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Our Ref

Your Ref

Date: 22 June 2020

Dear Councillor,

Planning Committee

A Meeting of the **Planning Committee** will be a **Virtual Committee**, held via Microsoft Teams on **Tuesday, 30 June 2020 at 17:00**. 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 - 120**
- 5** TREE PRESERVATION ORDER 519 LAND NORTH OF SNELSMOOR LANE, BOULTON MOOR, DERBY **121 - 123**
- 6** TREE PRESERVATION ORDER 526 PRIMAVERA, TRENT LANE, NEWTON SOLNEY **124 - 125**

Exclusion of the Public and Press:

- 7** 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.
- 8** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.
Details
- 9** LAND AT SK2913 7405, ACRESFORD ROAD, NETHERSEAL, SWADLINCOTE, DERBYSHIRE

Report of the Strategic Director (Service Delivery)

Section 1: [Planning Applications](#)

Section 2: [Appeals](#)

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

1. Planning Applications

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

Reference	Item	Place	Ward	Page
DMPA/2019/0931	1.1	Woodville	Woodville	6
9/2019/0313	1.2	Kings Newton	Melbourne	49
DMPA/2019/1431	1.3	Barrow upon Trent	Aston	62
9/2019/0699	1.4	Willington	Willington and Findern	86
DMPA/2019/1177	1.5	Twyford and Stenson	Stenson	93

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

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

Glossary of terms

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

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

Item No. 1.1

Ref. No. [DMPA/2019/0931](#)

Valid date: 28/08/2019

Applicant: Harworth Group PLC & BeePart Ltd **Agent:** Steve Lewis-Roberts
Pegasus Planning Group

Proposal: Outline application with all matters reserved, except for part access into the site from Moira Road, for the residential development of up to 300 dwellings, a local centre comprising a 1,600sqm food store (Class A1 Use), 700sqm restaurant/fast food (Class A3 Use) and 550sqm pub (Class A4 Use), together with employment land consisting of 2,000sqm Class B1(b) research and development and/or B1(c) light industrial uses, 4,000sqm Class B2 general industrial uses and 8,000sqm Class B8 storage and distribution uses, together with access from the Woodville Regeneration Route (to be delivered by others), and public open space, landscaping and associated drainage infrastructure on land north of Occupation Lane (Woodville Regeneration Area), Woodville, Swadlincote

Ward: Woodville

Reason for committee determination

This item is reported to Planning Committee as it is a major application not in accordance with the Development Plan and subject to more than 4 objections.

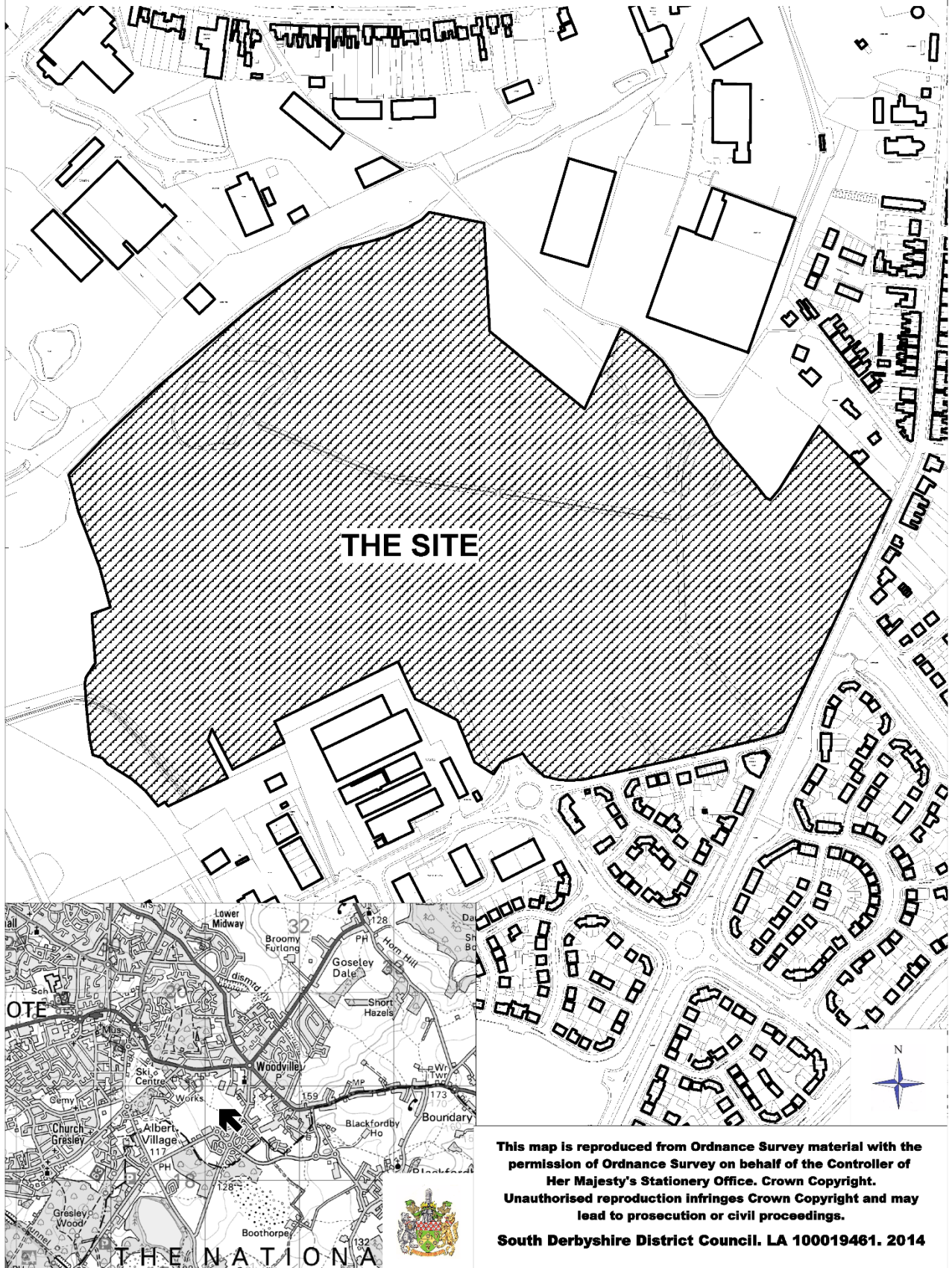
Site Description

The site comprises some 21.5ha of open land associated with the former Dyson coal and clay workings site, and is located to the south-west of Woodville and south-east of Swadlincote town centre. The site has previously been used for opencast mining, which expanded over around a 100 year period. In 1990 the entire western extent of the site was being quarried and the eastern portion used to store spoil. The opencast mine appears to have been backfilled shortly after 1990 and was subsequently returned to scrubland.

The site consists of a single field parcel, which is bounded on all sides by both commercial and residential development, as well as some local roads (Moira Road and a stopped up section of Occupation Lane). There is an area of woodland located to the north-eastern boundary of the site, some of which is outside the site boundary, and a pond on the north-western edge. A truncated section of hedgerow emerges from the southern boundary for a short distance, with other isolated hedgerow and groups of trees on the site boundaries. The site generally slopes down from the east to the west, but with undulations throughout, and consists of made ground having been backfilled following clay and coal extraction. A watercourse runs east to west through the middle of the site, feeding the pond on the north-western boundary. A Public Right of Way (PRoW) crosses the land from Moira Road to the south-east to Kiln Way to the north-west (Woodville Footpath No. 5), although the route is obstructed off-site at the latter location. A further PRoW spurs northwards halfway along this route (Woodville Footpath No. 6) connecting to a further path between Vicarage Road and the A514 Swadlincote Road (Woodville Footpaths Nos. 4 and 18). The site adjoins existing residential and employment development off the A514 Swadlincote Road and Woodhouse Street/Kiln Way to the north, existing housing off Moira Road to the east, employment development off Bridge Street/John Street to the west, and residential dwellings and employment development off Occupation Lane/Hepworth Road to the south.

The site falls within the settlement confines for Woodville and the wider Swadlincote Urban Area.

DMPA/2019/0931 - Land north of Occupation Lane (Woodville Regeneration Area), Woodville, Swadlincote DE11 8EX



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The proposal

Phase 2 of the Woodville to Swadlincote Regeneration Route (WSRR) is to intersect the site, running broadly north to south through its middle, from Kiln Way to the Occupation Lane/Hepworth Road roundabout. It is proposed to construct 300 residential units in total, split across the land to the eastern side of the WSRR, 75 of which would be constructed under phase 1 and accessed from Moira Road via means of a new simple priority junction. This element of the proposal is the only section where the detail of access is to be considered. A further 225 residential units are intended to be delivered under phase 2 which would be constructed on the remaining land, accessed from two roundabouts along the WSRR. Areas of public open space (POS) including a play area, woodland planting and drainage infrastructure would compliment these phases.

To the west of the WSRR, 14,000 sqm employment floorspace comprising 2,000 sqm of B1(b) research and development and B1(c) light industrial units; 4,000 sqm of B2 general industrial units and 8,000 sqm of B8 storage and distribution units would be delivered under phase 2. The proposals also include a local centre with general amenities comprised of a 1,600 sqm A1 food store, 700 sqm A3 restaurant and a 550 sqm A4 public house. These proposals also include further POS and drainage basins, bringing the wider site POS and drainage infrastructure total to some 5.27 hectares.

Matters of access, layout, scale, appearance and landscaping are reserved for later consideration with the exception of access in relation to Residential Phase 1.

Applicant's supporting information

A Planning Statement sets out Swadlincote, including Woodville, is a sustainable location for growth being at the top of the settlement hierarchy under Policy H1, which sets out the distribution of new development. It is highlighted that Policy E6 allocates the site for 12ha of employment development and up to 150 new dwellings. The evidence base that supports the Local Plan allocation demonstrates that this is a sustainable and suitable site for housing and employment development, and the site was allocated in the context of the requirement for the Council to deliver at least 12,618 dwellings over the Plan period. The development proposals reflect the mix of uses specified in Policy E6, however it includes an increased number of dwellings together with supporting local centre uses. This is necessary to ensure that the site is deliverable, considering the remediation works required. The mix of uses has been carefully considered to ensure that a comprehensive, deliverable and sustainable development is delivered. The detailed design and layout of the proposed development would follow at a later date; however, the illustrative masterplan demonstrates how the layout could be configured to deliver a high quality and attractive mixed use development. It is argued that the development would deliver significant economic benefits, and the combination of the WSRR with these proposals would unlock significant economic growth in the Swadlincote and Woodville area. It is held that there are no technical constraints that would prevent the development of this site.

An Economic Benefits Statement claims construction of the new homes could support up to 162 temporary jobs per annum over a five-year build period, and the local centre and employment floorspace could support up to 69 temporary jobs per annum during the five-year build period. In total, the construction phase could generate £61.3million of gross value added (GVA) over the five years. During the operational stage, the proposed local centre and employment floorspace would support around 582 full-time equivalent (FTE) jobs, generating an estimated £121.8 million of additional GVA over a ten-year period. Around 370 economically active and employed residents are estimated to live on site and, if residents represent a similar employment profile to the existing working age population of South Derbyshire, 45.5% could be working in higher value occupations. The households are estimated to generate expenditure in the region of £8.3million per annum, whilst residents would spend a total of £1.5 million to make their houses 'feel like home' within 18 months of moving in. It is stated that the new homes could generate £513,000 per annum in additional Council Tax revenue and a potential New Homes Bonus of £1.6 million for the Council and £401,000 for Derbyshire County Council.

A Consultation Statement documents how the applicant has engaged with the local community and other key stakeholders, prior to making the application. A leaflet was dispatched to some 2,000 homes and businesses in the vicinity of the site in May 2019, and also placed at Woodville Library and Information Centre, and at Woodville Methodist Church. A website was also set up providing information about the emerging proposals and the consultation process, and inviting feedback. Posters were distributed at key focal points in Woodville during May 2019, providing details on the time and location of the public exhibition later that month. Pre-application discussions were also held with officers at the District and County Councils, whilst a presentation to local councillors was held on in January 2019 in order to ensure they were aware of the emerging proposals for the site and to seek feedback at an early stage. Of the 34 comments received 'Transport' was the most frequent issue raised, followed by 'Facilities and Services', and 'Planning and Urban Design' and 'Environment'. The Statement details these concerns and explains how the scheme would address these as far as practicable.

The Design and Access Statement (DAS) sets out the development would create housing choice, new areas for employment, leisure and new amenity spaces for the existing and new community whilst improving public access across the site and to the wider pedestrian network. The masterplan is founded on best practice in urban design, community integration and sustainable development alongside drawing on national and local best practice and guidance. With strong links to the wider area, it aims to create a development for the 21st century whilst reflecting and connecting the desirable elements of the local vernacular. Development would accord with the principles of high quality design and best practice to create a townscape that is varied and sympathetic to its environment. The aim must be to achieve a development with a strong identity and distinct sense of place whilst at the same time integrating with the existing community. The proposals would be achieved in the following way:

- The creation of an integrated residential community with a sensitive relationship to the existing settlement;
- Creating new employment areas and an attractive local centre for residents and the wider community;
- The creation of the final phase of new roadway, bypassing Woodville town centre to relieve existing traffic burden and the creation of safe pedestrian routes through the development;
- Providing a development that is well connected, readily understood and easily navigated;
- The creation of a strong landscape structure that responds to the local area and retains and enhances existing landscape features within the site;
- Providing a range of dwelling sizes, types and tenures that offers an accessible and acceptable choice of lifestyles; and
- Promoting the objectives of sustainable development through layout and design.

A Retail Statement assesses the proposed main town centre uses against the relevant sequential and impact tests. A detailed sequential assessment has been prepared assessing a range of in, edge and out-of centre sites within the primary catchment area as agreed through pre-application discussions. A total of 12 sites were assessed and all are demonstrated to be unsuitable and/or unavailable to accommodate the proposed local centre given their size, the presence of active uses and site-specific issues. Given this, the application site is the most sequentially preferable location capable of accommodating the proposed development. To inform the assessment of impact, detailed health checks have been carried out for Woodville local centre and Swadlincote town centre, building upon surveys carried out as part of the 2015 Town Centre Retail Study. These health checks demonstrate that both centres are vital and viable, with Swadlincote town centre having very low vacancy rates, less than half of national averages, and a strong mix of national and independent retailers. The proposed foodstore would provide a smaller main food shopping facility serving the wider proposed development as well as pass-by traffic, and those living and working in Woodville as well as the southern and eastern areas of Swadlincote and the surrounding rural area. Given this, the foodstore would draw its trade from existing main foodstores within Swadlincote and Ashby-de-la Zouch, assuming a worst-case scenario in respect of potential turnover and trade diversion. Given the limited trade diversion from the town centres and their strong trading

performance, the development would not result in a significant adverse impact on any defined centre. No planned or committed investment was identified that the proposed development would have an impact on. The statement is therefore considered to demonstrate that the proposal accords with the relevant impact and sequential tests as set out in national and local policy.

A Transport Assessment (TA) outlines the intention to phase the residential development in a way that allows the units served from Moira Road to be built out first, without the need for the full operation of the WSRR. The second phase would include the full build out of the proposed development (225) additional dwellings and circa 17,000 sqm of commercial/employment uses, as well as the WSRR which would need to be delivered in order to serve the site. The scope of the document was agreed with the County Highway Authority and the development proposals accord with national and local planning transport planning policy. The site is said to be in a sustainable location with good pedestrian access to local community facilities, goods and services. There is also access to local public transport services. It is anticipated that the sustainable aspects of the location would be enhanced through the Framework Travel Plan that accompanies the application. Three access points are proposed to serve the development; one on Moira Road would be built to access Phase 1 dwellings (which would be the only entry/egress points for these properties as Phase 1 and 2 would not be internally linked), and two on the proposed WSRR (two new roundabouts). The proposed development as a whole is anticipated to generate in the region of 243 and 299 two-way trips in the AM and PM peak hour periods respectively. Phase 1 with an access from Moira Road can be developed with a negligible highway impact. A total of 10 junctions in the area, as well as the site access junctions, have been modelled in order to quantify the impact of the total development trips on the surrounding network:

- Junction 1: The Clock Roundabout;
- Junction 2: Hepworth Road/Ashby Road/High Street signalised junction;
- Junction 3: Hepworth Road/Forest Road roundabout;
- Junction 4: Main Street/Occupation Lane/Mushroom Lane/Occupation Road (Albert Village) crossroads;
- Junction 5: Moira Road/Hepworth Road roundabout;
- Junction 6: Moira Road Phase 1 access road;
- Junction 7: Occupation Lane/Hepworth Road/Regeneration Link roundabout;
- Junctions 8 & 9: Regeneration Link Phase 2 access roundabouts (North and South); and
- Junction 10: Swadlincote Road/Regeneration Link/Derby Road proposed roundabout.

Junctions 1 and 2 were found to operate close to/at capacity with the addition of phase 2 traffic, whilst junction 4 was also observed to be close to capacity. The impact on the Clock Roundabout is not considered to be 'severe' as there would be a net reduction in vehicles passing through the junction following the development of the WSRR. Furthermore, the benefits of the Broomy Farm spine road which would reassign a number of vehicles away from the junction are yet to be observed and have not been accounted for within this modelling. The Hepworth Road/Ashby Road/High Street signalised junction is forecast to operate at its practical reserve capacity at base levels following the reassignment of traffic from the A514/A511 corridor to the WSRR. The impact is not considered severe or require mitigation. The Albert Village crossroads is forecast to operate with approximately 50% spare capacity during the AM in all scenarios, while during the PM peak the capacity is closer to practical capacity. Again, the impact is not considered severe or require mitigation.

A Framework Travel Plan considers potential measures that could be implemented to affect modal choice, and a management strategy for producing a full Travel Plan in the future. The Travel Plan considers existing situation accessibility by sustainable modes of travel plan initiatives, including the production of resident and staff welcome packs, measures to encourage walking, cycling, use of public transport, car sharing and reduce the need to travel (for the commercial units), before looking at targets, performance indicators, monitoring and review.

A Flood Risk Assessment (FRA) considers the risk of flooding to the site from rivers, with no flooding concern noted on the EA maps. There are several drains around the site used for agricultural and

land drainage purposes. These are not identified as having issues with fluvial flooding. The main types of flooding that may apply to the site are surface water flooding to and from the site. Most of the flood risk is located around the existing land drain and the landowner should ensure that this is maintained and kept clear of any blockage. The proposed site levels in this area should not be any lower than what is currently constructed. There is also a region along the northern boundary of the site which is at high risk from surface water flooding. It is assumed this is where the current highway drainage from the site and the industrial estate to the north of the site discharges to. Works to this area of the site should not involve lowering the ground surface below the existing ground level. It is recommended that proposed external ground levels across the site should fall away from the proposed buildings in a manner which does not create low points where water might collect unintentionally. The current site appears to drain into the existing brook, and this fall should be maintained to ensure sufficient run off. Providing the above measures are implemented the flooding risk to the development site from surface water is therefore considered low post development.

The Sustainable Drainage System (SuDS) report contained as an appendix states that there are very significant constraints indicated for infiltration SuDS. There is a very significant potential for one or more hazards associated with infiltration. It reviews surface water discharge options, and it is proposed that the surface water would be directed towards the 3 surface water ponds located within the proposed site boundary. Attenuation would be provided where required on site. To minimise localised flooding, the drainage design should ensure that gullies, drainage channels and drains are all suitably sized to accommodate peak storm flows. Also, all inlet features should have suitably sized sumps to catch silts and should be subject to a documented routine maintenance and cleansing regime. Any surface water should be constrained within the site and sustainable techniques such as water re-use by rainwater harvesting/rainwater butts, permeable paving or enhanced landscaping features should be considered. A separate foul and surface water system is proposed. A pumping station is proposed for foul network. The system would be pumped to an existing Severn Trent pumping station located to the south-west of the proposed boundary. Proposed flows and pumping requirements would be confirmed and Severn Trent approval required for connection. The final connection location and type of connection would be agreed as part of this agreement process.

The Noise Assessment considers that, through the use of appropriate mitigation, the proposed development would avoid noise giving rise to significant adverse impacts on health and the quality of life. An outline glazing and ventilation strategy has been established for proposed residential receptors demonstrating that internal noise level criteria can be achieved. Based on indicative positioning of dwellings within, it has been demonstrated that noise levels in private external amenity space are predicted to be below 55 dB LA_{eq,16hours} with screening by either proposed dwellings or barriers around gardens (close boarded fences) likely to be required including along the northern boundary of the site. Assessment has been undertaken with regard to noise from the proposed non-residential uses including deliveries. The assessment has been undertaken with regard to potential and reasonable worst-case assumptions and establishes that with suitable considerations within the design, significant noise effects are not predicted. As details of proposed building services part are not available at this stage, design noise limits at existing and proposed receptors have been set. Based on the assessments undertaken, it is not considered that any existing businesses wanting to develop would be restricted by the proposals. An assessment of the existing tranquillity level of the site was undertaken and identified that the site is not highly prized for its tranquillity and recreational value in terms of noise.

An Air Quality Assessment (AQA) considers the potential effects during the construction phases, including dust emissions from site activities, such as earthworks. During the construction phase, site specific mitigation measures detailed within this assessment would be implemented. With these mitigation measures in place, the effects from the construction phase are not predicted to be significant. The impacts during the operational phase take into account exhaust emissions from additional road traffic generated due to the proposed development. In the worst case scenario, the maximum predicted exposure to NO₂, PM₁₀ (particulate matter 10 micrometres or less in diameter) and PM_{2.5} (2.5 micrometres or less) at any proposed residential receptor is below the annual average and therefore no additional mitigation is required. The assessment of the impact description

of the effects is determined to be 'negligible' for all identified existing sensitive receptors.

An Odour Survey was undertaken to study the potential magnitude and significance of potential odour impact from the existing industrial works at IG Elements, Occupation Lane on sensitive receptor locations within the development site. This included 3 field odour assessments to assess the extent of existing odour exposure from the existing industrial works operations. Three odour effect zones have been identified:

- Odour Effect Zone A: odour is likely to be regularly detected over a limited area close to the existing industrial works. Further mitigation measures, such as changes of the proposed layout, no private amenity spaces in this area, or providing mechanical ventilation and/or filtration to the proposed properties should be considered.
- Odour Effect Zone B: only likely to experience odour from time to time, depending on weather conditions and operations at existing industrial works. No further mitigation is required.
- Odour Effect Zone C: unlikely to experience odour from the existing industrial works frequently. It is considered that the odour may be potentially detectable only very infrequently. No further mitigation is required.

A Ground Investigation Report considers ground conditions, soil testing, risk to human health, controlled waters and from ground gas, and geotechnical considerations. Within the former opencast area the ground model is characterised by the presence of made ground, in form of opencast backfill, to depths of up to 58.8m. Outside the opencast area the ground model was characterised by a thin veneer of topsoil overlying residual soils of the Pennine Middle Coal Measures bedrock. Representative samples of the shallow site soils (made ground and natural) were obtained and subjected to laboratory testing for environmental chemistry analysis. The risk to future site users is considered low/moderate with respect to a residential with homegrown produce end use, with remedial action required for the development. The risk to the underlying Secondary A Aquifer (bedrock) and surface waters is considered to be low, with no remedial action required. The risk presented by ground gases is assessed to be moderate, with the requirement for some protective measures. The main design hazards associated with the site are considered to be: the variable nature of the shallow fill, the inclusions of anthropogenic material in the fill, and the potential for combustible coal seams in the south-east of the site (outside of the opencast area). It is recommended that ground improvement is undertaken to regulate the shallow soils within the opencast fill area. Based on the findings of this ground investigation it is recommended that the most feasible option is a 'dig and turn' of the upper 3 metres of the site followed by material sorting (removal of anthropogenic/unacceptable inclusions) and replacement to a suitable earthworks specification. Owing the scale of the required earthworks coupled with the variability of the fill and the likely requirement for some form of modification (e.g. lime addition to control moisture content) it is recommended that an earthworks trial is undertaken to inform the earthworks specification. The requirement for soil stabilisation (i.e. cement addition), may be required subject to the design performance. It is recommended that as part of the site enabling works a remediation strategy is developed to mitigate these risks to future site users. It is anticipated that these mitigation measures would be in the form of provision of clean capping to future residential properties and the provision of ground gas protections measures.

A Heritage Desk-Based Assessment considers the archaeological potential of the site through consultation with the Derbyshire and Leicestershire Historic Environment Records (HER). Due to extensive quarrying within the proposed development site and a lack of evidence of archaeological remains in the area, the potential for any prehistoric, Romano-British, early medieval or medieval remains of heritage significance to be extant within the proposed development site is considered to be low. Approximately half of the site was subject to quarrying throughout the modern period which is likely to have disturbed any earlier remains within the site. Three instances of modern archaeological remains recorded within the site comprise two sandstone quarry pits and a former field boundary. The field boundary appears to have been destroyed through modern quarrying within the site whilst the historic sandstone quarry pits were backfilled during reinstatement works within the site. Any extant remains relating the sandstone quarrying would most likely be of no/very low

heritage significance and would be unlikely to form a constraint upon development within the site. There are historic functional links between the site, which was formerly a clay mine, and the remains of Woodville's industrial heritage. Due to reinstatement works within the site, the site is no longer appreciable as a formerly quarry and therefore the aforementioned historic links are no longer considered appreciable. Development within the site would therefore not be anticipated to result in any harm to the heritage significance of any of the former industrial buildings in its vicinity through changes to setting. The site is not considered to form part of the setting of the Grade II Listed Church of St Stephen and would therefore development within the proposed development site would not have any impact to its significance through changes to setting.

A Landscape and Visual Appraisal (LVA) considers physical landscape features and elements, landscape character and views and visual amenity experienced by residents, recreational users (including visitors and tourists) and road users. The LVA identifies the key constraints and opportunities present in relation to the site and surrounding landscape, and also the nature of the likely impacts that may arise from the proposed development. The site comprises an area formerly used for mineral extraction and since restored as a basic rough grassland landscape. Furthermore, the site is not covered by any landscape related designations. At a County level the site is located in the Coalfield Village Farmlands Landscape Character Type (LCT). More locally, the site is generally well contained in the wider landscape as it sits within an urban fringe environment surrounded by mature vegetation including woodland blocks and existing built form, which is typically on relatively higher ground than the site, therefore intervisibility is very limited. Mature vegetation and woodland blocks, both located along site boundaries, notably the north-western, north-eastern and western boundaries, and the local landscape, notably Gresley Common and Swadlincote Woodlands to the north, also visually contain the site and urban area within which the site is located from the surrounding landscape. Direct views of the site are limited to the immediate site boundaries and a small area of land on higher ground to the north of the site, which are in the context of the existing residential and industrial development surrounding the site. Some limited physical landscape impacts would give rise to perceived changes in landscape character at a site level. The landscape mitigation strategy (and overall masterplan) makes provision for the retention of landscape features and elements. Other permanent changes to the landscape would include alterations to the landform at a site-specific level (with the nature of the overall landform retained) and the permanent change in land use from a rough grassland landscape to a mixed use sustainable development with associated built form. Overall the scale and form of proposed development is likely to result in only limited change at a localised level and potential landscape and visual effects are not likely to be significant. Furthermore, the proposals for green infrastructure and landscaping would provide mitigation retaining the overall local landscape character.

An Ecology Survey includes protected and notable species survey results as well as standalone Bat and Bird Survey Reports. The survey notes the River Mease Special Area of Conservation (SAC) is located approximately 6km to the south of the site, and five Local Wildlife Sites (LWS) and potential LWS are located within 1km of the site. Through good design of the on-site drainage system and public open space, no impacts upon any sites of nature conservation value are anticipated as a result of the development proposals. The extended Phase I Habitat survey identifies that the site predominantly comprises fields of grassland varying in species richness, with boundaries formed of ditches, scrub and hedgerows with mature trees and fence lines. A pond is located in the north of the site and an area of broadleaved and plantation woodland is present in the east. Additional habitats recorded within the site include small areas of disturbed ground, tall ruderal herbs and scattered scrub. The development proposals have been designed to retain the habitats of conservation value where feasible. The woodland, and the majority of hedgerows and dense scrub are to be retained within the site, and new linear planting would provide mitigation for the small loss of hedgerow, as well as new habitat corridors within the site for wildlife. The pond and ditches are also to be retained within the site within areas of green space which would be managed to promote their biodiversity value. Additional habitats to be created include species-rich grassland, tree planting and attenuation ponds. Protected species surveys undertaken included those for bats, badger, reptiles and water vole. No evidence of badger or water vole activity was recorded, and no reptiles have been recorded to date. The results of bat activity surveys indicate that the site is used for commuting and foraging by common and widespread species. Results of previous great crested

newt (GCN) surveys have been reviewed. No GCNs were recorded on-site or within accessible ponds in the vicinity of the site. It is therefore considered that this species is highly unlikely to be present within the site boundary. Development of the site as proposed would result in negligible impacts to most bird species, with the exception of skylark, meadow pipit and linnet. Up to ten breeding pairs of skylark were recorded and a small number of probable breeding meadow pipit, linnet and reed bunting. The loss of the on-site grassland habitat would lead to the loss of these species from the site. Habitat creation has been recommended to provide additional nesting opportunities for several other notable species. Mitigation measures are recommended to minimise disturbance impacts to birds during any clearance in the bird nesting season. Measures are recommended to ensure the development provides suitable foraging and commuting habitat for hedgehog and common toad, which have been recorded within the site and wider area.

