and manoeuvring area shall be laid out in accordance with the approved plans and such spaces shall be maintained throughout the life of the development free of any impediment to their designated use as such.
- 6) No items/materials/containers shall be stored at a height greater than 2 metres above current ground level in any part of the site outside the building hereby permitted.
- 7) Any B8 operated from the building hereby approved shall not take place other than between 0700 and 1000 Mondays to Fridays, and between 0800 and 1300 on Saturdays, Sundays, public holidays and bank holidays.
- 8) No laying of services, creation of hard surfaces or erection of a building shall commence until a scheme for the drainage of surface water from the site has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out and maintained thereafter in conformity with the approved details.

<b>REPORT TO:</b>	<b>Planning Committee</b>	<b>AGENDA ITEM: 5</b>
<b>DATE OF MEETING:</b>	<b>25<sup>th</sup> February 2020</b>	<b>CATEGORY: Delegated</b>
<b>REPORT FROM:</b>	<b>Strategic Director (Service Delivery)</b>	<b>OPEN</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>Tom Beardsmore (01283) 595821</b> <a href="mailto:thomas.beardsmore@southderbyshire.gov.uk">thomas.beardsmore@southderbyshire.gov.uk</a>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>Tree Preservation Order No. 517 – Land at Cadley Hill Road, Swadlincote and Swadlincote Lane, Castle Gresley</b>	<b>REF:</b>
<b>WARD(S) AFFECTED:</b>	<b>Church Gresley</b>	<b>TERMS OF REFERENCE:</b>

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## **1.0 Recommendations**

- 1.1 That this Tree Preservation Order (TPO) should be confirmed with modifications.

## **2.0 Purpose of Report**

- 2.1 To consider the confirmation of this TPO.

## **3.0 Detail**

- 3.1 The TPO was made on 18 October 2019 in respect of multiple trees situated on land at the corner of Cadley Hill Road and Swadlincote Lane ('the new Order').
- 3.2 A previous TPO was made in 18 October 2012 (TPO No. 367 – 'the first Order') as the site was the subject of ongoing enquiries relating to its re-development for residential purposes. The trees present on site were classed as numerous and in good health as well as having a high amenity value. It was considered expedient to create a TPO due to the potential threat the trees were under.
- 3.3 Following the consultation process on the first Order, modifications were considered necessary and before its confirmation the matter was brought to the Planning Committee on 5 March 2013. However, despite subsequent correspondence indicating that the Order was confirmed within time, it has subsequently been discovered there is some doubt that it was properly confirmed. As the site is now being developed and some trees have already been removed under that permission, the new Order, subject of this report, was considered to be expedient so to reaffirm the original protection as well as extend it to trees that surround the site.
- 3.4 Since then, a copy of the confirmed first Order has been submitted as a supporting document to an objection. Following legal advice, it is considered that the first Order still has 'status' and consequently the new TPO should be amended to ensure that the same trees are not unnecessarily protected across multiple Orders.



3.5 The one letter of objection to the making of the Order relates to ‘tree group A1’, and raises the following points:

- the statement for the reasons for making the order are misleading in suggesting that the October 2012 Provisional TPO was not progressed and presumably that it expired six months after the date upon which it was made;
- the grounds for the new Order also state that “there is no evidence to suggest that the TPO was confirmed”, which is considered incorrect as a copy of the confirmed Order has been enclosed as proof;
- the grounds stated in the new Order refer to numerous trees having already been removed and the need for a new Order to protect the trees existing on site. The new Order goes beyond what is necessary to protect trees on the development site and includes variations to the effect of the first Order insofar as it relates to retained land;
- those amendments fall outside the reasons and to the extent that they are considered to be necessitated by the removal of trees on the development site, they arise only by reason of the Council’s own consent to the removal of those trees; and
- variations to the requirements of the first Order insofar as they relate to retained land are both illogical and unreasonable.

3.6 In answer to the comments made, officers have the following response:

- at the time of making the new Order in October 2019 there was uncertainty as to the status of TPO367, with no evidence held either digitally or physically that the Order was confirmed;
- the letter with objections to the new Order included a scanned version of the confirmed first Order, and as such there is now evidence in hand that the trees on site were permanently protected;
- as a result of this evidence a number of trees can be omitted before confirming TPO517, so that they are not protected twice;
- despite this evidence, there is still justification for the new Order as further trees within and adjacent to the site require protection, having since become more significant specimens by passage of time or by their now collective function with others both on and off the site;
- there is also sufficient justification to progress with area A1 – a large group of mature trees. These trees directly adjoin the development site with potential for branches to overhang the grounds of the newly built properties. Without protection from an Order there is heightened potential for these overhanging branches/limbs to be removed without control negatively impacting on the long-term health and amenity value of these trees; and
- the group of trees identified within area A1 offer a significant level of outstanding amenity value from the public realm and together with other trees across the development site form a significant wildlife habitat, including habitat connectivity, worthy of protection. In addition, they provide a significant break to the built form within this area and were significant in considering the appropriateness of the development in the first instance.

#### **4.0 Planning Assessment**

4.1 It is expedient in the interests of amenity and habitat value to make the trees the subject of a TPO in accordance with advice set out in Planning Practice Guidance. As a result

of receiving evidence that the first Order was confirmed, the following trees within TPO517 can be omitted before confirmation as they are already protected: T1, T2, T3, T4, T5, T6, T7, T8, T9, T10, T11, T16, T17, T18, T19, T20, T21 and T22.

## **5.0 Conclusions**

5.1 It is expedient in the interests of amenity to preserve.

## **6.0 Financial Implications**

6.1 None.

## **7.0 Corporate Implications**

7.1 Protecting important trees contributes towards the Corporate Plan themes of enhancing biodiversity across the District, tackling climate change and enhancing the attractiveness of South Derbyshire.

## **8.0 Community Implications**

8.1 Trees that are protected for their good visual amenity value enhance the environment and character of an area and therefore are of community benefit for existing and future residents helping to achieve the vision for the Vibrant Communities theme of the Sustainable Community Strategy.

## **9.0 Background Information**

- a. 18 October 2019: Tree Preservation Order No. 517
- b. 13 November 2019: Letter of objection with copy of TPO367