A Bird Report includes a desk study carried out by consulting bird species records identified from within the local area included 15 notable species. Three breeding bird surveys were conducted between April and June 2019 to provide information regarding the sites value to breeding birds. One winter scoping survey was conducted during January 2019 to provide information regarding the sites value to overwintering birds. The breeding bird surveys recorded a total of 46 bird species within the site, of which 16 were considered 'notable'. Two species were confirmed as breeding but included no notable species. Sixteen were considered probable breeders, and the remaining 28 species were considered possible or non-breeders. Winter bird surveys identified a total of 23 bird species recorded within the survey area of which nine were considered 'notable' species. The bird assemblage recorded was typical of the habitats present, comprising common and widespread species. The survey area is therefore considered to be of no more than local importance, whilst the development of the site as proposed is considered to result in negligible impacts to most species, with the exception of skylark, meadow pipit and linnet. The loss of this habitat would lead to local adverse impacts for all three species. The retention of more established habitats and the habitat creation proposals included within the proposals would lead to negligible or beneficial impacts on the remainder of the assemblage recorded. Habitat creation has been recommended to provide additional nesting opportunities for several notable species. Mitigation measures are recommended to minimise disturbance impacts to birds during any clearance in the bird nesting season. A range of enhancement opportunities have also been suggested.

An Arboricultural Assessment identifies 12 groups of trees and 3 individual specimens across the site. The main woodland group to the north-east boundary is classed as priority habitat inventory as deciduous woodland. The tree cover across the site is largely situated in groups which are confined to the peripheries. The modal age category is early mature, with occasional semi-mature and mature specimens across the site. Most of the groups were graded as retention category C as they offered low arboricultural quality to the site. It is thought this is mainly attributed to lack of management, multi-stemmed forms and the self-seeded nature of some of the groups. Two groups of trees stand out due to their enhanced arboricultural quality. Both groups stand along the eastern boundary of the site and had a varied species composition. It is suspected that this group was old buffer planting with only a few minor defects noted within the trees. One group was assessed as being retention category U meaning it is unsuitable for retention regardless of future development. Three individual trees were picked out of the groups due to their mature age and larger proportions than their surrounding tree cover. These consisted of two sycamore and a silver birch. There were also two hedgerows recorded on the site. Both were mature, in fair overall condition and of low arboricultural quality. The layout has, through positioning the built element of the proposed development central to the field parcel and by virtue of the peripheral locations of the existing tree cover, allowed for the retention of existing tree cover. This tree cover should be retained within the landscape buffer strips proposed around the extents of the site and within the green space provision of the development. These buffer strips would enhance the quality of the existing tree cover and ensure a continued population of tree cover within both the site and the wider local environment. The only loss required to facilitate the development is a small section of hedgerow, required to allow access the WSRR into the site along the site's northern boundary. New tree planting has been illustrated as part of the illustrative masterplan within the open space provisions and along the new link road. Tree protection measures are also suggested for the construction phase.

A Viability Appraisal analyses the land value, gross development value, build and abnormal development costs, section 106 (s106) costs, suggested to total some £2.1m, and associated finance and profit levels. It is advanced the Gross Development Value (GDV) of a policy compliant scheme is £57.87 million, whereas the total development cost, including profit, is £63.18 million. This equates to -£5.31 million (negative) based on a profit target of:

- 20% of market sale housing GDV;
- 6% of affordable housing GDV; and
- No profit on the sale of serviced employment and commercial land.

The Existing Use Value (EUV) of the site (otherwise known as the Benchmark Land Value (BLV)) is assessed as being £5.31 million in accordance with Planning Practice Guidance. The proposed scheme on a fully policy compliant basis is therefore unviable as the RLV is lower than the BLV by £10.62 million. Thus a scheme advancing 30% affordable housing and all s106 contributions is unviable. It is noted that the site is currently vacant and underutilised. Due to its previously developed use, it is constrained and requires a significant amount of remediation in order to be developable. It is stated that without intervention from the applicant, the site would remain vacant and underutilised as the up-front development costs render any scheme unviable, particularly for employment use. In order to deliver this much-needed investment, regeneration and employment development, there needs to be a compromise in terms of Local Authority, landowner and developer aspirations. The applicants thus consider that a compromise has to be made if the scheme is to be acceptable in planning terms. In this context, a £1.2 million contribution towards s106 obligations is offered and the applicant is willing to deliver the land as 'serviced', including 11.39 acres of employment land that would be unviable without their intervention.

Relevant planning history

- 9/2017/1222: Construction of a single carriageway road with verges, cycleways and footways along with three new roundabouts and associated infrastructure and the partial demolition of Woodhouse Business Centre and affecting Derby Road, Swadlincote Road, Woodhouse Street and Kiln Way (WSRR Phase 2) - Approved April 2018.
- CD9/0519/20: Construction of an all-purpose single carriageway complete with verges, cycleways and footways (including three new roundabout junctions), connecting between the existing roundabout spur at Occupation Lane, Woodville, and the A514 Derby Road, Swadlincote (WSRR Phase 2) - Approved September 2019.

Responses to consultations and publicity

The County Highway Authority (CHA) notes the Transport Assessment (TA) supports 300 residential units in total, split across the site, 75 of which would be constructed under Phase 1 and accessed from Moira Road via means of a new simple priority junction. A further 225 residential units are intended to be delivered under Phase 2 which would be constructed on the remaining land, along with 14,000 sqm employment floorspace, a 2,850 sqm local centre and public open space, including drainage basins, of some 5.27 hectares. The latter would generate negligible traffic. Access to the Phase 2 scheme would be via the WSRR.

The WSRR TA focused on the junctions at its northern and southern ends, to inform their design. That TA considered two potential land-use options:

- 150 dwellings, 5,400 sqm of B1 (office) and 30,600 sqm of B2 (industrial) floorspace; and
- 250 dwellings, 4,050 sqm of B1 (office) and 27,000 sqm of B2 (industrial) floorspace.

The first scenario generated the largest overall number of total trips and was, therefore, used as the basis of the TA supporting the WSRR. The purpose of the scenario was intended to establish that the preliminary design, together with its junctions, would provide sufficient capacity and that it would be fit for purpose, although it was accepted that this design would not necessarily be the precise development that the wider regeneration scheme would eventually support – instead it being a

'sensitivity test' and that further transportation assessment work would be required. This is what the now submitted TA seeks to do.

The CHA state that the level of traffic generated would be considerably lower than that previously assumed and forms a satisfactory basis for the consideration of the TA. Both the development together with the WSRR would have some traffic impacts on local roads – in particular the Clock Island. Capacity assessment of the junction undertaken by the applicant confirms that under existing conditions, during peak hours, the junction operates at/over capacity with the greatest congestion on the Burton Road approach. The TA considers a sensitivity test whereby with the WSRR in place, 25% of traffic would switch to that route. This indicates that there would be some improvements to the operation of the High Street and Swadlincote Road approaches although, inevitably, queuing and delay would return more or less to current day levels on the Burton Road approach as a result of future traffic growth arising – principally from other development. In the absence of a dynamic traffic model, it is difficult to indicate definitively what the traffic impacts would be, but the overall likely redistribution effects would be influenced by the origin and destination of longer distance east to west traffic and the relative level of congestion at the Clock Island. During periods of peak hour congestion at the junction, more background traffic would likely use the WSRR as an alternative. The applicant's TA also includes capacity assessment of the WSRR together with its junctions on both the Occupation Lane/Hepworth Road roundabout and the proposed new roundabout on the A514 at its junction with Woodhouse Street. This work confirms the satisfactory operation of both junctions with the associated development in place.

The CHA also notes the current application refers to two main phases, indicating Phase 1 would be independent of the construction of the WSRR. It is noted that contributions have been previously secured from several sites towards a wider mitigation which, in this context, would see the eventual construction of the WSRR. The CHA would thus expect to see Section 106 contributions per dwelling, comparable with other surrounding developments, towards mitigating the impact of the development on the off-site highway network, and a contribution of £43,812.00 is requested (based on a sum of £584.16 per dwelling as applied elsewhere). With regards to Phase 2, to ensure that future development only takes place once the link road is complete and in a controlled and logical manner, a phasing plan is considered necessary and should be conditioned.

The TA also refers to the proposed access off Moira Road. The CHA notes this is to be located where the 30/40mph speed limit change occurs. The submitted drawing shows a suitable access layout. The measured speeds of 39.2mph and 41mph indicate that visibility sightlines of 100 metres to the north and 108 metres to the south are required. They can be achieved and a condition to this effect would need to be included. The TA instead refers to sightlines below this standard and also states that the 30mph limit would be relocated to a point approximately 100 metres to the south and sightlines to accord with a 30mph are proposed. As this would require a Traffic Regulation Order (TRO), which is open to delay and objection; the success of the TRO cannot be relied upon and the access will need to be constructed to accord with existing conditions (as outlined above).

In view of the foregoing, the CHA has no objections subject to the obligations towards the WSRR and Travel Plan monitoring (see below), and conditions being included in any consent in the interests of highway safety.

The County Travel Plan Officer notes the site is crossed by the A511 to Occupation Lane section of the South Derbyshire Cycleway, part of the Derbyshire Key Cycle Network. This follows the proposed route of the WSRR. As part of the development this facility should be provided as a cycle route, to specifications provided by the CHA. Alternatively, an agreed commuted sum should be set aside for provision of this facility by others. The proposal also represents an opportunity to design and build a cycle route through the development that enables and prioritises cycling above the needs of road traffic. Due to distances to existing bus stops, consideration should be given to bus service provision through the site, complete with bus stop infrastructure. This should be pursued with relevant operators to achieve a workable outcome to serve the likely demand from both employees and residents. It is also suggested that the closest bus stops on Swadlincote Road should be upgraded, to include lighting, raised kerbs, shelters, timetable cases, bus stop markings

and real time information wherever feasible and not already in place.

Each employment unit should also be provided with staff facilities, including showers, changing areas and storage lockers to encourage walking and cycling. Prominent, secure and covered cycle storage should also be provided close to staff entrances. Prominently sited dedicated car share spaces should be considered, along with a number of electric vehicle charging points for the use of staff and visitors. Dwellings should be provided with secure and accessible cycle storage, high speed broadband connection and electric vehicle charging points. Shared space design principles should be considered where appropriate, whilst pedestrian footways should tie into existing provision, complete with lighting. Existing rights of way which cross the site should be upgraded to enable year round use and laid out as positive features of the development which enjoy a degree of natural surveillance.

Resident and staff welcome packs should also be distributed to encourage use of bus and rail services, as well as cycling and walking routes. Details of the free car sharing/journey matching service throughout Derbyshire should also be promoted. The developer is also encouraged to negotiate with local bus operators to offer 'taster tickets' or similar discounts for public transport use, for both employees and residents. Consideration should also be given to the establishment of car share schemes, with journey matches facilitated either by the residential travel plan co-ordinator, or each commercial unit. A Travel Plan coordinator should be appointed as appropriate, with Travel Plan monitoring taking place over a number of years. Further comments encourage the establishment of a website, detailing all travel options for all existing and potential residents and employees, and a social media presence.

Leicestershire County Council Highway Authority (LCCHA) does not consider that the submitted TA fully assesses the highway impact of the proposals. The junctions that fall within Leicestershire's boundary include the Hepworth Road/Forest Road roundabout, the Hepworth Road/Ashby Road/High Street signals, and the Main Street/Occupation Lane/Mushroom Lane/Occupation Road (Albert Village) crossroads. It is also noted that the TA does not account for the unadopted status of some key sections of Hepworth Road and Forest Road. LCCHA notes there is a committed scheme at the Albert Village crossroads for a double mini roundabout junction that has not been acknowledged or assessed within the TA, and the impact of the development on this junction layout should be assessed. Tree clearance has already taken place on site with a view to the scheme being delivered in 2020. It is also noted that the TA concludes that the Hepworth Road/Ashby Road/High Street signals and the Albert Village crossroads would be close to/at capacity with the addition of the phase 2 development traffic but proposes no mitigation.

The Development Control Archaeologist notes that although the site contains records on the Derbyshire Historic Environment Record (HER) these relate to historic clay extraction, quarrying and post-medieval field boundaries – none of which are likely to have any meaningful archaeological significance. The site appears to have subject to substantial 20th century disturbance in the context of clay mining and opencast coal extraction, and thus it is concluded that archaeological impacts are extremely unlikely.

The Environment Agency (EA) notes the site is located on the bedrock of the Pennine Middle Coal Measures Formation, designated as a 'Secondary (A) Aquifer'. Several unnamed surface water bodies are located on and in proximity to site. Sampling and analysis of soils and groundwater reveals some elevated concentrations of polycyclic aromatic hydrocarbons (PAH) and metals within shallow soils samples. Significant elevated concentrations of contaminants within groundwater were not identified. Minor exceedances were identified for some heavy metal contaminants; however, these may be representative of local groundwater quality given the mining legacy of the site. As a result, the proposed redevelopment does not appear to represent a significant risk to controlled waters receptors, and a precautionary condition is recommended.

The Lead Local Flood Authority (LLFA) notes a split of the site into four drainage catchments, although initially they were provided without sufficient information on this split, the invert levels and outfall from two of the proposed attenuation ponds, the outlet arrangements for the existing pond

and the capacity of the existing ditch identified for the outfall from other attenuation ponds (although this could be provided at later stage together with drainage calculations for the detailed pipe network). Following receipt of these items, the LLFA has no objection subject to conditions.

Severn Trent Water Ltd (STW) notes that foul flows are to connect into the public sewer, which would be subject to a formal connection approval. However, due to the size of the development and as a pumped solution is being proposed for foul water discharge, a sewer modelling assessment would be required to determine what impact the generated flows from this site would have on the network and to determine the maximum pump rate that could be accommodated within the existing network without worsening the existing sewer performance in rainfall events. STW notes they may need to undertake a more comprehensive study of the catchment to determine if capital improvements are required and, if required, a reasonable amount of time would need to be determined to allow these works to be completed before any additional flows are connected. STW has no comment on the surface water drainage proposals, as these are proposed to connect to a watercourse.

Derbyshire Wildlife Trust notes the ecological appraisal is based upon surveys conducted during May, June and July 2019 and also reviews earlier reports prepared as part of previous applications. It is noted that areas of grassland with higher species diversity are largely restricted to site boundaries and Grass Vetchling was recorded on the site, although the origin of the species is unclear. It is understood that the loss of grassland would be compensated for with the retention and creation of grasslands throughout the site which would be managed for their biodiversity value under a Landscape and Ecological Management Plan (LEMP). Particular attention will be required in respect of the maintenance of the presence of Grass Vetchling at the site. The Trust advises that a Biodiversity Impact Calculator should be used to demonstrate that the loss of the majority of the grassland compared with the retention and creation of more species diverse areas of grassland does not result in a net loss of biodiversity.

The existing pond on the site is also considered to be a Habitat of Principal Importance given that it is a breeding pond for Common Toad, a Species of Principal Importance. It also supports a population of the aquatic plant, Horned Pondweed, and, as such, qualifies for selection as a Local Wildlife Site (LWS). While it is understood that the pond is to be retained, the report suggests that some work will be carried out to increase its capacity. It is important that a method statement/strategy is agreed to avoid impacts on the ecological features of interest associated with the pond. This could be included within a Construction Environmental Management Plan (CEMP), provided as a condition. The LEMP should also cover other retained and created habitats, provided as part of reserved matters submissions.

The Bird Report provides details of breeding bird and wintering bird surveys. Although there is loss of grassland habitat with some areas of higher interest, the main ecology impacts associated with the scheme are in respect of common toad and a number of farmland priority bird species, particularly skylark. Common toad, skylark, meadow pipit, linnet and reed bunting are all Species of Principal Importance (priority species). The loss of the majority of grassland habitat on the site to development would lead to the loss of these priority bird species from the site. While some grassland retention and creation is proposed, these areas would be unlikely to continue to support these species which rely on open grassland habitat. Although mitigation measures to minimise disturbance during site clearance are recommended, no details of compensatory habitat provision have been provided. Previous involvement in the site has favoured off-site compensation. A suitable offsite compensatory habitat scheme for ground nesting priority bird species, including skylark, needs to be provided in order for the proposal to comply with policy BNE3.

A condition was attached to the permission for the WSRR requiring the implementation of an agreed Common Toad mitigation strategy to allow unimpeded movement of common toads across the site from the scrub/woodland areas alongside the public footpath on the eastern boundary to the existing breeding pond. It is also understood that a new pond designed specifically for Common toad was to be provided to the east of the link road as part of this strategy, but the illustrative masterplan does not appear to reflect this. It is essential that the common toad strategy and the development layout

align.

The Trust welcomes and supports the provision of hedgehog highways within the residential element of the scheme together with the incorporation of in-built bat and swift bricks within the new buildings.

The County Planning Policy (Section 106) Officer notes the proposed development would impact upon the catchments for Woodville Infant School and Woodville CE Junior School. The proposed development of 300 dwellings would generate the need to provide for an additional 26 infant and 34 junior pupils. The proposed development also falls within and directly relates to the catchment of Granville Academy. The development would generate the need to provide for 45 secondary pupils. The Officer observes:

- Woodville Infant School has a net capacity for 263 pupils, with 252 pupils currently on roll and numbers projected to decrease during the next five years to 226. Evaluation of recently approved residential developments shows permission for 157 new dwellings, which would generate a demand for 13 infant places. Analysis thus shows that the infant school would only have sufficient capacity to accommodate 24 of the 26 infant pupils arising from the proposed development. £33,624.48 is requested so to provide additional teaching accommodation.
- Woodville CE Junior School has a net capacity for 340 pupils, with 329 pupils currently on roll and numbers projected to rise to 330 during the next five years. Evaluation of recently approved residential developments shows permission for 157 dwellings, which would generate a demand for 18 junior places. Analysis thus shows that the junior school would not have sufficient capacity to accommodate 34 junior pupils arising from the proposed development. £571,616.16 is requested towards a project to deliver additional classroom accommodation.
- Secondary Level Granville Academy has a net capacity for 830 pupils with 692 pupils currently on roll and numbers projected to increase to 771 during the next five years. Evaluation of recently approved residential developments shows permission for 186 dwellings, which would result in demand for 28 secondary places. Analysis thus shows that the secondary school would only have sufficient capacity to accommodate 31 out of the 45 secondary pupils arising from the proposed development. £354,660.46 is requested towards a project to deliver enhancement of teaching accommodation.

The Officer notes that amendments to the CIL Regulations which came into force in September 2019 removed restrictions on pooling of sums. It is also noted that demographics can change over time and therefore the County Council would wish to be consulted on any amendments or further applications. Viability of the scheme may allow for flexibility in the payment triggers, with it requested that the County are party to any further negotiations on developer contributions. High speed broadband connectivity is encouraged for the properties generated on the site.

The Derby and Derbyshire Clinical Commissioning Group (CCG) notes the impact on GP practices, with an increased patient population of approximately 750 persons. The site is within the catchment areas of Gresleydale, Woodville, Newhall, Heartwood and Swadlincote surgeries. Although prospective residents could register at any of these, the practice most likely to be affected is Woodville. The practice was assessed to be fully used in April 2019. Furthermore, the Overseal practice closed at the end of February and the list was dispersed amongst local practices, increasing demand for space. A contribution of £144,000.00 is requested, which would be invested in enhancing capacity/infrastructure within the Woodville practice.

The Strategic Housing Officer notes the proposed scheme meets the requirement for affordable housing provision at 30% of the total number of homes delivered on site. Of this total, the affordable housing should comprise of 23% one-bedroomed houses, 40% two-bedroomed houses, 6% two-bedroomed wheelchair adapted bungalows with the provision of level access showers, 25% three

bedroomed houses and 6% four bedroomed houses. A minimum of 68% of the affordable homes should be for affordable/social rent, whilst the shared ownership homes should be a mix of two and three-bedroomed houses. The size of homes delivered should meet the requirements set out in the Affordable Housing SPD, whilst two-bedroomed houses should be suitable for four people, and three-bedroomed homes suitable for five. Use of apartment blocks is not supported as affordable housing provision, and affordable housing should be indistinguishable and built to the same quality and standard as open market homes. Affordable housing should be distributed across the site in clusters of no more than 10 and the provider should be the Council or a not-for-profit Registered Provider. An Affordable Housing Statement and Affordable Housing Scheme should be submitted and approved prior to commencement, through a section 106 (s106) agreement.

The Coal Authority confirms that there are coal mining features and hazards which need to be considered, specifically both actual and probable shallow coal mine workings. Records also indicate that the site has been subject to past surface mining operations and that there are 12 recorded mine entries (shafts) within, or within 20m of the site. Because of the past surface mining operations, the submitted report confirms that shallow coal seams within influencing distance of surface, along with the shafts, would have been removed and that subsequent risks posed by these features is low. Because of investigations undertaken outside the former extraction area, the report is also able to discount risks posed by potential unrecorded shallow workings. However, the report does conclude by confirming that enabling and remediation strategies would be required and partially removed mine shafts may be present. A condition to ensure that the mitigation strategy as detailed in the Ground Investigation Report is requested.

The Environmental Health Officer (EHO) notes the key potential environmental impacts of the development are (1) the potential exposure of existing sensitive receptors to new sources of noise and air pollution associated with the development; (2) the potential exposure of new sensitive receptors to existing sources of noise, air pollution and odour; (3) the potential exposure of existing and new receptors to existing sources of land contamination; and (4) the potential exposure of new sensitive receptors to new sources of noise and air quality associated with the development. The EHO is satisfied that the impacts of the proposed development would be acceptable provided that conditions to control construction phase noise impacts; operational phase impacts associated with noise from the industrial units to the north of the site and the Regeneration Route (with it recommended that gardens are located away from these sources and the facade of the buildings act as a screen); fixed plant and equipment noise associated with new commercial development; glazing specifications to new dwellings (with the Noise Assessment recommending different specifications of glazing within different parts of the development; air quality construction phase impacts (construction dust, etc.); operational phase impacts with the development generating additional emissions of nitrogen oxides and respirable particulate (which current statutory guidance requires local authorities to reduce); and land quality/contamination risks. The EHO also strongly recommends that the developer explore the use of renewable sources for the supply of energy to the development.

The EHO raises particular comments concerning odour risks associated with existing industrial activity at IG Elements (Occupation Lane), with these having a likely material impact on a significant area of the southern portion of the proposed development which includes residential, employment and the local centre use, as well as public open land. If the development is taken forward in its existing form, it is the EHO's opinion that IG Elements would have a significantly adverse effect on it. Moreover, substantiated complaints about odour nuisance made by the new occupiers of the development are likely to be substantiated and as a result the Council would be required to impose odour management controls on activities at IG Elements which they would not otherwise be required to install. The most suitable form of mitigation would therefore be for the developer and IG Elements to agree an appropriate odour management plan to reduce and disperse process odours to such an extent that they do not have a significant adverse impact on the proposed development. Any such plan would be required for prior approval and commissioning in full before the first occupation of any buildings within 'Zone A' in Figure 7 of the Odour Assessment.

The Police Force Designing Out Crime Officer has no objection in principle noting the residential element seems to integrate with existing recent and more established housing. The commercial element also ties in with associated uses. One issue is raised with encouraging use of, and linking into, existing footpath links. There are two routes running across the site from Moira Road to Swadlincote Road, serving primarily the same function. One of these runs through the middle of the proposal, is more open, and would form primary integrated movement within the site. The second runs along Vicarage Road, prior to running enclosed between housing, around industrial land and through a tree copse before having a more open aspect. This second route has many features associated with unsafe, problem generating footways, and the advisability of providing a link from the site is questioned. Movement would be better served with a more open route in view of developed housing and public buildings. It may be more appropriate to divert this existing footway in a more direct manner, with opportunity now to construct a safer and more convenient route responding to the context of a newly developed site.

The National Forest Company (NFC) notes the proposal triggers the threshold for woodland planting and landscaping to be included. The site area extends to 21.49ha, with the policy expecting 30% of this to be National Forest planting – equating to 6.45ha. The proposed area of public open space, including drainage, existing trees and vegetation extends to 5.8ha. Therefore, even if all the on-site open space was considered suitable, the required amount of National Forest planting could not be accommodated. In this case, the shortfall should be addressed by way of a financial contribution. The permission should require a commitment for 6.45ha of National Forest woodland planting and landscaping to be incorporated through a combination of on-site provision and a financial contribution. The reserved matters submission should include details on where the on-site provision will be accommodated, how that space will be landscaped and the amount to be addressed by way of a financial contribution. The financial contribution shall be calculated at £35,000 per hectare and be available for off-site woodland planting and site development works by the National Forest Company within South Derbyshire. The NFC also notes that the WSRR is designed with a cycle path which provides safe pedestrian and cycle access to either Swadlincote Woodlands or the Conkers cycle network through the Heart of the Forest. In order to encourage use of this, the access links from the WSRR into the residential and employment parcels should be designed to continue the cycle paths on the residential and employment streets.

Peak and Northern Footpaths objects to the partial re-routing of Woodville Footpath No. 5 along the new estate roads footways, this specifically rejected in government advice (Defra Circular 1/09) and should be avoided. If it is necessary to divert public footpaths, they should be routed along green corridors completely separate from vehicular traffic. It also appears it is proposed to partially re-route Footpath No. 6 along 'lanes', although it is not specified what a 'lane' might be. Again, the footpath should not be diverted along a vehicular road or its footway. Footpath No. 4 appears not to be proposed for diversion, so the full width of this path must remain unobstructed at all times and its surface improved to serve the needs of the people who would live and work on the site.

North West Leicestershire District Council has no objection provided the Council is satisfied that the proposals comply with the relevant development plan policies.

Woodville Parish Council objects on the following grounds:

- i. highways infrastructure;
- ii. access from Moira Road;
- iii. impact on local services;
- iv. landscaping; and
- v. number of houses is in excess of that allowed for in the Local Plan.

12 objections have been received, raising the following concerns/comments:

Principle of development

- a. it would further decrease the amount of green land left in the area;

- b. green land should be protected given climate change concerns;
- c. if this land were to be built on in the future, it would be put to better use to better serve the existing residents of Swadlincote;
- d. houses were not previously proposed for this land, only business units;
- e. there is a need to plant more trees in the National Forest to benefit the environment, not build more houses;
- f. more trees, a nature walk, a forest school or even a nature park which encourages tourism would be more welcoming and would preserve the countryside;
- g. there are already local shops a short walk away – more are not needed;
- h. is there a need for another pub when so many are shutting down or can't find landlords;

Infrastructure needs and impacts

- i. schools are oversubscribed and classes are already overcrowded;
- j. no plans in place to build more schools;
- k. there is no space to extend the junior school;
- l. surgeries and hospitals cannot cope, with local doctors and dentists at capacity;
- m. surgeries cannot cope with an influx of over 1000 new residents;
- n. roads are already gridlocked and extra houses would add to this congestion;
- o. the Regeneration Route would push the problem onto the A511 and A444;
- p. the addition of 300 homes and a pub, store and fast food outlets and other businesses would further increase the amount of traffic using the Regeneration Route and local roads on a daily basis;
- q. building a new road would be ineffective as traffic using this route would only increase from other directions and not move traffic away;
- r. the traffic generated by the proposed development, when added to traffic reassigned by the Regeneration Route, would produce significant extra pressure on the Hepworth Road/Ashby Road/High Street junction, and the Main Street/Occupation Lane/Mushroom Lane/Occupation Road junction, and improvement/mitigation schemes should be made conditional of approval;
- s. a large proportion of the development would be completed before the Regeneration Route is available;
- t. the area is already saturated with development;
- u. Swadlincote does not have sufficient existing infrastructure to cope with further housing and business development on this land;
- v. pressure on emergency services;
- w. build a new school and park for the children;
- x. not providing for anything that the community needs: more nature, more opportunities to be outdoors;

Biodiversity

- y. damage to the wildlife that inhabit the land;
- z. nature should be encouraged with birds, bees, butterflies and deer much more beneficial for residents and mental health issues within society;

Flood risk and drainage

- aa. Whether surface water and foul water drainage needs can be adequately dealt with;

Highway safety

- bb. increased danger on what are likely to be narrow roads;
- cc. increase in the likelihood of accidents and, for many, the cost of insurance;
- dd. concerns for safety due to the amount of new traffic added to an already densely populated area;
- ee. obstruction to roads from construction traffic;

- ff. pleased that the initial proposed access onto the stopped-up section of Occupation Lane has been removed, with safety concerns for this possibility;
- gg. clear, visible signs to indicate Occupation Lane is a dead end are required as many vehicles still come up the lane;
- hh. concerned about speed limits, gritting in winter and litter management on the Regeneration Route;
- ii. weight restriction on Moira Road and lorries should not be allowed to access/egress the site from the Clock Island;

Effect on living conditions on nearby residents

- jj. shading effect on the homes on the north facing side of Occupation Lane, with the open land allowing light into homes.
- kk. loss of privacy;
- ll. homes, retail store and fast food outlets would disrupt the peaceful nature of the area;
- mm. air and noise pollution from residents' vehicles to the area;
- nn. noise, dust and mud from construction vehicles and machinery;
- oo. increase in anti-social behaviour around public house and shops;
- pp. there are many eating establishments in the centre of Swadlincote – the extra noise it would make at closing times, etc. is unnecessary;
- qq. an individual would be put under mental strain, not coping with the noise and disruption;
- rr. do not allow access to the estate from a quiet lane;
- ss. the houses should be built further away from the existing homes;

Character and appearance of the area

- tt. flats should not be allowed as they would be totally out of character
- uu. retain existing planting/plant a bank of trees to hide view of the houses and block the sound of cars;
- vv. view of the night sky would be spoiled by buildings; and
- ww. light pollution.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), S4 (Housing Strategy), S5 (Employment Land Need), S6 (Sustainable Access), S7 (Retail), H1 (Settlement Hierarchy), H20 (Housing Balance), H21 (Affordable Housing), E1 (Strategic Employment Land Allocation), E6 (Woodville Regeneration Area), 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 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF4 (Transport Infrastructure Improvement Scheme), INF6 (Community Facilities), INF8 (The National Forest), INF9 (Open Space, Sport and Recreation);
- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE7 (Trees, Woodland and Hedgerows), BNE10 (Heritage) and RTL1 (Retail Hierarchy)

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD);
- South Derbyshire Affordable Housing SPD;
- Section 106 - A Guide for Developers;
- Strategic Housing Market Assessment (SHMA);

The relevant national policy and guidance is:

- National Planning Policy Framework (NPPF);
- Planning Practice Guidance (PPG);
- National Design Guide (NDG);

The relevant legislation is:

- The Community Infrastructure Levy (CIL) Regulations 2010 (as amended); and
- The Conservation of Habitats and Species Regulations 2017 ('the Habitat Regulations').

Planning considerations

A Screening Opinion was issued in March 2019 under the Environmental Impact Assessment (EIA) Regulations 2017, confirming that the proposed development does not constitute EIA development. The proposal has also been subject to an Appropriate Assessment (AA) under the Habitat Regulations given the potential impact from surface water discharges on the River Mease SAC. The AA concludes that there would be no adverse effects on the integrity of the River Mease as a result of the proposed development either alone or in combination with other development locally, subject to the inclusion of mitigation measures to address likely effects of the project.

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

- Principle of development;
- The principle of the local centre;
- Impact on existing infrastructure and facilities;
- Viability of the development, affordable housing and need for alternative/additional land uses;
- Highway capacity/safety and sustainable transport;
- Flood risk and drainage;
- Biodiversity impacts and gain;
- Ground conditions and mining legacy;
- Impact on existing and prospective occupiers/end users; and
- Design principles.

Planning assessment

Principle of development

Policy S1 sets out the Sustainable Growth Strategy for the District up to 2028. It confirms, inter alia, that at least 12,618 dwellings will be built within South Derbyshire, with the housing sites on a mixture of brownfield and greenfield sites with encouragement given to the re-use of previously developed land. It seeks to retain, promote and regenerate employment development on sites in urban areas as well as provide for new infrastructure to support the growth across the District. Furthermore, National Forest objectives including the increase of woodland cover are supported, with encouragement for healthy lifestyles through leisure pursuits, open space and greater accessibility for residents. The site is well positioned to fulfil these strategic aims of the Plan.

Policy S5 outlines an employment land need of at least 53 hectares of new industrial and business land to support the Council's Economic Development Strategy and the D2N2 Local Enterprise Partnership (LEP). Policy S4 echoes the above housing need and sets out that strategic sites allocated in the LP1 would accommodate the majority of the housing target. The policy confirms the Council will maintain a five-year housing land supply (5yrHLS) in accordance with the NPPF. Policy INF4 outlines the transport infrastructure improvement schemes the Council wishes to deliver in conjunction with others. The Woodville to Swadlincote Regeneration Route (WSRR) is one of these. Furthermore, where required to mitigate the transport impacts of development, the policy states the

Council will seek to negotiate financial contributions toward these schemes and that proposals that would prejudice their implementation will not be permitted.

Policy H1 sets out the settlement hierarchy, which is based on the range of services and facilities that are offered by each settlement. The level of development for each settlement will be of a scale appropriate to the size and role of that settlement. The Swadlincote Urban Area sits in the top tier of the hierarchy, confirming the sustainable location of the site. Policy H20 then outlines the Council will seek to provide a balance of housing that includes a mix of dwelling type, tenure, size and density which takes into account the SHMA. The density of any site is to be considered individually as there is no evidence to support a set density across all sites, whilst housing development is expected to make the most efficient use of the land whilst taking into account what is appropriate for the surrounding local built and natural environment. Furthermore, the viability of a development will be considered through determining a schemes housing mix.

The key policies to first consider are policies E1 and E6. Policy E1 sets out an allocation of 12 hectares for industrial and business development as defined by classes B1(b), B1(c), B2 and B8 of the Use Classes Order. Policy E6 reaffirms this requirement for employment-led redevelopment, supported by the WSRR. Importantly, it should be noted that policy E6 allows for *“up to 150 new dwellings”*. The explanatory text to the policy also states the site *“mainly represents poorly restored former minerals workings and vacant industrial premises...”* and that *“development here would be dependent upon the provision of the WSRR”*. Furthermore, it emphasises that external funding contributions toward the route are being sought which may have viability implications which influence the mix of uses on site. It is this which led to the allowance for an element of residential development, so to ensure the wider scheme, and more importantly the WSRR, remained viable and thus deliverable.

The proposal would comply in terms of the mix of employment uses but on first glance falls short in respect of the land dedicated to employment purposes – this being 4.61 hectares. However, the application site does not include some 11 hectares of land within the E6 allocation, this extending further west towards John Street and taking in the former TG Green pottery and Ravensbourn premises. The 12 hectares figure represents one-third of the overall allocation, which totals 36 hectares, with it recognised that policy E1 sets out a minimum employment land requirement and that the site is also expected to deliver the WSRR, an element of housing and associated drainage, National Forest planting and open space requirements. Furthermore, this application would unlock meaningful access into the remaining land to the west – this presently served by substandard private accesses from Occupation Lane and John Street, and the surrounding land uses are likely to constrain the redevelopment of that land to further employment uses, allowing the eventual requirement for 12 hectares to be met (and possibly exceeded).

There are three clear conflicts with the Development Plan, however. The inclusion of a local centre, taking up 1.37 hectares and including a food store, a restaurant and a public house is one. This location is not a proposed local centre under the retail policies of the Plan and the appropriateness and principle of this element of the wider scheme is discussed further below. The second conflict is the number of dwellings proposed. This is significantly higher than the 150 allowed for under policy E6. The third conflict is that the applicant suggests that viability is so marginal on this site that it cannot support any affordable housing delivery, and that section 106 (s106) contributions also need to be curtailed. However, it is important to consider these conflicts in the context of the statutory duty - to take into account material considerations, namely the viability of the scheme and the need to ensure the allocation can be brought forward so to assist with the funding of the WSRR (both these matters are discussed extensively below). The wider economic, social and environmental benefits of the scheme should also be weighed against the conflict with planning policy.

The principle of the local centre

The strategy for retail provision is set out in policy S7. It confirms the role of Swadlincote Town Centre will be supported and enhanced where possible. Six new local centres are expected on urban extensions to Derby City and at Drakelow Park, and this is confirmed by policy RTL1. It does

not allocate a site within the Regeneration Area, hence the 'in principle' conflict identified above. Policy RTL1 therefore commands a Sequential Test be undertaken. The PPG confirms that the Sequential Test guides main town centre uses, such as A1, A3 and A4 uses as proposed here, *"...towards town centre locations first, then, if no town centre locations are available, to edge of centre locations, and, if neither town centre locations nor edge of centre locations are available, to out of centre locations (with preference for accessible sites which are well connected to the town centre)"*. The NPPF supports this approach. This means that the viability and vitality of town centres are supported by placing existing town centres foremost in decision-taking. Policy RTL1 also requires all retail proposals over 1,000 sqm to be supported by a Retail Impact Assessment (RIA) to measure the impact of the proposal on the vitality and viability of nearby centres and on committed and planned investment in those centres.

The submitted Retail Statement has been analysed. There is no policy reason for a local centre in this location, and the term 'local centre' implies a collection of mutually supportive land use activities attracting linked trips. Whilst the uses proposed might be complimentary to the residential or employment uses proposed, the planning policy officer is not convinced that the three proposed uses would be economically related to one another to any significant degree and suggests that their disaggregation among separate sites would be unlikely to have any decisive bearing on their economic viability. Certainly, there are no aggregation requirements (i.e. site-specific needs) relating to the needs of prospective occupiers, as none have yet been identified. In this light, the applicant's position that any other site to be considered through the Sequential Test must be large enough to accommodate the three uses together must be called into question.

Having said this, in the case of each of the sites considered (the list agreed in prior consultation with the planning policy officer), there appear to be valid reasons for dismissing them on the grounds of unsuitability or unavailability, as follows:

- Parts of the Civic Way, Belmont Street, Sharpe's Industrial Estate and Delph Block sites are currently in active use and their efficient and effective regeneration would require a comprehensive, rather than piecemeal, redevelopment approach. The time needed to assemble land and prepare and implement regeneration proposals means that they cannot be made available within a reasonable timeframe. In addition, the Delph Block does not meet the service vehicle access requirements associated with the retail element of the proposal;
- The West Street/Market Street site is largely in active use and is partially the subject of advanced proposals/permissions for re-use for residential purposes;
- The Hill Street and Coppice Side sites are the subject of proposals for redevelopment for residential purposes, which are well advanced or under construction;
- The Darklands Road site is the subject of re-development proposals, which are well advanced following a recent grant of permission, with commitments having been made by the intended end users;
- The Gresley Football Club and Church Street sites are the subject of proposals for development for residential purposes in accordance with LP1 policy H3;
- The Kirkland Way/Penkrudge Road site is constrained by restricted access, which would need to be addressed, making it unlikely that the site could be brought forward within a reasonable timeframe; and
- The former TG Green pottery site is larger than that needed for the proposed development and its efficient and effective regeneration (including conversion works and inherent costs) would require a comprehensive, rather than piecemeal redevelopment approach, which could not be achieved within a reasonable timeframe.

Given the foregoing, even if the proposed uses were to be disaggregated, the above sites do not provide reasonable in or edge-of alternatives under the Sequential Test. The site is therefore acceptable in principle, with it having passed the Sequential Test and it also being an accessible site which, upon completion of the WSRR, would be well connected to the town centre.

Turning to the RIA, the RTL1 threshold is exceeded by the three uses combined, but also by the proposed retail unit in isolation. For the purposes of this assessment the applicant has identified a

primary retail area, based upon that identified in the 2015 Swadlincote Town Centre Retail and Leisure Study, and has drawn a boundary around what it considers to be the Woodville local centre. The applicant estimates that around 21% of the convenience element of the turnover of the proposed retail unit would be drawn from the Swadlincote town centre primary retail area and less than 1% of trade from Woodville local centre. By 2024, this would equate to 3.4% of the Swadlincote primary shopping area turnover, the vast majority from Morrisons superstore, and less than 4% of the Woodville local centre (Tesco Express) turnover by 2024. It points to evidence which indicates that the store currently trades very well and would therefore not be placed at risk of closure. Most of the remainder of trade drawn from the primary shopping area would be distributed among larger comparison goods retailers, with no significant adverse impact on individual stores. Likewise, Woodville's Tesco Express would not be expected to suffer a serious adverse impact. In regard to the proposed pub and restaurant, the applicant notes that these would draw trade from establishments both within and outside centres and that their impact on the vitality and viability of Swadlincote town centre and Woodville local centre and on investments in individual facilities would therefore be limited.

The Planning Policy Officer considers the RIA to be a reasonable representation of the likely impacts and does not consider that the impact would be detrimental to centres or individual retailers therein, contrary to the strategic aims of local and national policy. However, it is considered it would be appropriate to limit the proportion of net floor area of the A1 retail unit that could be devoted to comparison goods retailing so to minimise any impact on such activity within the town centre.

Impact on existing infrastructure and facilities

Policy INF1 states new development that generates a requirement for infrastructure will be expected to provide the necessary on and off-site provision to support and mitigate the impact of that development – often in the form of financial contributions. The viability of development will also be considered when determining the extent and priority of contributions.

Policy INF2 indicates the Council will secure contributions towards off-site works where required to mitigate the impact of traffic generated by development, with this supported by policy INF4 seeking financial contributions towards the WSRR in particular. Policy INF2 also states, where a need is identified, the Council will seek to negotiate the provision of contributions toward new, or the enhancement of existing, walking and cycling routes and supporting infrastructure, and measures to encourage the use of public transport – including bus shelters and laybys.

Policy INF6 notes that development that increases the demand for community facilities and services makes appropriate contributions towards providing new facilities or improving existing facilities. Policy INF8 seeks provision of 20% National Forest planting on-site or a suitable contribution to the equivalent area of planting off-site. Policy INF9 notes that current provision of open space and sports and recreation facilities in South Derbyshire is not sufficient to meet local need and, to address this, opportunities for creating new or enhanced facilities will be sought.

Policy H21 confirms the Council will seek to secure up to 30% of new housing development as affordable housing on sites of over 15 dwellings. Consideration will also be given to the local housing market, the viability of the scheme, the tenure mix and dwelling type as based on the SHMA, and the phases of development that are being proposed.

The delivery of the WSRR is at an advanced stage. Planning permission for the route was granted in September 2019 by the County Council as a road construction scheme, which it would carry out as the Local Highway Authority, and pre-commencement planning conditions are in the process of being discharged. Following negotiations with landowners, variations to the approved design are required and a decision on this application is expected in July/August. The County Council also initiated a Compulsory Purchase Order (CPO) in 2019 to acquire land upon which to build the project in case agreement cannot be reached with landowners. A public inquiry was held in January 2020 and final determination by the Secretary of State for Transport is expected by the end of June. Conditional agreement to purchase has already been reached with most parties. The total capital

cost of the scheme is circa £13.5m. Of this, the County Council is seeking £6.4m in Local Growth Fund (LGF) support from the LEP. The LGF support is the only element of the funding package remaining to be secured, and the full business case is being presented to the LEP Project Board on 16th June where it is anticipated that a conditional final decision will be made. The County will contribute £6.4m, of which £1.2m in preparation costs has already been committed. The balance is expected to be met from s106 contributions from other housing developments around Swadlincote.

The County Highway Authority observes that the phase 1 element of the residential scheme of the proposal would impact directly on the local road network and the Clock Island in particular. This is an impact which requires mitigation as set out in the consultation response above. The remaining housing is not considered to bring about effects which require capacity mitigation, given it cannot be demonstrated to be necessary or reasonable (i.e. access to phase 2 would only be possible after the construction of the WSRR and the route would assign capacity back to the Clock Island). The requested contribution is therefore considered to be CIL compliant and would further cement the balance of funding towards the WSRR.

The remaining impacts on existing infrastructure and facilities would principally arise from the residential development on the site. Some associated use of recreational facilities may come about from employment uses (e.g. use of local sporting facilities during lunch breaks, etc.) but these are already linked back to a residential origin. The improvement projects taking place at Woodhouses Recreation Ground and Swadlincote Woodlands would be the principle recipient projects for outdoor sport and built facilities contributions. The Woodhouses Recreation Ground project is intended to create a central sporting hub on the Woodhouses site. The site currently has a rough car park, changing rooms pavilion, skateboard park, boxing club and 3 grass football pitches. The site is also adjacent to Swadlincote ski centre which is privately owned but enhances the concept of a sporting hub. The project would look to improve, enhance or extend all these facilities including introduction of an artificial grass pitch. The site could be developed as a whole or in discrete projects. This project would be appropriate for all 3 categories but principally outdoor sports and built facilities. The Swadlincote Woodlands site incorporates large swathes of open space and will likely soon be partly declared as a Local Nature Reserve (LNR). It also has a car park, pavilion including toilets, extensive play area, various sculptures and art works, extensive footpaths, bridges, ponds and other infrastructure and environmental and biodiverse features. s106 monies would increase, enhance, improve these and additional new features. As such it would be most appropriate for built facilities and public open space.

Any shortfall in public open space on site could also be provided as a financial sum towards elements of these projects. Similarly, any shortfall in National Forest planting requirements can be secured by way of a contribution, with the NFC able to utilise such funds towards new and enhanced woodland in the countryside around the town. In terms of education and healthcare needs, the responses above evidence the impacts arising. The response of the CCG has been queried by the applicant, but as outlined there is sufficient evidence to demonstrate that local surgeries cannot accommodate further demand without mitigation. Education contributions would be timed so to best align with when the mitigation is required (noting that, for instance, secondary school capacity is not exceeded until around 60/70% occupation of this development). Similarly, recreation contributions need not be secured early on, and this assists with viability. Accordingly, these contributions are all considered to be CIL compliant.

Finally, the County Travel Plan Officer has advocated consideration of a bus service to serve the development. Normally, a scheme of 300 dwellings would not be of sufficient quantum to secure a route through the development (it has not been secured on other, larger sites in the town, nor have those schemes been tied to securing or funding a service). However, the employment provision does bring about due consideration of the need to provide sustainable modes of transport for workers on a regular basis. The remaining land within the Regeneration Area allocation would also serve to support the financial viability of a service over time, as that land comes forward. Nonetheless, it is apparent that development viability is a problem and funding a new service along with associated bus stop infrastructure would not be possible. However, allowance has been made in the costs of the development to provide shelters and real-time service information on the WSRR

and to provide two stops with shelters and similar information boards on Hepworth Road. These provisions, along with the relief the WSRR would bring and footfall created by the proposal and Woodville Woodlands occupants offers an attractive opportunity for alternative routes on existing services. The hourly 29 and 29A both take the same route along High Street and Swadlincote Road from Ashby, so there is potential for the operator (Arriva) to divert one of these along Hepworth Road and the Regeneration Route. Whilst this is not a certainty at the present time, setting aside funds to provide the infrastructure is, and reasonable endeavours can be made by officers and developers alike to pursue the matter.

By way of summary, the total s106 contributions are as follows (*based on 300 dwellings):

▪ Infant education*:	£33,624.48
▪ Junior education*:	£571,616.16
▪ Secondary education*:	£354,660.46
▪ Recreation open space:	£373.00 per bedroom on-site shortfall
▪ Recreation outdoor sports facilities:	£220.00 per bedroom
▪ Recreation built facilities:	£122.80 per bedroom
▪ Healthcare*:	£144,000.00
▪ National Forest planting:	£35,000.00 per hectare on-site shortfall
▪ Travel Plan monitoring:	£43,812.00
▪ WSRR contribution:	£10,150.00
▪ Bus stop contribution:	£40,000.00
▪ Monitoring fee:	£5,000.00

The s106 would also deal with arrangements for the long term ownership of public open spaces and non-highway drainage on the site, as well as funding of any management company/ies.

Viability of the development, affordable housing and need for alternative/additional land uses

The District Valuer (DV) has considered the viability appraisal (VA) submitted and undertaken their own appraisals to verify that advanced by the applicant. A scheme with 30% affordable housing and full s106 contributions, but with 300 dwellings proposed, shows a deficit of £6.9m. Even this is with compromises by the applicant and with a high degree of risk being taken on – namely through the need to remediate and ‘make ready’ the land in order to ensure follow on development by other parties. The costs associated with this are outlined further below where it is evident these are significant, which is not unexpected given the historic use of the site, surrounding uses and infrastructure costs, and thus the associated unknown risks that could further increase these costs. Furthermore, the market housing values adopted for the purposes of assessment date from September 2019, with Land Registry data since indicating a slight decline – and that is without fully understanding the effects of the COVID-19 outbreak on the property industry. Hence, the DV indicates a degree of caution around their assessment in this respect, although it should be observed that improvement in the market would unlikely achieve anything other than a recouping of the observed (and further possible) decline in market values (i.e. it would unlikely result in surplus profit later on). With these points in mind, provision of 30% affordable housing, even at 300 dwellings, makes the development unviable. Ergo, detailed assessment of a scheme of 150 dwellings would be futile – it only resulting in an outcome which points to an even worse financial position.

Consequently, a scheme which secures full s106 contributions but 0% affordable housing has been modelled. The same associated compromises and risks as outlined above are taken on again. Furthermore, the abnormal costs have been subject to additional scrutiny by the DV’s quantity surveyor (QS). With additional scrutiny by officers of the cashflow underpinning the scheme, so to ensure section 106 contributions are appropriately triggered relative to the impact of the development arising on affected infrastructure, the scheme is *just* viable. Any surplus is so minor to be a ‘trace’ in the overall GDV of the development, and not sufficient to even secure an affordable housing contribution for a single dwelling. This is an important benchmark to acknowledge – the scheme cannot sustain any affordable housing whatsoever.

It could be the Committee's preference to seek affordable housing provision on site at the expense of section 106 contributions. This is, however, not recommended as it would have the following effects on the sustainability of the proposal:

- The total value of s106 contributions would only secure around 10% affordable housing on-site;
- The impacts on schools and healthcare would go unmitigated;
- Council projects for improvements to recreation and sporting provision would require greater support from other sources;
- The contribution towards the WSRR would be lost, in turn placing greater reliance (albeit not significant) on grant funding to deliver the route;
- Bus stop infrastructure would not be secured, limiting a significant opportunity to improve service provision for the wider benefit of the area;
- It would be contrary to a Corporate aim to secure all necessary section 106 contributions to mitigate impacts of development; and
- It could compromise the level of, or ability, for Homes England award funding (see below).

It must also be considered that to swap the local centre land for employment land would further negatively impact on the overall viability of the scheme, affecting the ability to support section 106 contributions and overall delivery. The social and economic benefits of a mix of uses across the site must be given some credence in this regard, it helping to support a healthy balance for those living, working or socialising in the Regeneration Area and the surrounding areas.

The absence of affordable housing is regrettable, and this affects the overall sustainability of the scheme. However, as outlined above, it is clear at the Plan preparation stage some support from residential development would be required to facilitate the development of the Regeneration Area. It must be also acknowledged that this is an area of the town which has long required regeneration and clearly forms a strategic aim of the Plan – if not a long standing desire from Members to see this site and the WSRR brought forward so to realise wider benefits. Those wider benefits can still be realised, however, whilst the applicant has taken on board officer suggestion to engage Homes England who can facilitate delivery of affordable housing where viability issues exist. Discussions have taken place and it is clear this site qualifies for support, with the applicant needing to secure a development partner and registered provider to secure grant funding. The discussions have been sufficiently positive for the applicant to provide a letter of comfort, stating:

"We believe in regeneration, revitalising and transforming sites and local communities and are building an enviable track record in the areas we operate within. Our success has relied on our ability to establish positive working relationships with key public stakeholders, such as Local Authorities and Local Enterprise Partnerships.

We have worked closely with South Derbyshire District Council and Derbyshire County Council as part of the Woodville Regeneration Route Project Board to bring forward the land at Occupation Lane for residential and commercial development alongside the delivery of the Woodville Regeneration Route....

Homes England, the government's housing accelerator, is aware of the site and the challenges it faces in delivering affordable housing. Homes England has several products available to boost the delivery of affordable housing. These can only be used if there isn't a requirement for affordable housing to be delivered through the planning permission.

For this major project, Harworth's role is that of master developer. Our role will be to remediate this derelict land and create serviced development parcels which we will then sell to local, regional or national housebuilders and commercial developers or occupiers who would build-out new housing and employment space.

To support the plot sale process, we prepare detailed technical packs which are made available to those housebuilders that express an interest in acquiring the land which in turn assists with their own due diligence, financial offers and accompanying scheme layouts. We would incorporate details in this technical pack of the latest products that Homes England have available to promote affordable housing delivery including the relevant contact details for Homes England.

Positively, we already have enquiries for both commercial and residential phases of the site which we're in early discussions on and will require delivery of the serviced development platforms in the next 24 months..."

This is a positive attitude towards this opportunity. Indeed, the applicant wishes to maintain and build on existing relationships with the Council so it is in their interest to work towards securing the support of Homes England. However, it is clear there is a risk to the Council, given that any permission cannot be conditional on first securing funding – this excluding the scheme from Homes England's eligibility criteria. Whilst this is a new concept for Members to appreciate, and a considerable degree of faith is necessary in both the applicant and officers to work towards securing this goal and the right type and tenure of affordable housing to meet local needs; it must not be forgotten that the scheme is otherwise unviable with affordable housing included. Essentially, the Council stands only to gain should this be successful. If not, it would be no different to the situation if Homes England were not able to offer support. Whilst work towards securing a development partner and registered provider, and in turn Homes England funding, is unlikely to be sufficiently advanced before the section 106 agreement is prepared, the potential of this bringing the site back to policy compliant levels (i.e. 30% affordable housing) and remove one of the conflicts with the Development Plan is most welcome. This would leave the only unresolved conflict with the Plan being the quantum of housing.

Highway capacity/safety and sustainable transport

Policy INF2 confirms that permission will be granted for development where traffic generated by development has no undue detrimental impact upon local amenity, the environment, highway safety, the efficiency of transport infrastructure and the efficiency and availability of public transport services. Developers are required to make appropriate provision for safe and convenient access to and within the development for pedestrians, cyclists, public transport users and the private car, as well as minimise car travel generated by the development. Applications for development with significant transport implications should be accompanied by Travel Plan measures, funded by developer contributions. The policy also seeks the expansion, improvement and protection of walking and cycling networks, as well as improvement of public transport services, infrastructure and information provision. Development should be designed and laid out to ensure that, wherever possible, public transport services are within convenient walking distance, whilst appropriate car parking provision should be made whilst encouraging the use of low emission vehicles.

The CHA's response is set out above. Subject to planning obligations, there is no objection to the impact on the wider highway network, with the delivery of the WSRR a key component of this site relieving the key congestion hotspot at the Clock Island. Travel Plan aims would also be secured through effective monitoring so to reduce reliance on private vehicle and encourage the take up of sustainable modes of transport. Bike storage and electric vehicle charging points can be a condition of permission. The Planning Policy Officer notes that the southern part of Woodville, including recent residential development, is not served by public transport yet the TA does not address the potential for enhanced bus services to serve the new development. Guidance recommends that there should be bus services within 400m of new development, but no bus stops exist within this range. It is recommended that applicant should explore the potential for utilising the complete WSRR to improve public transport penetration in this area, potentially offering additional relief to the highway network. The matter of financing a new or alternative service along the WSRR is discussed above, as well as measures to ensure appropriate engagement with existing and prospective operators and the County to facilitate a service in the long term. It must be noted, however, that the success of such an incentive would depend on wider timetabling and the financial viability of an alternative

route, and it would unlikely be feasible to secure this at an early stage. Consideration of timescales will be necessary in negotiating the finer detail of the s106 agreement.

LCCHA has a different opinion to the CHA, considering that the TA does not fully assesses the highway impact of the proposals. The two main junctions of concern (the Hepworth Road/Ashby Road/High Street signals and the Albert Village crossroads) have been considered. The applicant highlights that junction assessments were provided out of robustness and completeness, with the conclusion for the signalised junction being that *“it is not considered that the proposed development impact constitutes a ‘severe’ impact”* in NPPF terms. Indeed, LCCHA concedes this is the case stating that, with the development, the signals would operate *“close to/at capacity”* - crucially not significantly exceeding capacity which might ordinarily justify off-site mitigation. The same can be said for the existing Albert Village crossroads, with any capacity concern in the PM peak only. However, LCCHA contend that the applicant should model the impact of the development on the now proposed double mini-roundabout mitigation scheme proposed there. The applicant contends this is not required given their assessment has considered the impact upon the *existing* network.

It is perhaps more relevant to consider the responsibility of LCCHA in designing this mitigation scheme. The Regeneration Area and WSRR proposals are not fresh ideas. They have been part of the Council's Local Plan proposals for some 8 years, since the publication of the Preferred Growth Strategy for South Derbyshire in October 2012 – well before mitigation at Albert Village became a likelihood. The site has been a very likely allocation since the Pre-submission LP1 in 2014 and an adopted allocation since June 2016. The impact of the site should have therefore been sensitivity tested by LCCHA in their drawing up of the proposals. It should not be for the applicant to ‘make good’ what appears to be a shortcoming of the highway authority in this respect, particularly when the mitigation would create capacity at this congestion hotspot and it has been demonstrated the proposal would not have severe impacts under the existing arrangements.

In terms of proposed highway and access layout, the application is made in outline but with detail of access to be considered in part – namely the access to Moira Road for phase 1, and with the remaining land accessed from the WSRR. With the TA and relevant mitigation modelled on this principle, reserved matters submissions should be restricted by condition to these limits. The access to Moira Road is considered acceptable to the CHA, although it is not agreed that visibility splays should – at this time – be set to road speeds of 30mph. Whilst the applicant understands the need to protect full visibility splays because a TRO is not certain, the longer splays would sterilise more developable land if the speed limit were to be reduced. It is therefore suggested that the visibility splay condition allows for a lower standard to be adopted if a TRO is secured.

Turning to the remaining access arrangements and wider layout of the site, with these matters in outline suitable conditions can be applied to ensure appropriate detail is supplied at the reserved matters stage. The masterplan indicates a suitable access arrangement for the remaining 225 dwellings in phase 2 (approximately 110 either side of the watercourse crossing the site) with existing PRoWs accommodated close to or on their legal lines so not to cause undue diversion from the existing, albeit underused, routes through the centre of the site. The condition of existing and proposed routes can be secured through the reserved matters applications so to encourage their use. The masterplan also indicates a loop road arrangement for the employment and local centre phases, with areas of parking to serve each. A link to the remaining land to the west is to be provided, and this can be secured up the site boundary by way of condition. Parking provision for the range of uses would be determined at the reserved matters stage, with reference to the Design Guide SPD and the CHA's advice, and this can be made clear for the residential scheme at this stage.

Flood risk and drainage

Policy SD2 expects development in areas that are identified as being at risk of flooding to be resilient to flooding through design and layout; incorporate appropriate mitigation measures, and not increase flood risk to other properties or surrounding areas. Suitable measures to deal with surface water are required on all sites in order to minimise the likelihood of new development increasing

local flood risk, with incorporation of Sustainable Drainage Systems (SuDS), which mimic natural drainage patterns, unless this is not technically feasible, or where it can be demonstrated that ground conditions are unsuitable for such measures. Policy SD3 Seeks to ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively by ensuring that adequate water supply, sewerage and drainage infrastructure is secured, and that water consumption is no more than 110 litres per person per day. SuDS should follow the drainage hierarchy, mimic natural drainage wherever practicable and improve river water quality and deliver biodiversity gain. Furthermore, developments within the catchment of the River Mease should not lead to deterioration of the Mease SAC. Foul flows generated by new development are expected to connect to the mains sewer as a priority. Policy BNE3 also aims to restore the River Mease Site of Special Scientific Interest (SSSI) and SAC to a more natural condition and improve water quality within Mease and other catchments failing to meet Water Framework Directive objectives.

The proposal is not at risk from sources of river flooding, although some surface water risks are identified. These, along with the drainage needs brought about by the development, can be appropriately mitigated for by use of SuDS across the site, capturing surface water flows and delivering biodiversity opportunities. Detailed design and long-term management of these features can be deferred to reserved matters layout, conditions and planning obligations, as appropriate. It is notable that the LLFA holds no objections to the drainage strategy and recommends conditions. Furthermore, the proposal has been considered under the Habitat Regulations for its possible impact on the River Mease SAC, with an element of surface water drainage from the site falling within that catchment. However, with the application of SuDS this is not considered to cause harm.

In the same vein, foul water flows would be wholly out of the River Mease catchment and do not pose a risk to the SAC. The response of Severn Trent Water Ltd confirms that some pumping would be required for which modelling work would need to be pursued, but they recognise that the Water Act provides the framework for such investigation and thus do not seek a condition to impose this under a planning permission.

Biodiversity impacts and gain

Policy BNE3 seeks to protect, enhance, manage, restore and deliver net gains in biodiversity. Policy BNE7 states development proposals having a detrimental effect on important trees, woodland or hedgerows must satisfactorily demonstrate how the impact on biodiversity has been minimised and, wherever possible, a net biodiversity gain delivered through appropriate mitigation, compensation or offsetting. The NPPF has been updated since the adoption of these policies and requires net gains in biodiversity, and this forms a Corporate Plan objective. Policy BNE3 also aims to develop and maintain a District-wide ecological Network, support and contribute to the targets set out in the National Forest Biodiversity Action Plan (BAP) for priority habitats and species, and protect ancient woodland and veteran trees from loss (unless the need for and benefits of the development clearly outweigh the loss). Proposals that could have a direct or indirect effect on sites with potential or actual ecological importance, including protected and priority habitats and species, must be supported by appropriate surveys or assessments, and where mitigation measures, or exceptionally, compensation cannot sufficiently offset the significant resulting harm, planning permission should be refused.

Policy BNE7 states where development that could affect trees, woodland and/or hedgerows which are important in terms of their amenity, ecological, landscape or historic value, developers will be expected to demonstrate that the layout and form of development have been informed by appropriate surveys, development would not suffer from undue shading either now or in the future, and appropriate measures are secured to ensure adequate root protection and buffers.

Tree and hedgerow cover on the site are largely confined to the site boundaries and is somewhat patchy. The largest area of tree cover is along the north-east boundary where footpaths also pass, with these areas indicated on the masterplan to be put to public open space and further National Forest planting. A section of hedgerow intrudes into the site from the Moira Road/Occupation Lane (stopped up) junction, although it is of lower quality. The layout of the phase 1 housing scheme can

seek to retain and enhance this at the reserved matters stage. Additional tree cover and be secured under the reserved matters proposals, in both residential and commercial areas, so to enhance the biodiversity and visual value of the site and provide benefits such as urban cooling and pollutant capture.

The response of the Wildlife indicates that whilst there would be impacts on protected and priority species, these can be largely mitigated for during the construction phase. It is noted that a suitable off-site compensatory habitat for ground nesting priority bird species, including skylark, would need to be provided and this can be conditioned accordingly. Botanic interest can also be appropriately safeguarded. Longer term enhancement, and thus biodiversity gain, can be secured through the reserved matters detail and conditions as appropriate.

Ground conditions and mining legacy

Policy SD4 notes that development on land which is known to comprise made ground or which is unstable, contaminated or potentially contaminated, will only be granted where the applicant has demonstrated that the scheme would incorporate any necessary remediation measures to protect human health and/or the natural environment. The regeneration of derelict, unstable or contaminated sites is also an objective of this policy.

The former use of the site is set out in the Ground Investigation Report summarised above. It is evident that further remedial works are necessary, and a considerable level of study and investigation work has taken place to ensure confidence in the intended strategy for this. Conditions can ensure that the risk to human health and the natural environment is minimised.

Impact on existing and prospective occupiers/end users

Policy SD1 seeks to prevent adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments, with decisions taking into consideration, inter alia, the need for a strategic buffer between conflicting land uses such that they do not disadvantage each other in respect of amenity issues, such as odours, fumes, or dust and other disturbance such as noise, vibration or light. Policy BNE1 requires that new development should not have an undue adverse effect on the privacy and amenity of existing nearby occupiers. Similarly, the occupiers of new development should not be unduly affected by neighbouring land uses. The Design Guide SPD contains minimum separation distances between dwellings to which developments should accord.

In terms of the proposed dwellings, layout and scale is a reserved matter. However, the masterplan suggests that the separation distances set out in the Design Guide SPD – even if taller dwellings are proposed. Equally, satisfactory spacing between proposed dwellings can also be achieved. In terms of construction phase impacts, the impact on nearby residences can be lessened by appropriate conditions to control working hours and dust emissions.

The relationship of the development to existing industrial uses needs due consideration. Broadly speaking, the masterplan layout ensures that noise generating uses are to be positioned adjoining existing similar uses, away from existing and proposed dwellings. There is one exception where employment land reaches towards the Hepworth Road/Occupation Lane roundabout, and the more disruptive uses of B2 and B8 should be restricted in this position. The position of the local centre, and the public house, would also be buffered from new residences by the WSRR and associated landscape breaks, ensuring that its use into the evening would be unlikely to cause harm. This break also assists with any associated odours. The WSRR itself would be a noise generating use, and inevitably also have some air quality effects along its route, but landscaping would assist in absorbing some of this along its length, noting proposed street trees, etc. under the already approved scheme, and detailed layout of the development adjoining this route is yet to be determined under reserved matters. The EHO outlines that dwellings should be used to shield private gardens behind, and noise mitigation methods can be deployed in the construction of these properties.

The EHO raises particular odour concerns relating to IG Elements – an existing manufacturing premises to the southern boundary of the employment area. The concern here is of the effect of occasional odour emissions and the effect on users of the local centre and residences, and, to a degree, prospective employees, within a zone surrounding the premises. Unmitigated, this not only poses a concern under policy SD1, but also that substantiated complaint under Environmental Health legislation could constrain the operation of the premises. The EHO has worked with officers and the applicant to secure a conditional approach to mitigation which allows flexibility in the approach taken.

Design principles

Policy BNE1 expects all new development to be well designed, embrace the principles of sustainable development, encourage healthy lifestyles and enhance people's quality of life. New development should be designed to ensure that people feel comfortable and safe; streets should be designed to relate to their context, with a balance being struck between place-making needs and vehicle movement needs; easy to navigate; encourage social interaction; accessible to all user groups; create places with a locally inspired character that respond to their context and have regard to valued landscape, townscape and heritage characteristics; within the National Forest fully reflect the forest context; be visually attractive and respect important landscape, townscape and historic views and vistas; support healthy lifestyles, including through the promotion of active travel, the provision of public open space, sports and other leisure facilities; and facilitate the efficient use of resources. These objectives are supported by the detail of the Design Guide SPD and the NDG.

Many of the above matters would be considered in detail at the reserved matters stage. However, the Masterplan provides some broad principles for layout, scale and landscaping. The residential part of the development would follow the principles of outward facing perimeter layout, with landscaping corridors providing connectivity between areas without reliance on vehicular alternatives. Existing PRowS would be incorporated, in the main, along these corridors and the objection of Peak and Northern Footpaths needs to be considered in the context that layout is not a fixed matter, and that the WSRR permission has already dealt with the principle of some realignment of the existing route between Occupation Lane and Kiln Way. The need to ensure footpath routes are attractive can be made clear in conditions setting the parameters for reserved matters. Areas of public open space (POS) focus towards three main areas – one adjacent to the junction of Moira Road and Occupation Lane (stopped up), a central Local Equipped Area for Play (LEAP) adjacent to the watercourse, and a larger area of open space around the local centre and existing pond at the northern boundary. National Forest planting would feature on these areas as part of the on-site provision. Given the quantum of development proposed, a further Local Area for Play (LAP) should be secured as part of the detailed proposals, and this can be made conditional. The Open Spaces and Facilities Officer has queried whether allotments could be included on site, but space is at a premium and to pursue this would further impact on viability. Any shortfall in on-site POS provision could be balanced by a financial contribution, as set out above.

Whilst the comments from neighbouring parties are noted, it is not agreed that higher buildings would be out of character if carefully placed on the site. There are three and four storey blocks on Occupation Lane, as well as 2.5 storey dwellings elsewhere in the Woodville Woodlands development to the south-east. The DAS provides a suitable basis upon which to set the parameters for the reserved matters.

Turning to the local centre and employment areas, the Design Guide SPD carries forward many of the principles of BNE1 to this form of development. These areas will require particular focus on matters of landscaping, with high quality surfacing materials and relief through structural landscaping and specimen trees assisting in breaking up the built form. Long term management of these areas will also be vital, and such matters can be required as part of reserved matters submissions. The indicative position of the restaurant and public house capitalise on the opportunity for a green outlook, over the watercourse and facing traffic travelling away from the centre of Swadlincote. Parking facilities for these uses, and for the retail unit, would need to be visually attractive by a palette of materials and selective planting. The indicative position of the retail unit

would also ensure that servicing arrangements can be kept out of the public realm.

Benefits of the development and the planning balance

The benefits of the development are substantial. In an economic sense, the proposal would facilitate the first stage of employment land delivery from this allocation, enabling existing and prospective business to expand or locate here in a sustainable location. Employment prospects would encourage skilled labour, whilst the commercial element of the scheme would bring about employment in the retail and service industries. The delivery of the WSRR would be facilitated through the grant of permission, with the LEP seeking to support infrastructure schemes where they would unlock wider benefits. The construction stage of the project would also realise economic benefits, and further economic benefits would be seen in the form of New Homes Bonus, Council Tax and business rates income. In an environmental sense, derelict and previously developed land would be brought back into use with enhancement, in the long term, of the environment of this area of the town. Biodiversity gain can be secured and the visual attractiveness and access to land in this area would be enhanced. The dispersal of traffic along the WSRR would also alleviate congestion and air quality issues in Woodville and on routes surrounding the Clock Island. The development of this site would also remove a key barrier to movement around the south of Woodville, facilitating greater use of sustainable modes of transport, with a considerable proportion of the Woodville Woodlands estate able to reach the centre of Swadlincote in a direct and sustainable fashion. The creation of open spaces, water features and play areas also aids in the mental wellbeing and physical health of those living and working on and off the site.

The increased number of dwellings also leads to a greater overall section 106 contribution than might be achieved under a strictly policy compliant scheme. This is a material planning consideration in it constituting an economic benefit above and beyond that envisaged by the Plan. It is unlikely that the requested WSRR contribution would be altered under a lesser scheme (given the preferential location of housing relative to employment land uses would still likely lead to an access from Moira Road for some of the residential element); however, other contributions are effectively doubled. The same could also be the case for affordable housing provision, assisting further in a social dimension. 150 extra dwellings would also be added to the Council's housing land supply whilst delivery of employment land needs set out under policy S5 would give that supply a welcome boost.

Balanced against these benefits is the conflict with the Development Plan. It is, however, not enough to resist permission on the basis of a simple conflict with policy – it is necessary to establish harm and assign a significance to it. As outlined above, the additional housing provision and local centre provision does not jeopardise the ability to provide the required 12 hectares of employment land on the Regeneration Area. Furthermore, the proposed local centre passes the Sequential Test and would not have a significant impact on the vitality of the town centre or Woodville local centre. The lack of affordable housing does, however, count against the proposal – this being total in respect of policy H21. The viability of the scheme is a very important material consideration in this dimension – without the increased quantum of housing, the local centre and a reduction in affordable housing, the whole development would be undeliverable. It would not come forward and in turn the delivery of the WSRR could be compromised. Furthermore, there is reasonable prospect of this affordable housing shortfall being 'made good' by intervention from Homes England. Whilst this cannot be made a requirement of a permission without thwarting this opportunity, there is every reason to expect this avenue would be taken and these benefits realised. With highway, drainage, land condition, biodiversity and amenity impacts all considered acceptable, subject to conditions, and with the masterplan and DAS indicating a well designed development overall, it is considered the balance sits firmly in favour of approval.

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 (Service Delivery) to draft and complete a section 106 agreement to secure the planning obligations as set out in the report above;

B. Delegate authority to the Strategic Director (Service Delivery) to agree the final wording of the conditions, as substantially set out in the report below, noting that at the time of writing any pre-commencement conditions are subject to a statutory 10-day notification;

C. Subject to A and B, **GRANT** permission subject to the conditions as agreed under B.

1. (a) Application for the first approval of the reserved matters listed at condition 2 shall be made to the Local Planning Authority before the expiration of two years from the date of this permission, whilst application for all subsequent approvals of the reserved matters shall be made to the Local Planning Authority before the expiration of eight years from the date of this permission; and
(b) The development hereby permitted shall be commenced before the expiration of two years from the date of approval of the first of the reserved matters to be approved, whilst in respect of all subsequent approvals the development subject of those approvals shall be commenced before the expiration of one year from the relevant date of approval of those reserved matters.

Reason: To conform with Section 92 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004), noting that a timely commencement on site is required to capture existing land value and bring forward employment opportunities at an early stage, whilst also allowing adequate time for detailed approval of and delivery of the site in phases.

2. Before any development is commenced the further approval of the Local Planning Authority is required with respect to the following matters (herein referred to as 'the reserved matters') on an application made in that regard, with the exception of matters of access to phase 1 (which shall serve no more than 75 dwellings from Moira Road and be constructed in accordance with the 1:250 tracking detail on drawing ref. 067895-CUR-00-00-DR-TP-05001-P01, having a 5.5 metre wide carriageway, two 2 metre wide footways and 8 metre radii):
 - (a) access,
 - (b) appearance,
 - (c) landscaping,
 - (d) layout, and
 - (e) scale.

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

3. The reserved matters shall be designed broadly in accordance with the illustrative plan ref. P16-1422_004 revision B and section 5 of the Design & Access Statement ref. P18-0670_200B dated August 2019 with the exception of pages 44 to 45 where the principle and extent of 3 and 4 storey dwellings would need to be justified through detailed design analysis, and include the following specific requirements and/or be supported by the following documents in so far as relevant to that matter:
 - (a) a Landscape and Ecological Management Plan (LEMP) for all retained and created habitats demonstrating provision for the establishment of the approved landscaping scheme for a period of no less than thirty years and details of the legal and funding

- mechanism(s) by which the long-term implementation of the LEMP will be secured by the developer with the management body(ies) responsible for its delivery;
- (b) a Biodiversity Metric Calculation to confirm the extent by which mitigation measures proposed through the LEMP contribute to the achievement of a biodiversity net gain (ideally a 10% gain) compared with the existing site conditions in compliance with policy BNE3 of the Local Plan and paragraph 175 of the National Planning Policy Framework;
 - (c) a suitable off-site compensatory habitat scheme for ground nesting priority bird species, including skylark;
 - (d) details of enhancement measures for bats and birds in the form of incorporated bat boxes/bat bricks and nesting boxes both on existing mature and early-mature trees and within the fabric of the new buildings, as appropriate, set out in paragraph 6.2 of the Ecological Appraisal dated July 2019 (revision A);
 - (e) details of hedgehog holes/tunnels within boundary fences and walls at ground level to residential gardens;
 - (f) the layout shall accord with the Highway Authority's 6C's Design Guide (or equivalent guidance that may update or replace it); and national guidance laid out in Manual for Streets issued by the Departments for Transport and Environment and Local Government (or equivalent guidance that may update or replace it);
 - (g) the gradient of any access shall not exceed 1:30 for the first 10m into the site from the existing highway boundary and/or the Woodville to Swadlincote Regeneration Route (WSRR) and 1:20 thereafter;
 - (h) pedestrian and cycle links between residential cul-de-sacs and Occupation Lane, Moira Road and the WSRR, as well as pedestrian and cycle links between the local centre car parking/pedestrian circulation areas and the WSRR;
 - (i) each dwelling to be provided with designated space for the parking of 1.5 vehicles per 1 bedroom dwelling, two vehicles per 2-3 bedroom dwelling and three vehicles per 4+ bedroom dwelling. Parking spaces shall be no less than 5.5m in depth and 2.4m in width, increasing to 3m in width where the space is abutted by a building or boundary treatment. Where a garage or car port is counted as a parking space, the internal dimensions shall not be less than 3m x 6m, whilst further spaces in front of garage doors shall be no less than 6m in depth;
 - (j) domestic bin collection points, sufficient for holding no less than 2 bins per dwelling on collection days, at the entrance to shared private accesses to prevent refuse bins and collection vehicles standing on the new estate street(s) for longer than necessary causing an obstruction or inconvenience for other road users;
 - (k) commercial bin stores, positioned discretely within the curtilage of the proposed premises so to allow refuse vehicles to enter, collect and leave in a forward gear;
 - (l) the provision of an employment estate road up to and including the western site boundary so to facilitate a contiguous adoptable highway into the remaining land forming part of the policy E6 allocation in the Local Plan Part 1;
 - (m) a revised Travel Plan for that phase or premises, as the case may be, based upon the Framework Travel Plan submitted in support of this application;
 - (n) bike stores/racks with weather shelters located close to the pedestrian entrances to employment and retail, café/restaurant and public house premises;
 - (o) a Local Area for Play (LAP) as part of the phase 1 residential scheme and a Local Equipped Area for Play (LEAP) as part of the phase 2 residential scheme;
 - (p) public footpaths to be retained on their existing line where practicable and complimented by new routes through areas of public open space, with a compacted and/or bound surface applied for the length of these routes (supplemented by root protection measures/techniques where these routes pass through woodland);
 - (q) position, cross-sections and construction details of no less than three footbridges to span the existing watercourse running through the residential element of the site;
 - (r) a green corridor and new pond designed specifically for Common toad to the east of the WSRR as part of the Common Toad mitigation strategy required under the WSRR permission so to allow unimpeded movement of common toads across the site from the scrub/woodland areas alongside the public footpath on the eastern boundary of the site to the existing breeding pond;

- (s) a landscape management plan (LMP) for all non-domestic areas of landscaping created on the site (i.e. public open spaces, shared gardens and landscaped areas to non-domestic premises), including the location and type of litter and dog waste bins along with benches throughout the areas of public open spaces within the site;
- (t) retained hedgerows and trees shall not form boundaries to gardens to proposed dwellings and be incorporated into public spaces/green infrastructure;
- (u) details of subterranean tree and hedgerow root growth facilitation measures, including use of subterranean cage methods in or adjoining areas of hardstanding; and
- (v) details of the proposed glazing and ventilation specifications to proposed dwellings and the specification and location of any noise/acoustic barriers.

Reason: In the interests of achieving sustainable development, having particular regard to the potential impact of the development on the character of the surrounding area, biodiversity protection and net gain, highway safety and sustainable modes of transport and site connectivity.

4. No development, including preparatory works, shall commence until a site-wide phasing programme including the proposed sequence of providing:
 - (a) housing phases including associated parking and boundary treatments,
 - (b) employment units including associated parking and landscaping,
 - (c) the local centre including associated parking and landscaping,
 - (d) public and private highways including street lighting, including those provided by others,
 - (e) sustainable drainage systems and associated infrastructure, and
 - (f) public open space including play areas and footpath links,
 has been first submitted to and approved in writing by the Local Planning Authority. The details shall be provided cognisant of the delivery of the WSRR (timing and location of junctions/access points) and with reference to plan(s) and a Gantt chart.

Other than applications for enabling works, each Reserved Matters application made pursuant to this permission shall be accompanied with an update to any previously approved phasing programme(s) with the same details, as relevant, and define the extent and location of individual development phases or sub-phases and any associated interim arrangements for access, drainage, etc. The development relevant to that reserved matters approval shall not be carried out other than in accordance with the approved programme for that development.

Reason: To ensure that the impacts of the development are appropriately mitigated at all stages of the construction phase, and so occupiers of the development are able to reach and access services and facilities at an appropriate time, in the interests of achieving sustainable development.

5. No development involving the construction of a dwelling shall commence until a marketing scheme to market the availability of the employment land/plots has been submitted to and approved in writing by the Local Planning Authority. The approved marketing scheme shall thereafter be implemented and carried out for a period of no less than 5 years unless all employment land/plots has been transferred for development. The owner of any undeveloped employment land/plots shall submit to the Local Planning Authority quarterly updates on all remaining employment land/plots for a period of up to 5 years outlining the range and scale of interest in said land/plots.

Reason: To secure the continual promotion of employment land and timely delivery of the employment units in accordance with policy E6 of the Local Plan Part 1.

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

Reason: In the interests of protecting the living conditions of prospective occupiers and the amenity of the area and adjoining occupiers, recognising that initial preparatory works could also cause unacceptable impacts.

7. The mitigation measures described in Table 7.1 of the Air Quality Assessment submitted in support of the application (WYG Air Quality Assessment July 2019 ref. A112309 Issue 1) shall be adopted for the duration of the construction phase of the development.

Reason: In the interests of protecting the living conditions of prospective occupiers and the amenity of the area and adjoining occupiers, recognising that initial preparatory works could also cause unacceptable impacts.

8.
 - a) No development shall commence within a phase or sub-phase until a remediation scheme to control all forms of contamination identified in the Ground Investigation Report (ref. 067895.101-CUR-00-XX-RP-GE-001) dated 23 July 2019 has been submitted to and approved in writing by the Local Planning Authority. The measures approved in the remediation scheme shall be implemented in full unless the Local Planning Authority dispenses with any such requirement specifically and in writing.
 - b) Prior to occupation of the development (or parts thereof) an independent verification report which meets the requirements given in Box 2 of Section 3.1 of Council's 'Guidance on submitting planning applications for land that may be contaminated' (herein referred to as 'the Guidance') shall be submitted to and approved in writing by the Local Planning Authority. With the prior written agreement of the Local Planning Authority pursuant to part (a) of this condition, this may be carried out on a plot-by-plot basis.
 - c) In the event that it is proposed to import soil onto site in connection with the development, this shall comply with the specifications given in Box 3 of Section 3.1 of the Guidance.

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

9. The mitigation strategy as detailed in Section 10 of Ground Investigation Report (ref. 067895.101-CUR-00-XX-RP-GE-001) dated 23 July 2019 shall be implemented as set out therein unless an alternative mitigation strategy is first submitted to and approved in writing by the Local Planning Authority, whereafter that approved mitigation strategy shall be implemented.

Reason: To protect the health of the public and the environment from hazards arising from coal mining legacy, recognising that failure to address such matters prior to construction of buildings and subsequent occupation/use could lead to unacceptable impacts.

10. If during development of a phase or sub-phase any contamination or evidence of likely contamination is identified that has not previously been identified or considered, a written scheme to identify and control that contamination within a phase or sub-phase shall be submitted to and approved in writing by the Local Planning Authority prior to any further works taking place on the phase or sub-phase. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA (or equivalent guidance which may subsequently update or replace it), and appropriate remediation/mitigation proposals. The approved scheme shall be implemented in accordance with the approved remediation/mitigation proposals.

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

11. No development, including preparatory works, shall commence within a phase or sub-phase until details of measures indicating how additional surface water run-off from the phase or sub-phase will be avoided during the construction works have been submitted to and approved in

writing by the Local Planning Authority. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved measures and systems shall be brought into operation before any works to create buildings or hard surfaces within that phase or sub-phase commence.

Reason: To ensure surface water is managed appropriately during the construction phase of the development, so as not to increase the flood risk to adjacent land/properties or occupied properties within the development itself; recognising that initial works to prepare the site could bring about unacceptable impacts.

12. No construction of a building or hard surface, setting of site levels or installation of drainage services/utilities within a phase or sub-phase shall take place until a detailed design of, and associated management and maintenance plan for, surface water drainage of the phase or sub-phase, in accordance with the technical notes and principles outlined within:

- a) the Flood Risk Assessment and Outline Drainage Strategy (06785-CUR-00-XX-RP-D-001 Revision 4) dated 24th July 2019 and the Technical Note (067895-CUR-00-XX-RP-D-72901-P01) dated 2nd April 2020, including any subsequent amendments or updates to those documents as approved by the Lead Local Flood Authority;
- b) Defra non-statutory technical standards for sustainable drainage systems; and
- c) Development Proposals within the River Mease Catchment: Standing Advice for Local Planning Authorities (LPAs) - Third Issue Including Detailed Advice on Sustainable Urban Drainage Systems (SuDS)

has been submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate that, as a minimum, suitable capacity is proposed to attenuate peak flows from the phase or sub-phase, making allowance for climate change and urban creep, and where necessary include measures to capture overland flows between proposed and existing properties.

The scheme shall also include drawings and details, including the colour and appearance of safety railings, of all inlet and outfall structures to attenuation ponds, as well as details of any management company, responsible person(s), the mechanism of funding of the management company (including the details of any proposed service charge payable by the owners of the dwellings, justification for any amount proposed and the mechanism for calculating future increases in the service charge) so that the management company will be capable of carrying out the inspection, management and maintenance of the retained surface water drainage features.

The surface water drainage infrastructure shall be installed in conformity with the approved details prior to the first occupation/use of each respective building/road/hard surface served by the surface water drainage system within that phase or sub-phase or in accordance with a phasing plan first submitted to and approved in writing by the Local Planning Authority. Those elements of the surface water drainage system not adopted by a statutory undertaker shall thereafter be maintained and managed in accordance with the approved management and maintenance plan.

Reason: To ensure that the principles of sustainable drainage can be incorporated into the development, noting that initial preparatory and/or construction works may compromise the ability to mitigate harmful impacts.

13. Upon completion of the surface water drainage system, in part or in whole, including any attenuation ponds and swales, and prior to their adoption by a statutory undertaker or management company; a survey and report from an independent surveyor shall be submitted to and approved in writing by the Local Planning Authority. The survey and report shall be carried out by an appropriately qualified Chartered Surveyor or Chartered Engineer and demonstrate that the surface water drainage system has been constructed in accordance with the details approved pursuant to condition 12. Where necessary, details of corrective works to be carried out along with a timetable for their completion, shall be included for approval in

writing by the Local Planning Authority. Any corrective works required shall be carried out in accordance with the approved timetable and subsequently re-surveyed by an independent surveyor, with their findings submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the effective operation of the surface water drainage scheme following construction of the development.

14. No construction of a building or hard surface, setting of site levels or installation of drainage services/utilities shall take place within a phase or sub-phase until details of the finished floor levels of the building(s) or hard surface(s), and of the proposed ground levels of the site relative to the finished floor levels and adjoining land levels, for that phase or sub-phase has been submitted to and approved in writing by the Local Planning Authority. Such details shall be supplemented with locations, cross-sections and appearance of any retaining features required to facilitate the proposed levels. The development shall be constructed in accordance with the approved details.

Reason: To protect the amenities of adjoining properties and the appearance of the area generally, recognising that site levels across the site as a whole are crucial to establishing infrastructure routeing/positions.

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

Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan Part 1.

16. No removal of trees, hedges, shrubs, buildings or structures shall take place between 1st March and 31st August inclusive unless a survey to assess the nesting bird activity on the site during this period and a scheme to protect the nesting birds has first been submitted to and approved in writing by the Local Planning Authority. No trees, hedges, shrubs, buildings or structures shall be removed between 1st March and 31st August inclusive other than in accordance with the approved bird nesting protection scheme.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts.

17. No development, including preparatory works, shall commence within a phase or sub-phase until a Construction Environmental Management Plan for biodiversity (CEMP) for that phase or sub-phase has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following:
- (a) a risk assessment of potentially damaging construction activities;
 - (b) identification of biodiversity protection zones (e.g. buffers to trees and hedges or to protected wildlife habitat);
 - (c) practical measures (both physical measures and sensitive working practices, such as protective fencing, exclusion barriers and warning signs) to avoid or reduce impacts during construction (particularly in relation to works within canopy and root protection areas for hedgerows or protected trees);
 - (d) the location and timing of sensitive works to avoid harm to biodiversity features (in relation to breeding birds in particular);
 - (e) the times during construction when specialist ecologists need to be present on site to oversee works (as required);
 - (f) responsible persons and lines of communication; and

(g) the role and responsibilities on site of an Ecological Clerk of Works (ECoW) or similarly competent person (as necessary).

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless the ECoW otherwise sets out alternative details which are subsequently agreed by the Local Planning Authority.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts, noting that initial preparatory works could have unacceptable impacts; and in order to secure an overall biodiversity gain.

18. No development, including preparatory works, shall commence within a phase or sub-phase until a scheme for the protection of trees and hedgerows for that phase or sub-phase has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall be based on best practice as set out in British Standard 5837:2012 (or equivalent document which may update or supersede that Standard) and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The approved scheme of protection shall be implemented prior to any works commencing on site and thereafter retained throughout the construction period.

Reason: In the interests of safeguarding existing habitat and the visual amenities of the area, recognising that initial preparatory works could bring about unacceptable impacts.

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

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that initial preparatory works could bring about unacceptable impacts.

20. No development, excluding demolition and site clearance, shall take place within a phase or sub-phase until a temporary access for construction purposes has been provided in accordance with a detailed design first submitted to and approved in writing by the Local Planning Authority. The detailed design shall include measures for warning other highway users of construction traffic entering or emerging from the access. The access shall be retained in accordance with the approved scheme throughout the construction period free from any impediment to its designated use until it is either replaced/completed pursuant to an approval of reserved matters or the requirements of condition 2 (as the case may be).

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that initial preparatory works could bring about unacceptable impacts.

21. The access to Moira Road hereby approved shall be provided with visibility sightlines of 100 metres in a northerly direction and 108 metres in a southerly direction, both measured to the nearside edge of the carriageway, as measured from a point located centrally and 2.4 metres back into the access, the area forward of which shall be levelled and constructed as footway/verge and put forward for adoption as part of the public highway and thereafter be kept clear of any object greater than 1m in height (0.6m in the case of vegetation) above the nearside carriageway channel level, unless a scheme to reduce vehicle speed limits along Moira Road can first be agreed with the Local Highway Authority by way of first submitting details to the Local Planning Authority for their approval in writing and first implemented in full including relocation of associated signage, etc., allowing for visibility splays of 43 metres in both northerly and southerly directions. The area within the approved sightlines shall be levelled and constructed as footway/verge and put forward for adoption as part of the public

highway and thereafter be kept clear of any object greater than 1m in height (0.6m in the case of vegetation) above the nearside carriageway channel level.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety.

22. No development shall commence on site, excluding site clearance, remediation and other such preparatory works necessary for the future development of the land, relating to phase 2 of the development hereby permitted (as described in paragraph 3.3 of the Planning Statement ref. P18-0670 dated July 2019) until the new link road, permitted under County planning permission ref. CD9/0519/20 (or any subsequent variation to or equivalent of that permission) has been constructed and taken into use.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety.

23. Prior to the first occupation of each dwelling or employment/commercial premises, the new street(s) between each respective plot/unit and the existing public highway shall be laid out in accordance with the plan(s) approved under condition 2, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads. Until final surfacing is completed, the footway base course shall be provided in a manner to avoid any upstands to gullies, covers, kerbs or other such obstructions within or abutting the footway. The carriageway and footway(s) in front of each respective plot/unit shall be completed with the final surface course within 12 months (or 3 months in the case of a shared surface road) from the first occupation of that plot/unit.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety.

24. Prior to the first occupation of a dwelling or employment/commercial premises of a phase or sub-phase, a revised Travel Plan comprising immediate, continuing and long-term measures to promote and encourage alternatives to single-occupancy car use shall be submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall then be implemented, monitored and reviewed in accordance with the agreed travel Plan Targets.

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

25. Prior to the first occupation of each employment unit, a Low Emissions Strategy providing full details of controls from fleet transport emissions shall be submitted to and approved in writing by the Local Planning Authority. The Strategy shall include details about the mix of the vehicle engine and fuel types and fleet management measures which will be taken to minimise the emissions of respirable particulate (PM) and nitrogen dioxide (NO₂). The Strategy shall include specific targets and timescales. The measures in the agreed Strategy shall be delivered in accordance with the agreed timescales and maintained throughout the life of the development.

Reason: In order to safeguard the amenities of the occupiers of the proposed development and wider area in respect of atmospheric pollution.

26. Prior to the first occupation of a dwelling within Zone A as identified in Figure 7 of the Odour Assessment (ref. A112309 dated July 2019) until at least 1 of the 3 requirements below has been satisfied:
- i) a mitigation scheme for the control of odour within or to the proposed dwellings and/or external residential amenity spaces has been submitted to and approved by the Local Planning Authority and subsequently implemented;
 - ii) a mitigation scheme for the control of odour at the has been submitted to and approved by the Local Planning Authority and subsequently implemented; or
 - iii) updated assessments or surveys can satisfactorily prove that average odour levels within Zone A have fallen to below 3 OUE/m³.

Where mitigation is applied, such measures shall be subsequently retained in situ and maintained in working order.

Reason: In order to safeguard the amenities of the occupiers of the proposed development in respect of atmospheric pollution.

27. Prior to the first occupation of each respective dwelling, the glazing and ventilation as approved pursuant to the requirements of condition 3 shall be installed. Such glazing and ventilation shall be retained as approved and maintained accordingly and thereafter, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, where replacement windows or means of ventilation are required these shall achieve the same or better in terms of noise attenuation. Where complimentary noise/acoustic barriers are required and also approved pursuant to the requirements of condition 3, then these barriers shall be installed in accordance with the approved details prior to the first occupation of any dwelling they are intended to attenuate noise to and thereafter, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, maintained accordingly.

Reason: In order to safeguard the amenities of the occupiers of the proposed development in respect of noise pollution.

28. The rating level of sound emitted from any fixed plant and/or machinery associated with the A1, A3, A4, B2 and B8 elements of the development shall not exceed the following noise levels at the façade of any noise sensitive residential receptor location:
- 07:00 – 23:00 hours: 40dBA Measured as $L_{Aeq(15mins)}$
 - 23:00 – 07:00 hours: 35dBA Measured as $L_{Aeq(5mins)}$

All measurements shall be made in accordance with the methodology of BS4142:2014 Methods for rating and assessing industrial and commercial sound and/or its subsequent amendments. Where access to the nearest sound sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound sensitive property.

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

29. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, as amended, or any order revoking and re-enacting that Order with or without modification, the B1(b), B1(c), B2 and B8 units shall be used only for B1(b), B1(c), B2 and B8 uses of the Town and Country Planning (Use Classes) Order 1987, as amended, or any order revoking and re-enacting that Order with or without modification, and for no other purpose in Class B of the schedule to that Order.

Reason: In recognition of the purpose of the employment allocation at this location and that any main town centre uses hereby permitted have been established by way of a Sequential Test, their presence otherwise contrary to the Development Plan and sustainable delivery of growth.

30. The retail unit hereby permitted (use class A1) shall not exceed 1,600 sq m gross internal area floorspace and the net sales area (defined as all internal areas to which customers have access) shall not exceed 1,280 sq m. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, as amended, or any order revoking and re-enacting that Order with or without modification, the retail unit shall be used primarily for the sale of convenience goods, with a maximum of 320 sq m of the net sales area being devoted to the sale and display of comparison goods.

Reason: In recognition that this main town centre use has been established by way of a Sequential Test and Retail Impact Assessment, so to ensure that the projected impact on existing town/local centres remains acceptable.

31. Recharge points for electric vehicles shall be provided within the development to comply with the following criteria:
- Residential: 1 charging point dwelling with dedicated parking and 1 charging point per 10 spaces where the individual units have no allocated parking;
 - Non-residential: 1 charging point for every 10 parking spaces (this may be phased with 5% provision initially and a further 5% trigger).

Residential charging points shall be provided with an IP65 rated domestic socket 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. This socket should be located where it can later be changed to a 32amp EVCP. Non-residential charging points shall be supplied by an independent 32 amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2.

Alternative provision to the above specification must first be submitted to and approved in writing by the Local Planning Authority. To prepare for increased demand in future years suitable and appropriate cable provision shall be included in the scheme design in accordance with details first submitted to and approved in writing by the Local Planning Authority.

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

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

Informatives:

- 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 with the application reference included in correspondence.
- The application has been screened in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and the Authority is satisfied that the development will not give rise to significant environmental effects.
- This project has been subject to an Appropriate Assessment to assess its impact on the River Mease SAC under the Conservation of Habitat and Species Regulations 2017. The Appropriate Assessment has concluded that, subject to conditions, the development would cause no likely significant impact.
- The Council strongly recommends that the developer(s) explore the use of renewable sources for the supply of energy to their development.
- The developer is advised to liaise with the Local Planning Authority prior to submitting details of reserved matters for approval. It is strongly encouraged that, in addition to the requirements set out in any conditions, adequate details are supplied so to negate the need for further conditions upon approval. For example, details and locations of boundary treatments and species and size for soft landscaping should be provided pursuant to matters of landscaping, whilst details and/or samples of facing and surfacing materials and details of porches, rooflights, verges, eaves, cills and lintels should be provided pursuant to matters of appearance. For all matters, attention should be given to the Council's Design Guide Supplementary Planning Document - in particular the relationship with surrounding properties and the quality of materials and finishes expected.
- The details submitted under reserved matters should ensure that (i) all exposed housing elevations are well treated to allow a view between interiors and external space; (ii) where housing is set in blocks of more than two properties, rear garden access originates within the view of associated houses either by using gated undercroft alleyways, through plot access where practical, or by breaking up housing blocks into two or less, and that all shared rear

garden accesses are secured at the point of origin with a lockable gate; (iii) enclosed parking courtyards are overlooked or gated; and (iv) aspects of footpaths through public spaces are not compromised by any landscaping sited between footpath and the dwellings.

- g. Severn Trent Water advises that there is a public sewer located within the application site. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals by contacting our Developer Services Team (telephone: 0800 707 6600). Severn Trent Water will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.
- h. The applicant's and subsequent developers' attention is drawn to the notes contained in the consultation response of the Environment Agency in their response dated 1 November 2019, available at planning.southderbyshire.gov.uk under reference no. DMPA/2019/0931.
- i. The applicant's and subsequent developers' attention is drawn to the notes contained in the consultation response of the Lead Local Flood Authority in their response dated 27 May 2020, available at planning.southderbyshire.gov.uk under reference no. DMPA/2019/0931.
- j. The LEMP as required by condition to accompany any reserved matters application should also contain the following:
 - a) Ecological trends and constraints on site that might influence management;
 - b) Aims and objectives of management, including mitigation and enhancement for species identified on site and as advocated by the response of the Derbyshire Wildlife Trust (dated 31 October 2019);
 - c) Appropriate management options for achieving aims and objectives;
 - d) Prescriptions for management actions;
 - e) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a ten-year period); and
 - f) Ongoing monitoring and remedial measures, including where monitoring shows that conservation aims and objectives of the LEMP are not being met.
- k. Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Highways Development Control section at County Hall, Matlock (telephone: 01629 538658 or e-mail ETE.devcontrol@derbyshire.gov.uk).
- l. Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Highways Development Control section at County Hall, Matlock (telephone: 01629 538658 or e-mail ETE.devcontrol@derbyshire.gov.uk).
- m. The applicant is required to contact Derbyshire County Council's Traffic & Safety team regarding the location or relocation of any street furniture within the public highway (e-mail highways.hub@derbyshire.gov.uk).
- n. The application site is affected by a number of Public Rights of Way in the parish of Woodville as shown on the Derbyshire Definitive Map. The routes must remain unobstructed on its legal alignment at all times and the safety of the public using them must not be prejudiced either during or after development works take place. Please note that the granting of planning permission is not consent to divert or obstruct a public right of way. If it is necessary to temporarily obstruct a right of way to undertake development works then a temporary closure is

obtainable from the County Council. Please contact 01629 533190 for further information and an application form.

- o. If a right of way is required to be permanently diverted then the Council that determines the planning application (the Planning Authority) has the necessary powers to make a diversion order. Any development insofar as it will permanently affect a public right of way must not commence until a diversion order (obtainable from the Planning Authority) has been confirmed. A temporary closure of the public right of way to facilitate public safety during the works may then be granted by the County Council. To avoid delays, where there is reasonable expectation that planning permission will be forthcoming, the proposals for any permanent stopping up or diversion of a public right of way can be considered concurrently with the application.
- p. Any works in or nearby to an ordinary watercourse may require consent under the Land Drainage Act (1991) from Derbyshire County Council (e.g. an outfall that encroaches into the profile of the watercourse, etc.). Upon receipt of any application (including the legislative fee) Derbyshire County Council has an 8-week legislative period in which to make a decision and either consent or object the proposals. If the applicant wishes to make an application for any works please contact Flood.Team@derbyshire.gov.uk.
- q. The watercourses, attenuation pond(s) and/or swale(s) which would be incorporated into public areas on the site should be designed to accord with health and safety guidance as set out in the CIRIA SuDS Manual 2015 (C753) or guidance that may update or replace it, and to meet the requirements of the Construction (Design and Management) Regulations (CDM) 2015 through assessing all foreseeable risks during design, construction and maintenance of the pond, minimising them through an 'avoid, reduce and mitigate residual risks' approach.
- r. The National Forest Company advise that in order for the on-site open space provision to be considered as National Forest woodland planting and landscaping, the reserved matters submission would need to include:
 - a Woodland Management Plan for the retained area of woodland to the eastern edge of the site;
 - woodland planting adjoining the existing woodland to the eastern edge of the site to act as a buffer between the wood and the development;
 - sustainable drainage designed for biodiversity including areas of permanent water, variations in water depth, bank slope and orientation, and appropriate landscaping within and around the basins; and
 - a focus on tree planting within other areas of open space, including the use of mature tree stock at key locations and vistas.
- s. Effective monitoring is an essential requirement of a successful Travel Plan. The Highway Authority recommends the use of the STARSFor Travel plan toolkit: www.starsfor.org, although other monitoring methods are available. Use of this system ensures a consistency of quality and puts in place a straightforward system for subsequent updating and monitoring. Fees are levied for the use of this system. Contact: sustainable.travel@derbyshire.gov.uk for more details.

Item No. 1.2

Ref. No. [9/2019/0313](#)

Valid Date 22/03/2019

Applicant: Mr S Frawley

Agent: Mr David Granger
David Granger Design Ltd

Proposal: **Approval of reserved matters for layout, scale, appearance and landscaping of outline permission ref. 9/2015/0218 (for the erection of 8 no. dwellings and associated works) on land at SK3826 7702 (off Smith Avenue), Main Street, Kings Newton, Derby**

Ward: Melbourne

Reason for committee determination

This item has been called to Committee by Councillor Jim Hewlett as local concern has been expressed about a particular issue.

Site description

The site is located to the north-eastern edge of Melbourne, between it and Kings Newton, although it is contained within the settlement boundary for the Key Service Village of Melbourne. It also adjoins the Kings Newton Conservation Area (KNCA) to the north-east corner. The site is accessed from Smith Avenue as well as with Melbourne public footpath no. 14 which runs north to south along the east edge of the site and is bounded by a dense hedgerow. The site is presently scrubland.

The character of the area is defined by regular semi-detached pairs of dwellings along Smith Avenue and Nettlefold Crescent to the west, and the more traditional and varied dwellings and buildings within Kings Newton to the north-east. To the south is open farmland, with Melbourne cemetery adjoining the south-west corner.

The proposal

Outline permission was granted under permission ref. 9/2015/0218 for the erection of eight dwellings with means of access. The current application seeks consent for the reserved matters of layout, scale, appearance and landscaping, with 8 dwellings proposed in line with the maximum number stated in the outline permission.

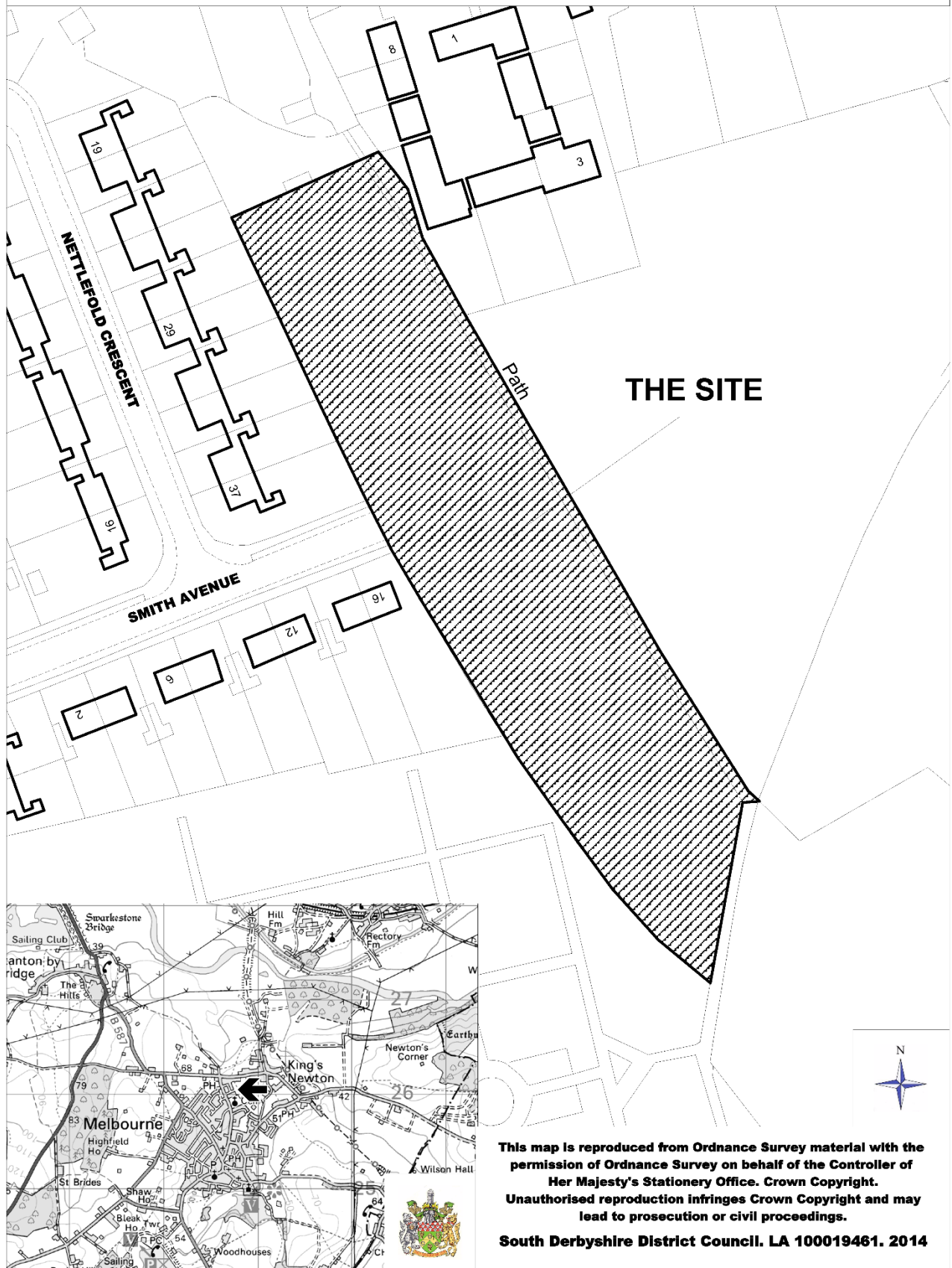
Smith Avenue would be extended into the site with a turning head installed close to the eastern boundary. Two dwellings would sit south of the extended highway, with an area of public open space (POS) to the south of this. To the north the remaining 6 dwellings would be arranged; two facing the extended highway and four accessed from a shared driveway – two facing the footpath to the east, and two at the northern end of the site facing south towards the new dwellings.

The dwellings have had some degree of redesign through the course of the application, improving articulation in some cases, whilst adopting some more traditional forms such as the twin gabled rear elevations to plots 1 and 2 and the repositioning of the garaging between plots 7 and 8.

Relevant planning history

9/2015/0218: Outline application (all matters except for access to be reserved) for the residential development of up to 8 dwellings with public open space, landscaping, drainage and highways infrastructure - Approved September 2016.

9/2019/0313 - Land at SK3826 7702 (off Smith Avenue), Main Street, Kings Newton, Derby DE73 8DB



Responses to consultations and publicity

The County Highway Authority has no objection as amended plans show a margin along the edge of plot 4 and the removal of the bend in the approach to the turning head.

Derbyshire Wildlife Trust has no objections as the enhancement measures specified at outline stage appear to be incorporated.

Melbourne Civic Society has raised the following objections:

- a) there is little information about the maintenance of the POS – who will be responsible for its maintenance after the developers have left the site?
- b) if general public access would be allowed to the development (i.e. not just residents of the development) and this needs to be confirmed before the application is determined;
- c) the house designs are uninspiring and bland and could be found anywhere in this country;
- d) there seems to be a reduction in planting, especially around plots 1 and 5;
- e) plots 7 and 8 have reduced parking provision; surely there should be more than 2 parking spaces per plot for 4 bedroom dwelling;
- f) lack of visitor parking as there are no communal parking spaces;
- g) there should be separation of Melbourne Footpath 14 from the development in order to retain its current rural feel, with it separated from the service road by hedging, shrubs and trees of a sufficient height to reduce views of the development;
- h) pavement now replaces the previous turfed area at the Smith Avenue end;
- i) the footpath should have a width of at least 3 metres;
- j) there must be no vehicle access to Main Street through the 'gap' at the north of the site and a suitable vehicle-proof barrier should be erected at the turning circle;
- k) all new developments in the town, such as this one, should take into account energy and resource conservation and features should be installed to reduce electricity, gas consumption and water consumption on this site (i.e. solar energy roofing systems, group source heat pumps, heat loss windows, electric vehicle charging points and rainwater harvesting).

Councillor Hewlett has made the following comments:

- a) the highway tracking drawing shows a turning area by plot 8 suitable for a 7.7m long fire tender, but refuse collection vehicles are 10.27m long with a 5.5m wheelbase and a turning circle of 17.7m;
- b) there should be a bollard at the junction of the lane from Main Street and the end the turning area at the northern edge of the site; this is necessary to prevent cars entering the lane from the turning area and going down the lane onto Main Street;
- c) the turning area should be kept level with the lane so that the car which is kept there can reverse onto it in order to turn round and drive out, and the bollard should be positioned to allow this;
- d) the line of the footpath is shown very tight up to the boundary and would necessitate the removal of most of the side growth of the hedge with loss of habitat and rural appearance, therefore it should be moved further away from the hedge;
- e) the width of this footpath at 2 metres is too narrow – there appears to be hedges on both sides and growth would soon reduce the width to 1m or less;
- f) plot 3 has a Juliet balcony which looks into the bedroom of 37 Nettlefold Crescent and obliquely into 35 Nettleford Crescent's bedroom;
- g) the Design Guide states dwellings with on-plot parking in front of the building line should be avoided to avoid parked cars dominating the street, yet the parking spaces for plots 5 and 6 do exactly that;
- h) the Design Guide also states driveways and parking spaces on residential developments should be wide enough to allow the doors on both sides of the car to be opened sufficiently, in order to provide comfort of use for all users, so the space at the side of the parked car should be 0.5m if bounded on one side and 1.0m if both sides are obstructed;

- i) an extra 0.6m should be allowed for bins to be moved past the cars – it is not clear if this has been added;
- j) planting between adjacent bays is shown in some places as a hedge and in others as low growing – clearly it should be the latter;
- k) the proposed garages would not meet the required internal measurements and would restrict the numbers of parking spaces available within the site – all 8 plots are 4 bedroom dwellings and if the garage is not a parking space then all plots are one space short of this requirement;
- l) there would inevitably be a need for additional parking for adult children living at home, guests and for social functions in the home;
- m) the roadway on these plans is not wide enough to permit much parking at all, especially not for 8 plots, so there would be cars everywhere, wheels on lawns and unauthorised conversion of lawns and gardens to hardstanding;
- n) together with the undersized garages mentioned above, parking would spill out to the nearby streets with the attendant problems of blocked driveways, cars all over the place and disputes with neighbours.

Kings Newton Residents Association (KNRA) has raised the following objections:

- a) there must not be an implied roadway into the next field - the layout must prevent development into the adjoining field to honour the original decision to reduce the plot size from the original outline application as the overall effects of a series of discrete developments create a risk to heritage assets;
- b) the application is part of long-term joined up activity by developers and it would be naive to ignore this;
- c) the design of the site and each property is not in keeping with the rural area and for the setting of the KNCA
- d) design principles for Newton Court should be mirrored in this neighbouring site
- e) this style of development would specifically destroy part of the conservation area principles trying to be maintained;
- f) there must be no potential for additional vehicles to use the path onto Main Street, in the interest of residents' safety and for the clarity of the location of this site;
- g) there must be a permanent but not visually imposing barrier to vehicles by plot 8;
- h) the path must maintain a rural feel as it runs into the conservation area and not be a fenced alleyway;
- i) hedgerows should be properly maintained on both sides;
- j) the fencing and walls proposed are against the conservation area requirements;
- k) more information is needed as to the design and maintenance of the open space;
- l) clarity is required as to whether this land is in the rural village of Kings Newton or the Key Service Village of Melbourne, with continuing switching between the two depends on that which suits developers;
- m) this site is key to the characteristics for the KNCA, a point previously recognised and reinforced by the Council and this needs to continue throughout this development;
- n) these are not the right type of houses needed by the community, with more affordable houses and homes suitable for retirement needed;
- o) it is an appropriate time in the planning process to build in requirements for lower carbon/energy efficiency but given the increase in both knowledge and awareness – it is easier to build environmentally less damaging houses than convert them at a later date.

There have been 35 letters/emails, objecting to or supporting the application, raising the following points:

- a) the proposal puts forward an appropriate housing density;
- b) due regard has been given to biodiversity in area;
- c) due regard has been given to housing need in the area;
- d) there is an anti-social behaviour problem on site and the position of the open space would move the problem on;

- e) the proposed development would overshadow the existing properties on Nettlefold Crescent;
- f) the proposed dwellings would all be executive homes and would be unbalanced;
- g) heavy traffic around school times and further dwellings in this position with more families would worsen this situation;
- h) the site currently provides a safe passage at towards the school;
- i) the proposed development is more in keeping with a urban area than a rural area and would affect the setting of the KNCA;
- j) concerns regarding the infrastructure on services in Melbourne;
- k) is the current public footpath used by the general public the same as the footpath on the Definitive Map or is this likely to move closer to the hedgerow?
- l) removing the protective wall in previous plans and opening up access from the development to the public footpath;
- m) the turning area and access to plot 8 is adjacent to two neighbouring bedrooms and a neighbouring kitchen;
- n) plot 8 does not have two car parking spaces, unless the garage is counted (which may not be used);
- o) parking can now be adjacent to neighbouring properties by partial parking on the turfed area (previously this was not the case);
- p) the area for the turning point and the fence that is to be erected – who is going to be responsible for the upkeep of this fence and should a neighbour have to forfeit some of their land for the excavation for it to be put into position;
- q) bollards or a sympathetic barrier is needed at the junction of the lane from Main Street to prevent cars from this housing proposal using it as a through route as this would be extremely dangerous as the lane is narrow and there are front doors on this lane;
- r) tractors and large vehicles exit from the former Gayborders Nurseries were not allowed to access this way either;
- s) adjacent to plot 8, a condition should be attached that the land at the lane to Main Street should be kept level with a large enough size to allow access for neighbours living on the lane to turn safely as they have done since 1974/5;
- t) the nature of the footpath is blighted, however, the increased width by plot 2 and reduced wall height of 1.0m at plot 2 is an improvement;
- u) the wider opening at the north end of the footpath is helpful but the end elevation and 1.8m close boarded fence at plot 8 remain visually obstructive and should be visualised for the view southwards;
- v) the addition of a length of kerbed pavement, in the middle section of footpath and immediately adjacent to the turning head, is welcome if it is kept clear of parked vehicles, although it would be better if there was a grass verge between the pavement and over grown hedge;
- w) the visualisations have not been amended and still do not show the critical views along the footpath;
- x) concerns about the maintenance of plantings and hedges;
- y) enabling the development to become a cut through for cyclists is not acceptable;
- z) the removal of rendering from the house walls and adoption of brick finish is a small improvement in appearance but the differences between the development and its immediate environment remain stark;
- aa) more could be done to the design and finishes of these houses so as to be compatible with the adjacent conservation area – features such as large glass openings and balconies are examples of the mismatch;
- bb) the position of this site impacts the setting of the KNCA as the view along the footpath from Main Street up into the field of the proposed development is specifically mentioned in the conservation statement, along with the way the view ‘opens out’ – the Council has an obligation to protect this setting and while the new plan is improved it is still not clear that the current proposal would do this;
- cc) the broad opening narrowing down to a rural footpath into the field must be maintained, and there should be no visible barrier or harsh transition between rural land and modern development;

- dd) there would be a substantial two storey building at the top of the lane which would be in contradiction to the heritage statement which quotes "narrow passages opening out to meet the fields" - plot 8 should be moved out of the line of sight;
- ee) the first-floor balcony windows proposed for plot 8 are out of keeping with a rural area and would be visible on entry and exit from the Conservation Area and should be replaced with smaller windows;
- ff) lack of parking for visitors and residents could cause parking on the road thus spoiling the rural view along the footpath as referred to in the heritage statement;
- gg) the latest design has been revised to show pavement replacing part of the current rural footpath opposite the Smith Avenue entrance - this is shown going all the way up the official footpath line which would require the destruction of the hedgerows and is contradictory to the rural description in the heritage statement;
- hh) the footpath is well utilised and its current broad aspect should be retained by maintaining a width of at least 3 metres so to protect its current character;
- ii) conditions should specifically preclude the use of the path from Main street by any construction traffic;
- jj) plot 7 and 8 have each had a parking space removed meaning only two parking space per house; all others on the plan have three parking spaces, and houses of this size tend to have at least 2 cars and people seldom park in garages raising concern that occupants would need to park on the road potentially causing an obstruction;
- kk) there is no provision for visitor parking within the development;
- ll) the biodiversity strategy mentions that there should be a metre buffer along the hedgerow, yet the footpath line shown on the plan is very tight up to the boundary which would mean the removal of most of the side growth with resulting loss of habitat and rural appearance, in contradiction to the statement in the biodiversity strategy;
- mm) the developer should be required to maintain the current thickness of the hedgerow;
- nn) responsibility for the maintenance of the open space and the footpath needs to be clarified;
- oo) the design is modern and contains elements which are unsuitable for the location;
- pp) the garages of plots 7 and 8 have been moved forward are only 2.97m x 5.94m and should be at least 3.6m x 6.5m.
- qq) the driveways are less than the required minimum;
- rr) plot 3 has been turned slightly but does not reduce overshadowing of the houses on Nettlefold Crescent or the loss of privacy;
- ss) the driveways of plot 3 and 4 are not wide enough and both garages are below the minimum dimensions;
- tt) the road into the estate has been straightened up instead of slightly running to the right, allowing less room for the 6 huge houses being crammed into the north;
- uu) both integral garages on plots 4 and 5 stand proud of the houses – plot 5 more so, yet in the design guide they are not supposed to;
- vv) any visitors to plots 4 and 5 would block the road
- ww) none of the garages on the whole plan meet with the minimum requirements, and if all the houses had the correct measurements for garages and drives, etc. this plan would not fit onto this site;
- xx) the outlook of 16 Smith Avenue would be a brick wall;
- yy) the access road on the northern end of the site is very narrow and unsuitable for the recycling/refuse collection vehicle to negotiate and the vehicle would have to reverse the full length of the street;
- zz) residents of plots 7 and 8, who may be disabled or elderly, would need to drag their wheelie bins approximately 75 metres to the bin collection point;
- aaa) a fire appliance would not have close enough access to plot 7 in the event of an emergency;
- bbb) there is insufficient off road parking across the entire northern end of the site and it is not compatible with modern living;
- ccc) removing the protective wall in previous plans and opening up access from the development to the public footpath makes neighbouring borders less secure and also increases noise from the development;
- ddd) would the turning area be used as a parking space?

- eee) parking can now be adjacent to the public footpath by partial parking on the proposed turfed area which was not the case on the previous plans, with concerns this would impede users of the path;
- fff) the integrity of separation between Kings Newton and Melbourne is an important distinction and there are concerns, if this development were to expand in the future, that this would be lost.
- ggg) the footpath adjacent to the recent Charles Church development is often poorly maintained and is difficult to walk down – the hedgerow here, without maintenance, would cause damage to neighbouring properties.
- hhh) the proposed open space at the southern end of the development must be in keeping with the habitat, and would require an on-going maintenance programme;
- iii) the road into the site narrows to 4.9 metres with no nearside footpath and a grass verge on the offside along the route of the public footpath making it difficult for even 2 average sized cars to pass with extreme care – larger vehicles would be unable to pass;
- jjj) the angle into the turning areas at each end of the road outside plots 7 and 8 have been tightened up to 90 degrees making the manoeuvre on and off the driveways into these turning areas challenging;
- kkk) the lack of footpaths outside plots 7 and 8 are an indication of the lack of space at this end of the site and it would put pedestrians at risk from vehicles;
- lll) plot 3 includes full length bi-fold doors with a Juliet balcony to the first floor bedroom which would allow residents to look across into the rear of the Nettlefold Crescent properties;
- mmm) the plans are not consistent as some show continuous frontage and some show staggered frontages at plots 1 and 2.

Relevant policies and guidance

The relevant policies Development Plan policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), H20 (Housing Balance), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), INF9 (Open Space, Sport and Recreation);
- 2017 Local Plan Part 2 (LP2): BNE7 (Trees, Woodland and Hedgerows) and BNE10 (Heritage).

The relevant national policy and guidance is:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- National Design Guide (NDG)

The relevant local guidance is:

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

Planning considerations

The principle and maximum quantum of development in this location has already been established through the approval of outline permission. Conditions of the outline permission as well as planning obligations contained in the section 106 (s106) agreement would need to be read and executed in conjunction with any permission granted here. Under this application, the principle considerations are matters of layout, scale, appearance and landscaping. It is thus necessary to determine if there would be any adverse impacts in terms of visual appearance and the impact on the character of the area, the amenity of proposed and existing occupants, and on highway safety (in so far as the layout of the site).

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:

- Impact on the character and appearance of the area;
- Impact on heritage assets;
- Impact on neighbouring amenity; and
- Highway design and parking provision.

Planning assessment

Impact on the character and appearance of the area

Policies BNE1, BNE2, BNE4 and BNE10 stipulate that development should respond to locally inspired character and context as well as be visually attractive. Amended plans have been submitted which have changed various plot designs and the proposed layout of the development, particularly in the central part of the site.

The site is accessed through Smith Avenue by way of an extension to the public highway and extended northwards by way of a shared driveway towards plots 7 and 8, positioned adjacent to the KNCA. The site is essentially split between two different character areas and differs between the strong urban and repetitive characteristics of the site along Smith Avenue and Nettlefold Crescent, and the looser pattern of development as the site sides onto Kings Newton.

Concerns were initially raised regarding the size of plots 1 and 2 and the relationship between plots 1 to 4. Smith Avenue is characterised by modest, two-storey semi-detached properties with a strong building line and strong, symmetrical elevations. Whilst a lot of these properties have been heavily extended to the rear, from the public realm Smith Avenue is read as a modest street scene of unimposing dwellings set back from the highway, with predominately natural boundary treatment and landscaping. The initial layout plan showed plots 1 to 4 positioned forward of this building line and orientated at a different angle to the existing street pattern. This compromised the existing pattern of development when entering the site from Smith Avenue.

Amended plans step back and re-orientate these plots so that they follow the building line and reflect the symmetrical pattern of the existing development. Plots 3 and 4 are positioned marginally further forward, but this falls in line with the side extension to number 37 Nettleford Crescent. The original curve in the access road has now been removed and replaced with a straight section up to the turning head. This reflects the linear form of development.

Plots 1 and 2 consist of two, two-and-a-half storey detached dwellings with detached garages. They have been reduced in height during the course of the application so to be comparable with the height of the existing dwellings along Smith Avenue. The massing of these properties would respect the form of adjacent dwellings on Smith Avenue. The main bulk of plots 1 and 2 would sit to the rear, minimising the size when viewed from Smith Avenue. However, this bulk would be visible from the POS to the rear. However, as noted above, existing properties along Smith Avenue have already been heavily extended to the rear and the form of the proposed dwelling would not, therefore, appear as a stark contrast to existing views of development from the footpath. There is also tree planting proposed along the rear of plots 1 and 2 within the POS which would filter views to the rear of the plots.

Plots 3 would be a two storey dwelling whilst plot 4 would be a two-and-a-half storey dwelling. A detached garage would serve both properties (split centrally) along with two further spaces each. Plot 4 would be positioned on the corner of the turning head, rounding the turn towards the north and providing an active frontage to both Smith Avenue and towards the footpath.

Plots 5 to 8 would consist of four detached two-storey dwellings with projecting gables to the front and a linked car port to plots 7 and 8 (split centrally). Plots 5 and 6 would have integral garages. Amended plans revised the size of the upper and lower floor windows to provide more traditional proportions consistent with the requirements of the Design Guide. The garage at plots 7 and 8 has been amended to a car port in order to provide a continuous link across and to replicate similar design traits and proportions as seen within the neighbouring buildings within Kings Newton.

The proposed changes to the dwellings and the amended layout has sought to respond positively to the layout and form of the existing characteristics of the area – both the dominant pattern along Smith Avenue and, for plots 7 and 8, neighbouring buildings within Kings Newton of which there would be pedestrian and visual connectivity via the existing footpath. It is considered that the proposals would accord with the principles of policies BNE1 and BNE4, the NDG and the Design Guide.

The landscaping to the site would predominantly present planting to the frontages to replicate the hedges as seen along Smith Avenue. To the rear and sides of the plots that would be visible from the public realm, namely plots 2, 6 and 8, brick walls would provide enclosure to rear gardens and form a boundary to the POS and public footpath. To the rear and sides of other plots, close board fencing would distinguish between plot boundaries. The position of the boundary treatments also allows for tree planting to the frontages and to the public realm.

A surfaced footpath of around 1.5m in width would be laid adjacent to plots 2 and 8 and continue into the proposed open space, so to create a more preferable route compared to the existing legal route. In addition, the footway to the turning head is to be block paved to present a more pedestrian friendly appearance.

The proposed works would be consistent with the design principles within policies BNE1 and BNE4, the NDG and the Design Guide. The works would incorporate positive features that would respect the local vernacular and character and offer betterment to the existing use of the public footpath. The alignment and positioning of the proposed boundary treatment would also allow greater tree planting and landscaping which will assist with softening the appearance of the development when entering the site on foot.

Impact on heritage assets

The Conservation Officer notes the site is located south of the KNCA. There are also a few listed buildings nearby including the Cemetery chapels and gates to the south-west, and the Hardinge Arms, Four Gables and Broadways to the north (all grade II listed). However, these are screened by the proposed new buildings by a courtyard of agricultural style dwellings which have been developed to the rear of the Hardinge Arms.

The listed cemetery structures have the Cemetery itself as their setting and context, with the Cemetery already bordering the rear gardens of dwellings to Smith Avenue along most of its northern boundary. The proposed development would add two more rear boundaries and gardens to a row along the north which already has 9 dwellings and their gardens. As such the change in the setting of the listed Cemetery structures is not considered to be notable or to affect their special significance or the ability to appreciate and understand it.

The listed buildings to the north of the site are more domestic in scale and character, their settings mostly relate to immediate streetscape context and would not be adversely affected by the proposed development. The courtyard of buildings at the rear of the Hardinge Arms is not historic, and whilst they are themselves sensitively designed for the context of the listed public house, they are not heritage assets in their own right.

The revisions have sought to create greater relief to the nearest heritage assets and would be read in the context of the mid-20th Century housing development to the west of the site. As such the proposal would avoid adverse impacts upon the setting of nearby listed buildings, of which all neighbouring listed buildings are shielded from the proposed development by existing built form and

development. Whilst the public right of way could be considered an approach to the KNCA by the time it approaches the proximity of the site, 20th century development is already prominent, both as backland development at the rear of Main Street but also to the west where the development of Smith Avenue and Nettlefold Crescent already limits views into the Conservation Area. Therefore, it is advised that the proposal would not harm and would preserve the special architectural and historic character and appearance of the KNCA, as is described as a 'desirable' objective in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Accordingly, the proposal is considered to accord with policies BNE2 and BNE10.

Impact on neighbouring amenity

Concerns have been raised with regard to overlooking and overbearance from the proposed dwellings, particularly to dwellings along Nettleford Crescent and number 16 Smith Avenue. The layout has been assessed, inclusive of any extensions and alterations to existing dwellings, and it achieves in excess of the minimum separation distances as contained within the Design Guide. Plot 3 would have a blank side elevation facing toward the properties at Nettleford Crescent. Concerns have been raised regarding the incorporation of Juliet balconies to the rear. However, these would present similar outlook to windows at this level and the existing dwellings on Nettleford Crescent would remain well outside of the 45 degree sector of vision. Plots 5 and 6 would also be set back well in excess of the minimum standards required in the Design Guide. The proposed development would therefore accord with policies BNE1 and SD1 of the Local Plan.

Highway design and parking provision

The access into the site was assessed as part of the outline application and was deemed to provide a safe and convenient access to the site. There has been no objection received from the County Highway Authority with regard to the layout now proposed within the site, with it providing sufficient carriageway and footway width for the size and use of the development, and that a sufficient level of parking would be provided within the site.

Concerns have been raised that some of the proposed garages would fail to achieve the required internal measurements to house a car. Amendments have overcome any shortfall to the sizes set out in the Design Guide, as well as increase parking provision for plots 7 and 8. There is also sufficient space within many of the plots to accommodate additional vehicles in excess of the 3 parking spaces that is desirable under the Design Guide. A condition can control the future use and availability of parking spaces for each plot.

Finally, bollards have been included adjacent to plot 8 to restrict vehicles using the adjacent open space as a means to access the site from Main Street to the north.

Other matters

Concerns have been raised in respect of the footpath that runs to the eastern boundary of the site. The existing footpath would remain unaltered by the development, remaining on its present legal line, connecting to the open space to the south of the site and other footpaths beyond. The existing legal line should be noted to already sit immediately adjacent to, or even in, the hedgerow. The walked line appears to be off the legal line for this reason and this is an existing issue to which the developer should not have to correct. The proposed plans show that the line of the footpath would be refreshed with new turf, although a new route, perhaps in a more desirable position, would be created. This could be subject of a diversion order at a later date, although it is not a necessity of any grant of permission here.

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

Grant permission subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with plans/drawings; 18.3628.10K, 18.3628.11K, 18.3628.12J, 18.3628.13 F, 18.3628.14 F, 18.3628.15 D, 18.3628.16 B, 18.3628.17 C, 18.3628.18 D, 18.3628.19 C, 18.3628.20 D, 18.3628.21 (received 4 May 2020), 18.3628.25 B and 18.3628.26 B, and the Biodiversity Strategy dated March 2019, 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.

2. Prior to their incorporation in to the dwellings hereby approved, details of the external appearance of eaves, verges, cills and headers shall be submitted to and approved in writing by the Local Planning Authority. The details shall include drawings to a minimum scale of 1:10. All verges shall be finished in a mortar finish. There shall be no use of dry verge (cloaking tile) systems. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, there shall be no later installation of a dry verge system. The eaves, verges, cills and headers shall be constructed in accordance with the approved drawings.

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

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

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

4. The boundary walls hereby approved shall be constructed using a facing brick to match that used in the construction of the dwelling and garage for the plot concerned.

Reason: To ensure continuity of boundary treatments with the buildings on the site, in the interests of the visual appearance of the buildings and the character of the area.

5. Prior to the construction of a road, driveway, parking area, footpath or footway, details of surfacing materials shall be submitted to and approved in writing by the Local Planning Authority. The roads/driveways/parking areas/footpaths/footways shall be constructed in accordance with the approved details prior to their first use and thereafter maintained using such materials.

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

6. The shared driveway to between the turning head to the extended part of Smiths Avenue up to the turning head adjacent to plot 8 shall remain open and free of obstruction to its use by pedestrians. For the avoidance of doubt, this does not apply to the limb of the shared driveway running east/west to serve plots 7 and 8.

Reason: To offer the use of the route for pedestrians as an alternative to the adjoining public footpath, in the interests of promoting a convenient and accessible pedestrian route through the site.

7. All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the buildings 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 phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

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

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, the car ports to plots 7 and 8 shall not be enclosed other than allowed for by the drawings hereby approved, and all car ports, garages and parking spaces to be provided in connection with the development shall not be used other than for the parking of vehicles except with the prior grant of planning permission pursuant to an application made to the Local Planning Authority in that regard.

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

9. Each dwelling shall be provided with a charging point for electric vehicles. Charging points shall be provided with an IP65 rated domestic socket 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. This socket shall be located where it can later be changed to a 32amp EVCP. Alternative provision to this specification must be first submitted to and approved in writing by the Local Planning Authority. To prepare for increased demand in future years suitable and appropriate cable provision shall be included in the scheme design in accordance with details first submitted to and approved in writing by the Local Planning Authority. The electric vehicle charging points shall be provided in accordance with the stated criteria and approved details prior to the first occupation of the respective premises and shall thereafter be maintained in working order and remain available for use throughout the life of the development.

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

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

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

Informatives:

- a. Details of all proposed facing materials should be submitted for approval by the Local Planning Authority pursuant to requirements of condition 19 attached to permission ref. 9/2015/0218.
- b. Public Right(s) of Way crossing the site, as shown on the Derbyshire Definitive Map, must remain open, unobstructed and on its legal alignment at all times. There should be no disturbance to the surface of the route without prior authorisation from the Rights of Way Inspector for the area. Consideration should be given to members of the public using the route at all times. A temporary closure of the route may be granted to facilitate public safety subject to certain conditions. Further information may be obtained by contacting the Rights of Way Section at Derbyshire County Council.

- c. The applicant is encouraged to apply under Section 257 of the Town and Country Planning Act 1990 for the permanent diversion of the right of way so to move it onto the paths and surfaces created as part of this development. However, it should not be assumed that because planning permission has been granted an order will invariably be made or confirmed.

Item No. 1.3

Ref. No. [DMPA/2019/1431](#)

Valid date: 13/12/2019

Applicant: Ali Wright

Agent: Christopher Lindley
Heatons

Proposal: Employment development comprising the erection of buildings to provide uses within B1 and B2 of the use classes order and other associated ancillary development including external alterations (to Unit D), demolition of existing structures and the reconfiguration of existing external hard standings and parking areas on land off Sinfin Lane, Barrow Upon Trent, Derby

Ward: Aston

Reason for committee determination

The item is presented to Committee at the discretion of the Strategic Director for Service Delivery as a recent similar application for the re-development of the site was considered by this Committee.

Site Description

The application site is located off Sinfin Lane, to the north east of the rural village of Barrow upon Trent. The site extends to 2.4ha with its south western area currently occupied by a number of buildings within Use Class B8, most recently occupied by East Midlands Self Storage. Permission was granted in 2014 for an expansion of this existing facility to the east of the existing buildings on an undeveloped part of the site but this permission lapsed in 2017. Last year a hybrid planning permission (part full permission, part outline permission) was granted by the Committee for the complete re-development of the whole site.

The north-eastern part of the site is occupied by an existing man made pond, previously used for private angling, and is surrounded by a number of self-set trees. To the north western corner of the site is an area of land with an extant permission for the installation of equipment for the research, testing and generation of electricity from biomass.

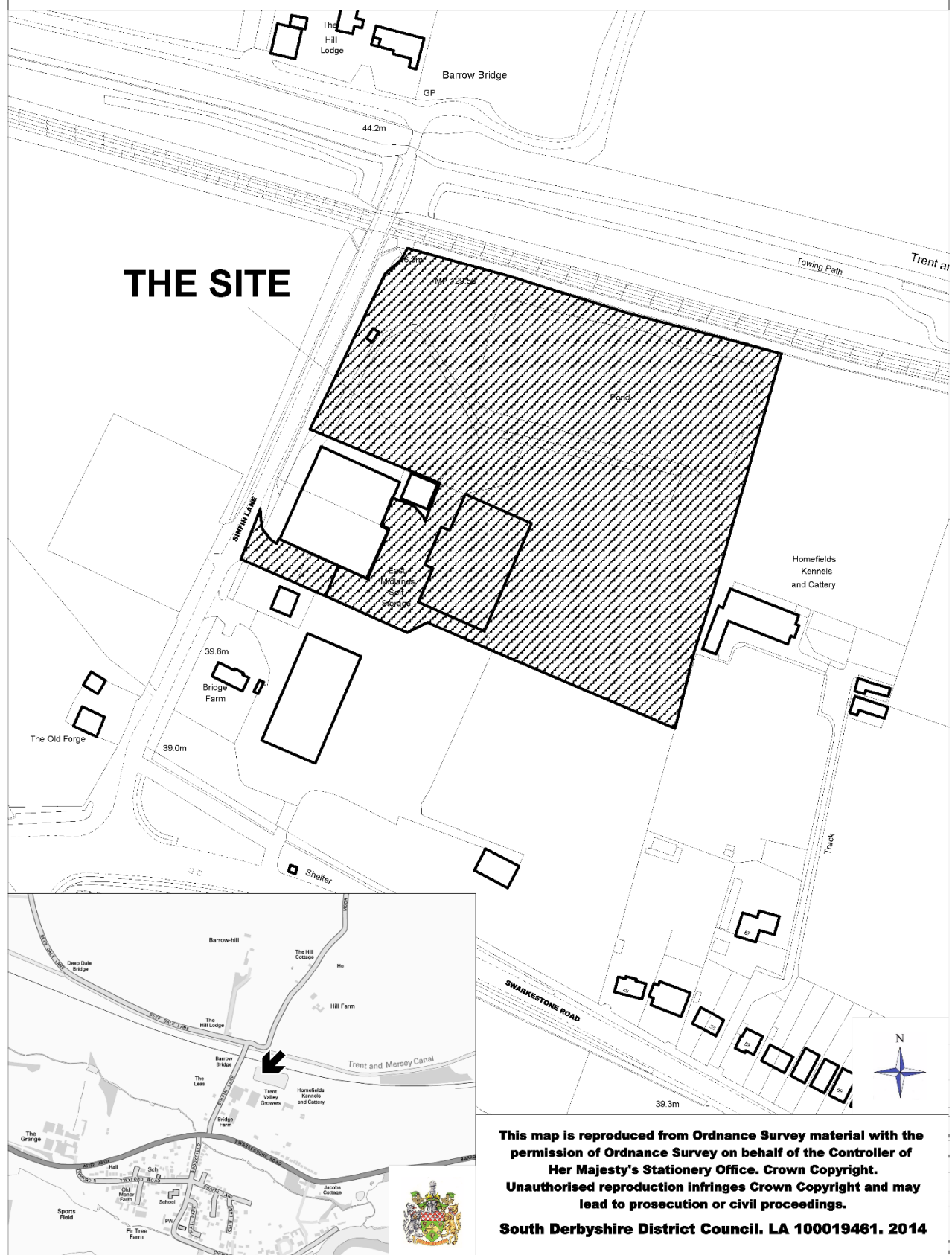
The site itself is generally flat, but Sinfin Lane rises adjacent to the western boundary of the site in order to pass over the Uttoxeter to Nottingham railway line which forms the northern boundary of the site. To the north of the railway line, and beyond, a tree belt lines the Trent and Mersey Canal and its conservation area over which is Barrow Bridge which provides access to Deep Dale Lane and Moor Lane beyond Sinfin Lane. The eastern boundary of the site adjacent to Holmfields Kennels and Cattery is formed by low level fencing and existing unmanaged trees tree and hedge planting. The southern boundary is formed by post and rail fencing and close boarded fencing adjacent to an existing industrial unit occupied by JPS Flowers.

The existing vehicular access to the site is from Sinfin Lane, which is a restricted access road for any vehicles over 7.5 tons except for access (which includes the application site).

The proposal

This application proposes the re-development of the site though the erection of buildings to provide uses within classes B1(b), B1(c) and B2 and other associated ancillary development including associated external alterations to one of the existing buildings on site, demolition of existing ancillary structures, and the reconfiguration of existing external hard standings and parking areas. The application covers most of the wider site with the exception of three existing buildings to the south-

DMPA/2019/1431 - Land off Sinfin Lane, Barrow on Trent, Derby DE73 7HH



western corner (full permission having been granted in 2019 for the change of use of these buildings to classes B1 & B2 with associated internal and external alterations).

The first element of the scheme relates to the north western part of the site and proposes the erection of 5 buildings (3 being connected) and is described as a 'Business Incubation Zone' (BIZ) containing small industrial units for a variety of class B (industry) uses. These 'incubator' units are proposed to support small start-up and growing businesses, with the buildings also containing offices, meeting rooms and other functions in connection with the BIZ. The second element proposes three buildings also for B1(b), B1(c) and B2 uses with the two largest buildings along the northern and eastern boundaries. The intention is for these units to be sold or rented, and divided as the market demands.

Vehicular access to the site is proposed via the existing access point on Sinfin Lane, which would be modified in order to accommodate the proposed development. In addition to the internal road layout and pedestrian access throughout the site, a new pedestrian link is proposed from the site south along Sinfin Lane to the existing footpath network where improvements are also proposed including to the existing pedestrian refuge across the A5132.

The site layout sees the retention of the majority of the existing boundary trees and landscaping with the units proposed set away from the boundaries in order to provide a landscaped edge to the site and incorporate new planting. The BIZ is proposed to provide a square arrangement with the buildings facing the shared manoeuvring space.

Applicant's supporting information

The Planning, Design & Access Statement sets out a description of the site, its history and the proposed development. Both the local and national policy context is set out including a succinct description of the requirements of the relevant policies. The statement sets out that the scheme represents an increase in floorspace over the consented scheme by approximately 20%, and the layout of the site has been developed based on an 'understanding of the operational requirements of modern business users' and the characteristics and constraints of the site splitting the proposal in to three elements:

1. A business incubation zone comprised of 5 new buildings to the north western part of the site to house start-up businesses which are proposed as smaller scale and sized units, the function of which is to be supported by office and meeting spaces;
2. Buildings 1 and 2 are the two larger buildings proposed on the site with the intention of the buildings to mirror the existing units on the site, the location of these larger buildings are adjacent to the railway line and the eastern boundary of the site;
3. One of the existing units is to be retained with modifications and updating, this unit is adjacent to an existing building which has detailed consent for alterations and modernising.

The scale of development ranges from 3.8m–7.5m eaves heights and 5.5m–8.8m ridge heights of a similar scale to the existing (and retained units), the buildings are described as a mixture of single and two-storey buildings to accommodate modern commercial requirements. The appearance of the buildings would generally follow their commercial function.

Landscaping at the site has been developed following a landscape and visual appraisal of the proposal and a landscape strategy has been prepared. This strategy responds to the challenges of introducing new buildings, car parking and manoeuvring space on a previously developed site. The proposal includes the retention of dense vegetation on the site boundaries with native planting, and the creation of a wetland (including drainage) feature to the north western corner of the site.

Access and movement in to the site is dictated by the retention of the existing site access. The strategy has been informed by the Transport Statement including a movement strategy within the site and assessment of car parking provision. A new footpath is proposed along the eastern edge of Sinfin Lane to link into the existing footpath network, improvements are also proposed to the

Swarkestone Road / Sinfin lane junction including the provision of improved pedestrian crossing and cycle facilities. The new access to the site would facilitate the use of the existing access for egress only.

The remainder of the statement goes on to summarise the technical considerations and the various submitted assessments, summarised elsewhere in this section of the report. The planning balance and overall conclusion to the statement sets out the relevant sections of the NPPF and Local Plan and highlights the positive approach both take to new economic development. Advice provided by local commercial operators has informed a business case for the development which highlighted the need within the area for 'incubator space', and new business units in general. The Statement has considered the South Derbyshire Economic Development Strategy 2016-2020 which identifies a number of weaknesses in the area including the need to increase diversity of the economic base of the District, the limited supply of small and grow on workspace, and amongst other things the limited availability of conference, meeting and business training facilities and overnight accommodation for business visitors.

The economic benefits of the development are considered to be worthy of significant weight in the planning balance. The social benefits of new local employment opportunities are also highlighted and considered to be of great weight. The environmental impacts of the development are not considered to give rise to any adverse significant impacts and should be considered as having neutral weight in the sustainability balance. The Statement concludes that the proposal represents sustainable development with compelling economic and social benefits associated with the delivery of the development.

A Business Case has been prepared and updated following the previous approval. The revisions to the scheme are partly as result of market testing the development resulting in revisions to the size and position of the proposed units. This will also allow a greater flexibility to sub-divide the buildings to suit the needs of potential occupiers in particular growing businesses from the incubator units.

The Business Case highlights the support for 'sustainable employment activities on land outside of settlement boundaries' providing they support 'the social and economic needs of rural communities in the District' within policy E7. The case highlights the current limited employment space within this rural north-eastern area of the district serving its key and local service villages of Melbourne, Repton, Shardlow, Aston on Trent, Willington, Weston on Trent and Ticknall. This is considered especially pertinent given the housing growth within these areas, and it is important that this area is supported with sufficient land and premises to support existing businesses, accommodate start-up businesses and to provide opportunities for business expansions.

The development at Sinfin Moor (Infinity Garden Village) will provide employment opportunities in this part of the District but it is unlikely that this site would provide the same immediate need as the application site, as it is anticipated that this site will be delivered towards the end of the plan period. A question is raised as to whether the allocated and committed sites are likely to meet the Council's aspirations of small and grow on business in the form of premises or serviced plots - an acknowledged need, especially given that Sinfin Moor is likely to focus on advanced engineering sectors supported by existing presence in Derby. The proposal provides associated shared services such as meeting rooms, secretarial services and welfare facilities to meet the needs for small and grow-on business – this combination of uses and support services provides a unique opportunity for which significant positive weight should be placed.

In terms of the existing employment land stock in this part of the District, the lack of existing premises is highlighted by the Councils Economic Development Team and the number of existing businesses specifically with the local area which are seeking larger premises. The employment land review from 2007 remains the most up to date evidence and assesses some of the existing employment stock in the District – the most relevant of the sites are assessed for their suitability to meet the needs identified. None of which would be sufficient to meet the acknowledged demand in this area of the district or accommodate the proposed development. Existing vacant properties and premises have also been considered, again with no sites or premises suitable to meet these

demands again highlighting the lack of available stock for the range of uses proposed. This assessment is considered to provide a strong proven business case for the development proposed.

An Archaeological and Heritage Assessment supporting the proposal has considered the impact of developing the site on both above and below ground designated and non-designated heritage assets. This includes the Barrow upon Trent and Trent & Mersey Canal Conservation Areas. The assessment concludes that the implementation of the proposed development will not result in an adverse impact on, harm to, or loss of significance from any of the identified designated heritage assets, either in terms of an effect on their physical fabric or through changes to their wider setting. It is considered that the current nature of the site, being light industrial units, and the previous consents on the site, clearly demonstrate development of this nature is acceptable within the site without causing harm to any designated heritage assets.

Archaeological works within the wider area have recorded evidence of prehistoric and Roman activity, along with evidence associated with the medieval to post-mediaeval rural settlement of Barrow-on-Trent. This demonstrates the fairly intensive nature of archaeological activity in the wider area. An assessment of historical maps and aerial photographs show multiple phases of use within the site. It is considered that the previous uses of the site will have removed or truncated any surviving archaeological finds and features (if present). As such, there is very limited potential for remains within the site to predate the modern period given the previous impacts to the site. Any such remains which do survive within the site are most likely to relate to the modern use of the site and would be of low archaeological significance. On this basis, it is considered that no further archaeological works should be required in relation to the application.

The Transport Statement discusses the previously approved scheme and highlights the differences - those being the increase in floor area from 8,989sq.m to 10,043sq.m, the change to the access arrangements from the approved new two-way access to enhancing the existing access to provide for pedestrians as well as vehicles. The access has been designed to allow a HGV to give way to an incoming vehicle in to the site. Visibility splays are proposed of 90m to the north and 70m to the south. The development provides for 147 parking spaces with swept path analysis provided for each of the spaces, 5% disabled parking is provided (20 in total). 16 HGV loading spaces are provided - with further space within the site to accommodate an additional 11 HGVs. 20 secure cycle parking spaces are provided throughout the development, with pedestrian routes provided throughout the development in addition to the previously required pedestrian link from the site to the junction of Sinfin Lane and the A5132.

The statement includes a review of the previous Transport Assessment and Transport Assessment Addendum, with includes a comparison of the trip rates for the approved scheme and that currently proposed - which whilst an overall increase in floor area is proposed to trip rates reduce in both the AM (24 less movements) and PM (42 less movements) peaks. The Assessment also considers access to the site via non-car modes and it is acknowledged that bus services in the area have recently been downgraded but as a result of the development there could be sufficient demand for the operators to reconsider this position.

The Landscape and Visual Appraisal has been revised to reflect the changes to the approved scheme. The appraisal follows the standard methodology of the Landscape Institute and IEMA. The site lies within the Trent Valley Washlands National Character Area, and the Lowland Village Farmlands Derbyshire character area. The study area surrounding the site extends to approximately 4km with land levels varying only be around 10 – 20m across the area. The site is considered typical of these character areas, generally flat with local vegetation restricting views of the site to the immediate north, east and predominantly west. 10 viewpoints were chosen to represent a cross section of long and short distance views of the site. The appraisal considers that the site cannot be seen from distance, with the site not visible in views across the Trent Valley, some views available from the A5132 and the site boundaries. The appraisal predicts the landscape impacts to be slight adverse, with aspirations to reduce this impact over time through the implementation and management of the proposed landscaped areas. The visual impacts of the development are considered to be moderate adverse initially but restricted to a small areas of direct influence – this would reduce (and even

result in an improvement) as the landscaping matures.

A Flood Risk Assessment has been undertaken (an updated version of the previous submission) as required due to the size of the development proposed. The site is located in Flood Zone 1, and is therefore at low risk of flooding and represents a sequentially preferable site for new development (in terms of flood risk). The only identifiable risks from flooding come from ground water and reservoirs, risk from groundwater can be managed through foundation design where necessary, with the residual risk of a reservoir failure or breach being extremely unlikely. The surface water strategy is intended to effectively and safely manage surface water for the site, ensuring no increase in run-off rates or increase in flood risk.

The Ecological Appraisal identifies that there are no statutory designated nature conservation sites (i.e. SSSI), with influencing distance of the site. There are however 3 Local Wildlife Sites (LWS) within 1km of the site. The nearest LWS is approximately 350m south-east of the site. No features suitable for roosting bats were encountered on the site, the man-made pond is a fishing lake with no evidence of it being used by protected species. There was no evidence of water vole using the site. The only potential impacts on protected species is considered to be the potential impact on nesting birds, which subject to avoidance measures i.e. the timing of clearance of the site or a survey of the site prior to any works commencing.

Following the initial Ecological Appraisal a Technical Note: Phase 2 Ecology Surveys has been undertaken following further detailed surveys of the site, with a further Toad Mitigation Strategy prepared. The survey acknowledges that without mitigation, there is potential for an adverse impact on common toad as a consequence of development. To offset the potential for an adverse impact the Strategy recommends the following measures: clearance of suitable terrestrial habitats be supervised by a suitably qualified ecologist; any captured toads are translocated to suitable habitat in the local area; the destruction of the Water Tank is carried out when common toads are not likely to be present (August to February), and the proposed water-body is designed to provide suitable breeding habitat for common toad.

The additional wildlife surveys were followed by a Biodiversity Metric Calculation which identified that without off-site compensation there would be a shortfall in biodiversity units if the proposed scheme is developed. Natural England guidelines state that the “metric sits within a decision framework based on the mitigation hierarchy, which informs decision-making where application of the mitigation hierarchy and good practice principles has concluded that compensation for habitat losses is justified”. As the proposed development results in a shortfall, which cannot be mitigated on site, it will be necessary to implement compensatory measures. For compensation, Natural England guidelines state that “Compensation for habitat losses can be provided by creation and by restoration or enhancement of existing habitats. Measures taken to improve existing habitats must provide a significant and demonstrable uplift in distinctiveness and/or condition.” It is also important to note that Natural England advise against “trading down” and expect that habitats that are lost are replaced by habitats that are of similar or equal distinctiveness. The biodiversity metric calculations demonstrate that a net gain for biodiversity can be achieved by the implementation of suitable off-site compensation scheme in addition to on-site mitigation. The proposed compensation in this case investigated by the applicant is based on Barrow-upon-Trent Parish Council adopting a funded programme of grassland management at the site for a period of time that is considered to be appropriate to the compensation requirement.

A Phase 1 Environmental Assessment supports the application and describes the sites past uses, highlighting that there is unlikely to be any risk from made-ground. The development of the site is considered to pose a negligible risk to human health.

The Arboricultural Report considers that the majority of trees within the site are mediocre specimens, which allows a significant portion of the site to be developed. A number of trees along the northern and eastern boundaries are to be retained along the railway line and adjacent to the kennels/cattery. The trees of most value are those identified as G2, which are located along the hedgerow to Sinfin Lane and are to be retained. A carefully designed landscaping scheme including

new planting to compensate for any loss and is considered to create a better quality landscape on-site than currently exists.

An Acoustic Planning Report has been undertaken in order to assess the impact of the proposals on local residential amenity particularly from industrial and road traffic noise. Surveys were undertaken to the south of the existing site access and at the eastern site boundary, the results of these surveys indicate that noise from vehicles accessing the site are unlikely to impact on the nearest noise sensitive receptors due to the existing permitted uses at the site and the existing road network in the area.

The report confirms that no overnight operations are proposed, and operational noise from the site will predominantly occur within buildings, which due to the distance separation and existing boundary screening are considered to remain within the existing ambient noise levels measured and as such are unlikely to be noticeable outside of the site. This is subject to openings within the units remain closed during noisy activities sound reduction provided by the buildings would be sufficient to achieve a suitable noise environment. The report concludes that the proposed development should not be precluded from planning approval in terms of noise impact on existing or future sensitive receptors.

Relevant planning history

- 9/2006/0688 - The excavation and removal from site of approximately 27,000 tonnes of sand and gravel to increase the size of the existing pond for recreational fishing and to provide a car park: Approved 05/09/2006. This permission was for further excavations on the site to extend the existing man made pond and proposed to cover the area of the current planning application but was never implemented.
- 9/2014/0877 - Outline application (all matters except for access, layout and scale to be reserved) for the erection of four blocks of buildings in connection with the existing self-storage use: Approved 16/12/14. This permission was specifically for the erection of four warehouse buildings and approved the development of some 3,288 sq.m of additional floorspace, a total floorspace of 6,426 sq.m. The permission lapsed in December 2017.
- 9/2015/0147 - The installation of plant and equipment for the research, testing and generation of electricity: Approved 01/05/15. This permission has been implemented although not completed.
- 9/2018/1409 - Hybrid planning application for employment development comprising: (1) Outline Planning Application (all matters except for access and layout to be reserved) for the erection of buildings to provide uses within classes B1, B2 & B8 and ancillary short term residential accommodation (class C3) and other associated ancillary development, and (2) Full Planning Application for the change of use of buildings to classes B1 & B2 (including the retention of existing B8 use) with associated internal and external alterations, demolition of existing ancillary buildings and structures, and the reconfiguration of existing external hard standings and parking areas: Approved 14 June 2019.

Responses to consultations and publicity

The County Highway Authority notes that access to and egress from the site will now be via a modified version of the existing access. The provision of a footway on Sinfin Lane remains part of the proposal as do the improvements at the junction of Sinfin Lane and the B5132, Swarkestone Road to improve pedestrian and cycle facilities and the relocation of the weight restriction on Sinfin Lane to the north of the site entrance. The application is supported by a Transport Statement, some of which relies on that submitted in support of the previous application. It should be understood that the Highway Authority does not necessarily "agree" the content of a Transport Assessment or

concur with every detail. However, it is not considered to be reasonable to ask an applicant to devote further resources to amending the details when it is considered unlikely that the conclusion would alter. Therefore, bearing in mind the above and the previous comments there are no objections to the proposal from the highway point of view subject to the conditions outlined in the response.

Highways England offer no objection.

The Lead Local Flood Authority (LLFA) has no objection to the proposal, subject to conditions relating to the submission of a detailed design and associated management and maintenance plan for surface water, and the management of surface water during construction.

The Environment Agency has no objection subject to the imposition of a condition relating to contaminated land, similar to the suggested condition by the Environmental Health Manager.

The Environmental Health Officer has no objections based on the submitted information subject to conditions.

Derbyshire Wildlife Trust notes that the use of biodiversity metrics identifies that the development would lead to a net loss of 11.80 habitat units as a result of proposed scheme after the on-site mitigation measures are accounted for. However, a suitable offset scheme has been put forward to achieve off-site compensation on the nearby Greenacres site owned by Barrow-on-Trent Parish Council. This enables the overall development to achieve a net biodiversity gain of 5.30 biodiversity units through a combination of habitat creation and enhancement on-site together with the long-term commitment to grassland restoration and management of the off-site Greenacres site. The scheme also achieves a net gain of 0.74 hedgerow units through on-site enhancements. The offsetting scheme should be secured by condition. The on-site landscaping, including the Common Toad mitigation measures, should be covered by a Landscape and Ecological Management Plan (LEMP).

The Development Control Archaeologist comments that the site has been the subject of archaeological field investigations which did not reveal any archaeological finds or features and, as such, no archaeological conditions are required.

Sport England notes that the proposed development does not fall within their statutory or non-statutory remit, therefore Sport England has not provided a detailed response in this case.

Natural England has no comment to make on the application.

The Canal and Rivers Trust notes that the adjacent Trent & Mersey Canal is a designated conservation area, with little consideration given to the potential for damage to the bridge as a result of increased traffic. As a minimum a Travel Plan is suggested that highlights the restricted access at Barrow Bridge.

Severn Trent Water (STW) notes that the proposal is to connect to the public foul sewer, which will require formal approval. STW has no comment on surface water discharge.

The Derbyshire Police Force Designing Out Crime Officer does not wish to comment on the full element of the scheme. However, the application alters the security dynamic at the site and whilst there is no objection in principle, the security provision at the site would require suitable conditions due to its location and a risk of 'travelling crime' controls will be required to restrict access and secure the site overnight.

A comment has been received from Cycling UK and CTC Derby and Burton (local groups of Cycling UK) who comment that the development seems a prime case for a contribution to the local cycle infrastructure.

Barrow on Trent Parish Council, whilst not objecting to the application, raise concern over the draining of the existing lake questioning whether there is a plan for the discharge of water? The amount of water in the lake could have a significant flooding impact on the local area. Secondly, is there a fish removal plan as its reported that the lake is home to a large number of fish?

Two objections have been received, raising the following comments:

- a) Concern of overshadowing, overlooking and loss of privacy due to the appearance and size of the planned buildings;
- b) The submitted Landscape and Visual Appraisal doesn't show the line of sight from an existing dwelling (pictures provided);
- c) The visual impact and intrusion is much greater than the previous submission;
- d) Drainage from the site runs the full length of the adjacent property before entering a culvert under Swarkestone Road (pictures provided) - replacing the lake and existing land with hard surface will increase water run-off and add to flooding on the other side of Swarkestone Road. In addition due to this soil erosion is a concern;
- e) Noise and visual impact from HGV's due to the changed layout and road along the southern boundary;
- f) The changed larger building along the eastern boundary is the worst area for impact on overshadowing and loss of privacy - proposed hedgerow planting will not be sufficient screening - there is no commitment to serious mitigation and is no way sufficient given the proximity to my home (directly to the south);
- g) Given the immediate proximity of the well-established boarding kennels, cattery and animal exercise areas, this significant change in context on the eastern boundary dwarfs our premises and is not in keeping with the character of the locality. We note there will be hedge planting along the eastern boundary but these will do little to shield the proposed 6m+ building that runs almost the entire length of the eastern boundary;
- h) The change from Office based activities to Industrial based activities is a significant concern for the continuity of our business. Having the largest industrial unit on the site proposed immediately adjacent to our kennels and cattery will cause issues for the day to day running of our business. The immediate visual impact of the industrial warehouse on our boundary will cause us to lose business due to the overbearing scale and external appearance of an industrial warehouse on what is a rural location and our small business relies on the rural nature of the area;
- i) Sound concerns due to the change in use proposed. Our animals have thrived on the peace and quiet of rural Derbyshire. It can be a stressful experience initially for animals that stay with us. Whilst the Kennels generates noise during opening hours, we shut between 12-3pm in the afternoon to allow the animals to relax and sleep. Given the now immediate proximity of the B2 industrial unit we have serious concerns that the operation of this unit will generate significantly more noise than the approved B1 office spaces and have a severe detrimental impact to the way we care for our animals;
- j) The increased traffic will cause a significant change in character to the area - changing the rural character of our business;
- k) Whilst the current approved masterplan consent does change the nature of the rurality we felt it addressed the sensitivity of the eastern boundary to our boarding kennels both in the character and context of the building forms proposed but also the proposed B1 office use is a lot more sympathetic to our operation and is one we can support. To now flip the whole site around, proposing the most significant industrial unit along the eastern boundary is a change that we are extremely concerned about and we feel significantly impacts the Landscape and established Character of the area, having a knock on effect to our premises and our ability to operate in the way we have for the last 30 years;
- l) It could be argued the current consent is not in keeping with the rural character of the countryside but at-least this masterplan is prepared in a way that is sympathetic to the local context and established businesses – A balanced approach. The Application we are objecting to does very little to consider the neighbouring rural character to the East and significantly impacts the existing character of the rural land.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S5 (Employment Land Need), S6 (Sustainable Access), H1 (Settlement Hierarchy), E1 (Strategic Employment Land Allocation), E5 (Safeguarded Employment Sites Dove Valley Park), 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 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF7 (Green Infrastructure), and INF9 (Open Space, Sport and Recreation).
- 2017 Local Plan Part 2: SDT1 (Settlement Boundaries and Development), BNE5 (Development in the Countryside), BNE7 (Trees, Woodland and Hedgerows), BNE10 (Heritage) and RTL1 (Retail Hierarchy).

The relevant National Guidance is:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- National Design Guide (NDG)

The relevant Local Guidance is:

- South Derbyshire Economic Development Strategy (SDEDS)
- South Derbyshire Design Guide SPD
- The Barrow upon Trent and Trent and Mersey Canal Conservation Area Character Statements

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 issue(s) central to the determination of this application are:

- Principle of development;
- Landscape and visual impact;
- Highway matters;
- Biodiversity and protected species; and
- Amenity impacts.

Planning assessment

Principle of development

The planning history on this site is a significant material consideration in assessing the suitability of the proposed scheme, noting that the changes to the approved scheme relate to an increase in overall floorspace, a re-design of the layout of the site, and the removal of two of the non Plan-compliant elements of the scheme (the originally proposed office accommodation and ancillary residential unit). The changes see an increase of 1,054 sq.m in the overall new floorspace proposed to 6,905 sq.m (an 18% increase).

One of the key means of achieving sustainable economic development as outlined in the NPPF is through the planning system and its role in helping to build a strong, responsive, and competitive economy. This can be achieved by ensuring that sufficient land of the right type is available in the

right places at the right time in order to support growth, innovation and improved productivity. The role of the planning system is to help to create the conditions in which businesses can invest, expand and adapt, with the NPPF highlighting that significant weight should be given to this need to support economic growth and productivity.

Supporting the economy of the District, including the rural economy is a key strategy of the Local Plan and the SDEDS. The SDEDS itself specifically identifies a shortage of start-up and grown-on business accommodation in the District. Both the NPPF and Local Plan identify that there is a specific need within rural areas to enable the sustainable growth of all types of businesses both through the conversion of existing buildings and new buildings. Indeed, the NPPF specifically recognises that sites to meet local business and community needs may need to be found beyond local settlements, and in locations that are not well served by public transport. This is echoed by policy E7 provided the development supports the social and economic needs of the rural communities in the District, and that new rural economic development proposals are supported by a sound business case. Policy E2 supports the development of land (irrespective of location) for B1(b), B1(c), B2 and B8 uses where the proposal is for the redevelopment of established industrial or business land or premises.

The applicants have prepared a detailed business case in support of the application, which is outlined above. This highlights the strategies of the SDEDS, and evidences the outstanding specific need for serviced industrial plots. There is evidence of considerable demand locally, especially in the Melbourne area. The business case put forward and the evidence available presents a compelling and sound case in support of the proposed development, such that it is considered that the principle of the conversion of the existing buildings and the development of the remainder of the site for new employment development would comply with the requirements of policies E2 and E7 of the Local Plan and the provisions of the NPPF. This is subject to a limitation that the office and meeting space provided (normally B1(a) and D1 uses respectively) is used ancillary to the wider operations on the site, noting that the Development Plan focusses new independent premises of this nature to town and local centres.

One area in which the principle of development needs to be considered, and is less clear cut, relates to the loss of the existing pond. The pond was originally an irrigation pond, created following the extraction of gravel, and has previously been used for angling. It is therefore arguable that the infilling of the pond would result in the loss of a sporting facility and an area of open space. However, the angling facility is a private facility which has been closed since the current site owner took over the site, and is considered to have little public amenity value due to its lack of public access. As such the infilling and loss of this facility is not considered to be a matter to weigh significantly against the re-development of the site, especially given the location of the site close to the Trent and Mersey Canal, which provides an alternative angling facility within very close proximity to the site.

Landscape and visual impact

The surrounding landscape is generally low and flat, with established field hedgerows typical of the Trent Valley Washlands landscape character area. The site itself is also flat, and part occupied by existing buildings (to the south west) which are proposed for retention and updating, the pond to be infilled to the north and eastern part of the site, and hardstanding areas and pockets of scrub to the north-western corner. The only unaltered greenfield part of the site is to the south-eastern corner, upon which permission has previously been granted for built development as an expansion to East Midlands Self Storage.

Due to the topography of the surrounding area and intervening vegetation, the site is rarely visible from beyond Sinfin Lane with the existing buildings located in the most prominent position due to the level of Sinfin Lane. The northern extent of the site would be partially screened by the rising level of Sinfin Lane as it passes over the railway line and Trent and Mersey Canal. The screening of the site from this location is also aided by the existing hedgerow and hedgerow trees which rise with the level of the road.

Beyond the site itself, the landscape has a more rural quality and comprises a mix of pasture and arable farmland. Longer distance views may be available of the site from the A5132 during the winter, but these views are likely to be fleeting and filtered and are not considered significant. The proposed new built development would also sit in context with the existing buildings.

The proposals include the updating of one of the existing buildings on the site (the other retained buildings already having permission for remodelling and updating) through re-cladding and general tidying up of it and its surroundings. These alterations are considered to be appropriate, and improve the visual attractiveness of the buildings and site in general complying with the requirements of policy BNE1 and the SPD.

In terms of the wider proposal (i.e. the remainder of the site), the layout is intended to balance the extent of the site area and the operational requirements for the proposed uses following market testing of the approved scheme. The 'Business Incubation Zone' (BIZ) proposes five new buildings arranged in a block structure to the north-western part of the site. An L-shape arrangement of three buildings is proposed with a central larger building which would house the communal offices, meeting rooms and other ancillary accommodation and functions in connection with this area. The BIZ area is then complemented with two additional buildings creating a central manoeuvring area, completing this part of the site suited to start-up businesses. The two larger buildings are proposed positioned adjacent to the northern and eastern boundaries (with a minimum of a 10m stand-off to the actual boundaries themselves). These larger buildings are generally of a height comparable to a two storey dwelling (6.7m to the eaves and 8.5m to the ridge) but do have a substantial mass with Unit 1 measuring 91m in length and 31m in width.

The site is generally well screened, assisted by the levels on Sinfin Lane, and the mature tree line on the boundary of the site and in-between the railway line and canal. However, there will be views of the site and new buildings from a distance to the east and from the south from Swarkestone Road and a number of the dwellings to the south east of the site. The new buildings would be screened to some extent by the existing vegetation, but during the winter and until the proposed landscaping becomes more mature, the development would be visible. In order to minimise this visual impact, close control over the materials of the larger buildings is considered appropriate in addition to ensuring an appropriate landscaping scheme and its future management through conditions.

Overall it is not considered that the impact of the development on landscape character would be significant, with the more localised visual impacts mitigated by the level of Sinfin Lane, which would be further minimised by appropriate landscaping. The loss of the man-made pond is not considered to be detrimental to the landscape or character of the area. Generally the layout of the site is not considered to give rise to undue impacts on the local landscape, natural environment such that the requirement of policies E2, E7, BNE1, BNE4 and BNE5 are adhered to.

Highway matters

The thrust of local policy (S6 and INF2) and national policy relating to highway matters seek to ensure that safe and suitable access can be achieved for all users, and that any significant impacts arising from the development on the existing transport network or on highway safety can be adequately mitigated. The NPPF seeks to ensure that opportunities are taken to promote sustainable transport are taken up and is explicit that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety or the residual impacts on the road network would be severe. Here there are three main areas for consideration: highway capacity and safety on the existing network; the proposed vehicular access and the internal layout; and sustainable transport measures.

With regards to the impact of the development on the local highway network, this submitted Transport Assessment has demonstrated that the current scheme would result in a lower number of vehicle trips on to the local highway network than the approved scheme. This has been accepted by the Highway Authority, and as such the impact of the development on the local highway network is

not considered to be severe. In support of the original application, an assessment was undertaken of 6 vehicular junctions at or within the vicinity of the site, as follows:

1. The existing site access;
2. The new site access located 60m to the north of the existing;
3. A5132 / Sinfin Lane T-junction;
4. A514 Swarkestone Road / A5132 T-junction;
5. Sinfin Lane / Site Access; and
6. A50 / A514 / Infinity Park Way Roundabout (Bonnie Prince Island).

Each junction assessment was based on the following traffic flow scenarios:

- 2018 Observed Year;
- 2019 Baseline Year;
- 2024 Design Year; and
- 2024 Design Year + Proposed Development.

The previous transport assessment concludes that all junctions with the exception of junction 4 would be able to operate within capacity for all of the scenarios considered. The capacity analysis identified that junction 4 is currently operating over capacity, and the proposed development would be adding to an already congested situation. The capacity assessment identifies that additional traffic from the development would lead to traffic increases of 1.69% of the total background traffic.

A key concern for the Highway Authority, and locally, relates to the likelihood of vehicles from or visiting the site using Barrow Bridge to access or leave the site. Sinfin Lane is subject to a 7.5 tonne weight restriction with allowance for access, which includes access to the existing site. There is concern that the future development of an additional A50 junction at Deep Dale Lane would improve the attractiveness of using the Barrow bridge for access. To this end it is considered necessary for the positioning of the weight restriction to be relocated on Sinfin Lane from its junction with the A5132 (Swarkestone Road) to the north of the proposed site access, which would restrict vehicles over 7.5 tonnes accessing the site from using Barrow Bridge. The current situation is that once a vehicle has entered the 'access only' area (Sinfin Lane), it would then be free to access any part of the restricted access area meaning that there would be no restriction on using Barrow bridge. To this end it is considered necessary to impose a condition on the permission requiring the applicant to apply for a Traffic Regulation Order in order to relocate the weight restriction. Similar relocation of the northern end of the weight restriction would be a matter for consideration under the Garden Village proposals facilitated by the new A50 junction.

In terms of the proposed vehicular accesses and the internal layout, the proposal is to modify the existing access with measures such as smaller radii on the northern side of the access are included in order to deter vehicles turning right out of the site access.

Adequate visibility for vehicles has been demonstrated to the satisfaction of the County Highway Authority, and a swept path analysis has been provided to demonstrate that the site access can be used by articulated lorries. In general, the revised access into the site is considered to be acceptable, subject to the submission of precise construction details of the new access works. Adequate provision for service vehicle access, manoeuvring and off-street parking is provided within the site, with the quantum of parking spaces provided sufficient to meet the County Council's parking standards. So, on a technical highway safety issue, there is no objection to the development in terms of providing a safe vehicular access in to the site, and the internal layout.

As acknowledged above, sites necessary to meet the needs of local businesses are required in rural locations that are not well served by public transport, which is unfortunately the case here. The application includes provisions to increase the attractiveness of accessing the site by public transport, walking and cycling though providing a new footpath link from the site to the south along Sinfin Lane where the existing footpath terminates at the A5132 junction and further improvements

are proposed to the existing crossing over the A5132. In addition, the submitted Travel Plan includes the following measures to promote sustainable travel:

- the provision of appropriate space for the storage of cycle equipment;
- to increase the number of employees/visitors using alternative modes of transport rather than single occupancy cars;
- promote healthy lifestyles and a sustainable, vibrant local community; and
- achieve a reduction in the level of peak hour traffic generation associated with the site.

The comments received from Cycling UK and CTC Derby and Burton are noted. However, a request for financial contributions need to be compliant with the CIL Regulations. As the development would see a *reduction* in trips compared with the previously approved scheme (noting that additional floorspace is now proposed), and no contribution was requested at the time of that application, it would be unreasonable to place a new funding request on the development given the fallback that scheme presents.

Overall the development is considered to provide safe and suitable access, the impacts of the development on the wider highway network are not considered to be severe and, where possible, measures to encourage and promote the use of sustainable transport measures are proposed so that the proposal is considered to comply with requirements of Local Plan policies S6 and INF2 and the provisions of the NPPF.

Biodiversity and protected species

The Habitats on-site are comprised of semi-improved grassland, scrub, hedgerow, scattered trees, a large pond and a small butyl (rubber) lined tank. An Ecological Appraisal has been undertaken, including a walkover survey. Policy BNE3 supports development which contributes to the protection, enhancement, and management of biodiversity and delivers net gains in biodiversity wherever possible. Similarly the NPPF requires impacts on biodiversity to be minimised with net gains in biodiversity provided.

Following the approval of the previous application further surveys of the site have been undertaken, in addition to a Biodiversity Metric Calculation based on the information in the Ecological Appraisal, which provided a plan of the existing habitats and a Landscape Strategy Plan in order to determine the extent to which the proposed mitigation measures contributed to the achievement of biodiversity net gain. The use of biodiversity metrics identifies a net loss of 11.80 habitat units as a result of proposed scheme after the on-site mitigation measures are accounted for. However, a suitable off-set scheme has been put forward to achieve off-site compensation on the nearby site known as Greenacres site owned by Barrow-on-Trent Parish Council. In 2007 the Parish Council completed the purchase of the site by using landfill tax funds. The area was bought from the Church Commissioners and was restored and maintained by Lafarge for five years. The site now belongs to the people of the Parish and the Parish Council undertakes the day-to-day maintenance of the area. An assessment of the site identified a lack of grassland management which has had an adverse impact on its condition. To restore the grassland and sustain its long-term future, intervention is required for a sustained period. Over a period of 15 years of management the grassland would develop into a high quality Lowland Meadow habitat that would significantly enhance the overall quality of Greenacres. This intervention would enable the overall development to achieve a net biodiversity gain of 5.30 biodiversity units through a combination of habitat creation and enhancement on-site together with the long-term commitment to grassland restoration and management of the Greenacres site. This is the equivalent of a biodiversity net gain of 21.76% and, as such, very much complies with the NPPF and policy BNE3. The scheme also achieves a net gain of 0.74 hedgerow units through on-site enhancements. The applicants are currently at an advanced stage of legal proceedings with the Parish Council in respect of the scheme of management of their asset for a 15 year period - a matter adequately secured by condition.

Amenity impacts

The amenity of neighbouring dwellings and uses is to be protected through policies SD1, E7 and BNE1. To the east of the site lies a kennels and cattery; to the south a flower business beyond which are two dwellings. There are also a number of dwellings which front Swarkestone Road to the south-east of the site that have the potential to be impacted upon.

The visual impact of the development is considered above and the comments received in the objections are noted. It is important to emphasise that the loss of a private view is not a material planning consideration that holds any weight in making planning decisions, but impacts on amenity are relevant. Impacts on amenity are generally held to be the impact on humans rather than animals. Nevertheless, the impact of the development on the kennels business is relevant.

The buildings are located over 95m from the nearest habitable room windows of any of the nearby dwellings, and over 55m from the nearest area of private amenity space. Such a distance would not result in any significant impacts on the reasonable amenities of these occupants in terms of overlooking, overbearing or overshadowing. The buildings are located close to the adjacent kennels and cattery to the east, which include the kennels themselves and the outdoor exercise areas. The building proposed running along the eastern boundary of the site is substantial in length along part (but not all) of the eastern boundary of the site, but the fact that the building is located over 10m from the boundary and dense landscaping is proposed to the site boundary coupled with the fact that the area is used for the walking of dogs rather than a primary area of private garden leads to the conclusion that the development would not be unacceptable in this regard.

The application is supported by an Acoustic Report, which includes an assessment of the impacts on the adjacent kennels as well as existing residents. The report concludes that the noise rating level from fixed or mobile plant items associated with an industrial development would not exceed the existing prevailing background levels. One concern raised relates to the impact of industrial activities occurring closer to the site boundary with the kennels which may result in additional barking stimuli for dogs in external runs where a line of sight is not obscured. As no specific noise reduction is required, the proposed boundary screening/landscaping would achieve this purpose.

The scheme also includes provisions for no outside working, doors generally opening facing away from any noise sensitive receptors, and doors and shutters being closed when operations are being carried out within the buildings. The Environmental Health Officer concurs with the recommendations and conclusions in the report that the development would not give rise to significant impacts on amenity, subject to a number of conditions designed to protect the amenity of nearby uses and residents including operating hours restrictions.

Other matters

The original proposal was screened under the Environmental Impact Assessment (EIA) Regulations 2017. The revised proposal is considered to fall within paragraph 10(a) of Schedule 2 to those Regulations, being an infrastructure project. However having taken into account the criteria of Schedule 3 to the Regulations, the proposal is not considered to give rise to significant environmental effects in the context and purpose of EIA. Accordingly the application is not accompanied by an Environmental Statement.

The application is supported by a Flood Risk Assessment, which identifies that the site would be developed with a Sustainable Drainage System (SuDS) scheme designed to accommodate a 1 in 100 year flood event, with a 40% allowance for climate change and an additional 10% allowance for urban creep - accommodated by a variety of SuDS features including underground storage and an above ground wetland feature. Surface water is proposed to discharge to an existing ditch to the eastern part of the site, as it has been demonstrated that the site is unsuitable to infiltrate surface water due to the presence of groundwater.

The proposals include the infilling of the existing pond on the site and to alter the route of an existing watercourse. The concerns of the Parish Council in respect of the drainage of the pond are noted and there are two options available - either a limited discharge in to the existing watercourse (subject to the relevant consents from the LLFA and/or Environment Agency), or collection of the water by tanker to be disposed of away from the site. Either option would allow for suitable draining of the pond and a condition to deal with this matter is proposed. Overall the proposed scheme is considered to provide suitable and adequate surface water drainage for the site subject to the conditional approval of a detailed scheme incorporating its management and maintenance, and as such will comply with the requirements of policies SD2 and SD3. Water consumption can also be limited by condition in accordance with policy SD3.

The impact of the development on the nearby heritage assets, namely the Barrow upon Trent and Trent and Mersey Canal conservation areas, is partly considered above. It is worthwhile confirming that the proposed development is considered to preserve the significance of the Barrow upon Trent Conservation Area due to its separation from the site and existing development closer to its setting. In terms of the nearby Trent and Mersey Canal Conservation Area, the site makes a limited contribution to the setting of the conservation area due to the intervening railway line and vegetation cover. The impact of the development on the canal would be reduced through suitable landscaping and boundary treatments that would aid in screening the site in its limited views from the conservation area, and these matters can be secured through a landscaping condition. Generally, the development is not considered harmful in a heritage context and would preserve the significance of the setting of the Trent and Mersey Canal Conservation Area. In terms of archaeology, following approval of the previous scheme, archaeological investigations (trial trenching) have been undertaken which did not reveal any archaeological finds or features and highlighted the high level of ground disturbance. As such no additional investigations are considered necessary. Overall the proposed development is considered to comply with the requirements of policies BNE2 and BNE10, in addition to the provisions of the NPPF and the 1990 Act.

The scheme includes the loss of a large portion of trees within the site, especially those surrounding the existing pond. The Arboricultural Report undertaken correctly identifies that these are generally poor self-set specimens, with the trees of importance within the site, and in terms of the landscape setting, being those along the sites boundaries - particularly those along Sinfin Lane. Subject to the protection of trees along the site boundaries during construction and their bolstering through an appropriate landscaping scheme, the loss of trees within the site is not seen as a significant constraint to the development. A suitable scheme of landscaping would offer the opportunity to provide a scheme of appropriate mitigation for the lost trees, with appropriate species and specimens to be managed appropriately.

Summary and planning balance

This application for industrial economic development is presented with a strong, sound and compelling business case supported by evidence gleaned from the South Derbyshire Economic Development Strategy. The development would meet identified economic needs in this part of the District and is supported by the economic development policies of the Local Plan and the provisions of the NPPF both of which seek to ensure planning aids in building a strong, competitive economy. The proposal would provide the employment opportunities lacking in this area and this form of economic development needs to be given the strong planning support it deserves. This weighs heavily in favour of the proposal, as does the previous planning permission granted by the Committee in June 2019.

The fact that the highways impact of the development can be appropriately mitigated and accommodated in the area, subject to conditions; the impact of the development on the landscape and character of the area is considered acceptable; and appropriate sustainable drainage provision can be provided also weigh in favour of the proposals. The development, whilst subject to biodiversity off-setting, would result in a demonstrable net gain in biodiversity and would benefit the local community through this offsetting at a Parish Council owned site. Overall the proposed development represents sustainable development and is recommended for approval.

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

GRANT permission subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with drawings and architectural plans as detailed on pages 2, 3, and 4 of the Heatons Cover Letter dated 4 December 2019; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

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

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

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that initial preparatory works could bring about unacceptable impacts.

4. No development, including preparatory works, shall commence until details of measures indicating how additional surface water run-off from the site will be avoided during the construction works have been submitted to and approved in writing by the Local Planning Authority. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved measures and systems shall be brought into operation before any works to create buildings or hard surfaces commence.

Reason: To ensure surface water is managed appropriately during the construction phase of the development, so as not to increase the flood risk to adjacent land/properties or occupied properties within the development itself; recognising that initial works to prepare the site could bring about unacceptable impacts.

5. No generators shall be used on the site during the construction phase without details having first been submitted to and approved in writing by the Local Planning Authority. Thereafter, only those approved generators shall be used.

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

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

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

7. No site preparation or construction works pursuant to this permission shall take place on the site other than between 0800 to 1800 hours Monday to Friday, and 0800 to 1300 hours on Saturdays. There shall be no construction works (except for works to address an emergency) on Sundays or Public Holidays.

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

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, as amended, or any order revoking and re-enacting that Order with or without modification, the buildings hereby approved shall be used only for use classes B1(b), B1(c), B2 and B8 of the Town and Country Planning (Use Classes) Order 1987, as amended, or any order revoking and re-enacting that Order with or without modification, and for no other purpose in Classes B or D of the schedule to that Order. For the avoidance of doubt the offices, meeting spaces and welfare facilities provided as part of the development shall be only be used ancillary to the use of the B1(b), B1(c), B2 and B8 units at the site, including those shown to be within the applicant's control on the site location plan, and not sold off, let or sub-let as independent office or meeting facilities.

Reason: Only the approved use has been considered in establishing whether the proposal would have acceptable impacts in this location, and other uses would require further detailed consideration by the Local Planning Authority noting that the ancillary uses proposed are normally focussed towards sustainable locations in town and local centres.

9. The open land (or parking or manoeuvring areas) within the curtilage of the site shall not be used for the storage, display or sale of anything whatsoever.

Reason: In the interests of the visual amenities of the area.

10. The B1(c), B2 and B8 uses hereby permitted shall not operate unless the doors, shutters and windows of the premises are closed, and shall be kept closed at all times except as required for the incidental entry or exit of vehicles, goods or customers.

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

11. The B1(c), B2 and B8 uses hereby permitted shall not take place other than between 0700 hours and 2100 hours Mondays to Fridays, and between 0700 hours and 1600 hours on Saturdays. The B1(c), B2 and B8 uses hereby permitted shall not take place whatsoever on Sundays, public holidays and bank holidays.

Reason: To safeguard the amenities of nearby occupiers.

12. The rating level of noise emitted from the site shall not exceed 46dBA LAeq (1hour) at any time as measured at the nearest noise sensitive receptor. Where access to the nearest noise sensitive receptor is not possible or measurements are affected by other local noise sources, measurements shall be undertaken at an appropriate location and corrected by means of a noise propagation calculation to establish the noise levels at the nearest noise sensitive receptor.

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

13. No development, including preparatory works, shall commence until a site-wide phasing programme including the proposed sequence of providing:

- (a) employment units including associated parking and landscaping bunds,
- (b) public and private highways including street lighting,
- (c) sustainable drainage systems and associated infrastructure,
- (d) any off-site works required under this permission, a planning obligation or agreement under the Highway Act 1980

has been first submitted to and approved in writing by the Local Planning Authority. The details shall be provided with reference to plan(s) and define the extent and location of individual development phases or sub-phases and the associated interim access arrangements. The development shall not be carried out other than in accordance with the approved programme.

Reason: To ensure that the impacts of the development are appropriately mitigated at all stages of the construction phase, and so occupiers of the development are able to reach and access services and facilities at an appropriate time, in the interests of achieving sustainable development.

14. No development, including preparatory works, shall commence until a signed management agreement for the delivery of the offsetting scheme as detailed in the Technical Note: Biodiversity Metric for Land off Sinfin Lane, Barrow-on-Trent Ref: 1163.02_03_TN_mw_v5 dated 30th March 2020 has been submitted to and approved in writing by the Local Planning Authority. The hereby approved offsetting scheme shall be implemented in accordance with the approved details.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts, noting that initial preparatory works could have unacceptable impacts; and in order to secure an overall biodiversity gain.

15. No development, including preparatory works, shall commence until a Common Toad Mitigation Strategy (CTMS) has been submitted to and approved in writing by the Local Planning Authority. The CTMS shall deal with both mitigation for the duration of construction works, and measures to protect migrating animals during the operational phase of the development. Specifically the CTMS shall include a scheme detailing the locations and specifications of dropped kerbs and amphibian-friendly gullies. The approved CTMS shall be adhered to throughout the construction phase and permanent measures implemented strictly in accordance with the approved details.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts, noting that initial preparatory works could have unacceptable impacts; and in order to secure an overall biodiversity gain.

16. No development, including preparatory works shall commence until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall include the following:
 - a) Description and evaluation of features to be managed;
 - b) Ecological trends and constraints on site that might influence management;
 - c) Aims and objectives of management, including mitigation and enhancement for species identified on site, namely Common Toad;
 - d) Appropriate management options for achieving aims and objectives;
 - e) Prescriptions for management actions;
 - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a fifteen-year period);
 - g) Details of the body or organisation responsible for implementation of the plan, along with funding mechanism(s) for that body or organisation; and
 - h) Ongoing monitoring and remedial measures, including where monitoring shows that conservation aims and objectives of the LEMP are not being met.
 The approved plan shall be implemented and maintained thereafter in accordance with the approved details.

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

17. The dewatering of the pond or groundwater shall be carried out in accordance with Sinfin Lane Dredging Statement (RE: - Proposed method and sequence of works for the de-silting of fishing pool off Sinfin Lane) and Drawing No A3756 – 197 P1, unless prior to works being carried out, alternative details have been first submitted to and approved in writing by the Local Planning Authority.

Reason: To protect and prevent the pollution of controlled waters and minimise flood risk.

18. No development, including preparatory works, shall commence until a scheme for the protection of trees, hedgerows and ponds has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall be based on best practice as set out in BS 5837:2012 (or equivalent standards which may replace them) and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas of trees/hedgerows. The approved scheme of protection shall be implemented prior to any works commencing on site and thereafter retained throughout the construction period.

Reason: In the interests of safeguarding existing habitat and the visual amenities of the area, recognising that initial preparatory works could bring about unacceptable impacts to protected and non-protected interests.

19. The development shall be carried out in accordance with the surface water drainage scheme as detailed in the following documents and drawings: Sinfin Lane, Barrow Upon Trent, Flood Risk Assessment 211550 Rev P3; Proposed Drainage Layout Drawing No: A3756- 149 Revision P9; Proposed method and sequence of works for the de-silting of fishing pool off Sinfin Lane and Drawing No A3756 – 197 P1; and Information and proposals received from the applicant by emails Dated 8th April 2020. The scheme shall be carried out in conformity with the approved details prior to the first use of each respective building served by the surface water drainage system.

Reason: In the interests minimising the likelihood of flooding incidents and damage to the environment, property or life.

20. Upon completion of the surface water drainage system, including any attenuation ponds and swales, and prior to their adoption by a statutory undertaker or management company; a survey and report from a suitably qualified independent engineer shall be submitted to and approved in writing by the Local Planning Authority. The survey and report shall demonstrate that the surface water drainage system has been constructed in accordance with the details approved pursuant to condition 19. Where necessary, details of corrective works to be carried out along with a timetable for their completion, shall be included for approval in writing by the Local Planning Authority. Any corrective works required shall be carried out in accordance with the approved timetable and subsequently re-surveyed by an independent surveyor, with their findings submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the effective operation of the surface water drainage scheme following construction of the development.

21. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, a written scheme to identify and control that contamination shall be submitted to and approved in writing by the Local Planning Authority prior to any further works taking place on the site. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA (or equivalent guidance which may subsequently update or replace it), and appropriate remediation/mitigation proposals. The approved scheme shall be implemented in accordance with the approved remediation/mitigation proposals.

Reason: The proposed site for development is a brownfield site and hence there is always the potential for unexpected sources of contamination to be present. To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site. To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it.

22. Prior to the first occupation of any building hereby permitted, the existing site access shall be modified in accordance with application drawing VC0289/001/001, having 7.3m carriageway, a 10m radius on the north side, a 15m radius on the southern side and provided with visibility sightlines of 2.4m x 70m to the north and 2.4m x 90m in the southerly direction, the area forward of which shall be cleared and maintained throughout the life of the development clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge.

Reason: In the interests of highway safety.

23. Prior to the first occupation of any building hereby permitted, the access, car parking and manoeuvring space shall be laid out in accordance with the application drawing (R0023 – 001 rev P13) and maintained throughout the life of the development free of any impediment to its designated use.

Reason: In the interests of highway safety.

24. Prior to the first occupation of any building hereby permitted, a Traffic Regulation Order shall be promoted for the relocation of the 7.5 tonne weight restriction to a point immediately to the north of the new access to Sinfin Lane and any associated works and signage in conjunction with Derbyshire County Council (the Highway Authority).

Reason: To ensure safe and suitable access and in the interests of highway safety.

25. Prior to the first occupation of any building hereby permitted the access, parking and manoeuvring area shall be laid out in accordance with the approved plan(s) and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, such space shall be maintained throughout the life of the development free of any impediment to its designated use as such.

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

26. Prior to the first occupation of any building hereby permitted the following works to the existing highway shall be carried out:
- (a) A new 2m footway on Sinfin Lane as detailed on drawing number F18076/06; and
 - (b) Alterations to the pedestrian/cycleway at the junction of Sinfin Lane with the A5132, including upgrading of the central refuge as detailed on drawing number F18076/14.
- The works shall be carried out in accordance with the approved details, and constructed in accordance with Derbyshire Council Council's specifications for works within the public highway. For the avoidance of doubt the developer will be required to enter into an agreement with the Highway Authority under section 278 of the Highways Act 1980 in order to comply with the requirements of this condition.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that even initial preparatory works could bring about unacceptable impacts.

27. Prior to the first occupation of any building hereby permitted, the existing site access shall be modified in accordance with application drawing VC0289/001/001, having 7.3m carriageway, a 10m radius on the north side, a 15m radius on the southern side and provided with visibility sightlines of 2.4m x 70m to the north and 2.4m x 90m in the southerly direction, the area

forward of which shall be cleared and maintained throughout the life of the development clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge.

Reason: In the interests of highway safety.

28. Prior to the first occupation of any building hereby permitted, the access, car parking and manoeuvring space shall be laid out in accordance with the application drawing (R0023 – 001 rev P13) and maintained throughout the life of the development free of any impediment to its designated use.

Reason: In the interest of highway safety.

29. The gradient of the access shall not exceed 1:30 for the first 10m into the site and 1:20 thereafter.

Reason: In the interests of highway safety.

30. Prior to their incorporation in to the building(s) 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.

Reason: In the visual interest of the building(s) and the surrounding area.

31. Notwithstanding the plans hereby approved, prior to the first occupation of any building hereby permitted a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The scheme should evidence compliance with British Standard (BS) 3936: 'Part 1 - Specification for trees and shrubs', BS3969 - 'Recommendations for turf for general purposes' and BS4428 - 'Code of practice for general landscape operations (excluding hard surfaces)'. All hard landscaping shall be carried out in accordance with the approved details prior to occupation of each respective unit it serves, whilst all planting, seeding or turfing comprised in the approved scheme of soft landscaping shall be carried out in the first planting and seeding seasons following the first occupation of each respective 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, unless the Local Planning Authority gives written consent to any variation.

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

32. Prior to the first occupation of any building hereby permitted a landscape management plan (LMP) shall be submitted to and approved in writing by the Local Planning Authority. The LMP shall include long-term design objectives, management responsibilities (including contact details and means of informing the Local Planning Authority of any change to those details) and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens. Where relevant, the maintenance schedules shall include means to annually review the condition of any hard surfaces, fixed play equipment or furniture, and replace/upgrade those surfaces, equipment and furniture on a rolling programme. The landscape management plan shall be carried out as approved.

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

33. Notwithstanding the plans hereby approved, prior to the construction of a boundary wall, fence or gate, details of the position, appearance and materials of such boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be completed in accordance with the approved details before the respective building(s) to

which they serve is/are first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

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

34. Prior to the installation of any external lighting a detailed lighting strategy (designed in accordance with the guidelines issued by the Institute of Lighting Engineers, or any equivalent guidelines which may supersede such guidelines) which shall include precise details of the position, height, intensity, angling and shielding of lighting, as well as the area of spread/spill of such lighting, has been submitted to and approved in writing by the Local Planning Authority. All lighting shall be installed in accordance with the approved strategy and thereafter retained in conformity with them.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers and/or transport routes from undue illumination impacts or distraction, and to minimise light pollution at night.

35. Prior to the first occupation of any building hereby permitted a scheme of a scheme of security measures for the site, including fencing, lighting, CCTV and secure cycle parking facilities for the employees of, and visitors to, the employment premises shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with approved details prior to the occupation of the unit to which the measures relate.

Reason: In the interests of reducing crime.

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

Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan Part 1.

37. Recharge points for electric vehicles shall be provided within the development to comply with the following criteria:
- 1 charging point for every 10 parking spaces (or part thereof) which may be provided in phases first submitted to and approved in writing by the Local Planning Authority.
- Non-residential charging points shall be supplied by an independent 32 amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2. Alternative provision to this specification must be first submitted to and approved in writing by the Local Planning Authority. To prepare for increased demand in future years suitable and appropriate cable provision shall be included in the scheme design in accordance with details first submitted to and approved in writing by the Local Planning Authority. The electric vehicle charging points shall be provided in accordance with the stated criteria and approved details prior to the first occupation or use of the respective premises and shall thereafter be maintained in working order and remain available for use throughout the life of the development.

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

Informatives:

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

are advised to contact Severn Trent Water to discuss your proposals. Severn Trent will seek to assist you obtaining a solution which protects both the public sewer and the building.

- b. The applicant is advised to note the following comments from the Environment Agency:
- If fish are to be removed from a fishing pond by a method other than rod and line (so seine net, electric-fishing, traps etc.), Fish Removal consent (FR2) must be sought from the Environment Agency's Fish Movements Team.
 - If the fish are to be found a new 'home', e.g. a pond elsewhere; a Site Permit must be in place ahead of the fish being introduced. Again, you would need to apply for this through the EA Fish Movements Team
 - Depending on the fish species to be moved, movement restrictions may apply (more below).
 - If the receiving water is mandatory (online and / or located within the floodplain), the fish must first pass a health check before they can be stocked. This is a legal requirement and exists to prevent / minimise the risk of spreading disease and / or parasites into the wild, should they escape in a flood etc.
 - If the receiving water is fully enclosed (not online and sits outside of the floodplain), the fish can be stocked without a mandatory need for a health check (no risk of the fish escaping).
 - We have a list of Fish Health Consultants and Contractors who can undertake the fish removal if needed and undertake the health check (if required).
- c. Pursuant to Section 278 of the Highways Act 1980, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Environmental Services Department at County Hall, Matlock. The applicant is advised to allow at least 12 weeks in any programme of works to obtain a Section 278 Agreement.
- d. Pursuant to Section 184 of the Highways Act 1980, and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months' prior notification should be given to the Environmental Services Department at County Hall, Matlock (Tel: 01629 538589) before any works commence on the vehicular access within highway limit.
- e. The previous application for the site was screened in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and the Authority is satisfied that this application would also not give rise to significant environmental effects.

Item No. 1.4

Ref. No. 9/2019/0699

Valid Date 28/06/2019

Applicant: Mr P Hammond

Agent: Mr Michael Congreve
bi Design Architecture Ltd

Proposal: **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) at 11 The Green, Willington, Derby**

Ward: Willington and Findern

This report was deferred at the meeting on 4 February 2020 in order to carry out a site visit. Since then, the applicant has also chosen to submit a revised scheme which has been subject to further publicity. The report remains the same as previously published other than additional assessment set out in *italics*.

Reason for committee determination

This item is presented to Committee at the discretion of the Head of Planning and Strategic Housing, the Committee having considered previous applications for the site recently.

Site Description

The application site is part of the existing beer garden and seating area at the rear of the Dragon public house adjacent to the canal towpath. This land is owned by Derbyshire County Council but leased to the owner of The Dragon.

Proposal

Following the submission of two separate applications for variation of different conditions (9/2019/0699 – lighting and 9/2019/0741 – approved plans) which referred to two separate permissions the applicant was advised that the only way to achieve a valid consent which could be implemented was to amalgamate the two applications. 9/2019/0741 was therefore withdrawn and this proposal now seeks to vary conditions 1 and 4 of planning permission 9/2018/0959 relating to the retention of a sun canopy within the existing seating area at the rear of The Dragon. Condition 1 relates to the approved plans and condition 4 states that the lighting shall be for a limited period of six months following the first use. This application for the variation/removal of conditions is to allow the applicant to retain the lighting on a permanent basis to the structure and vary the approved plans.

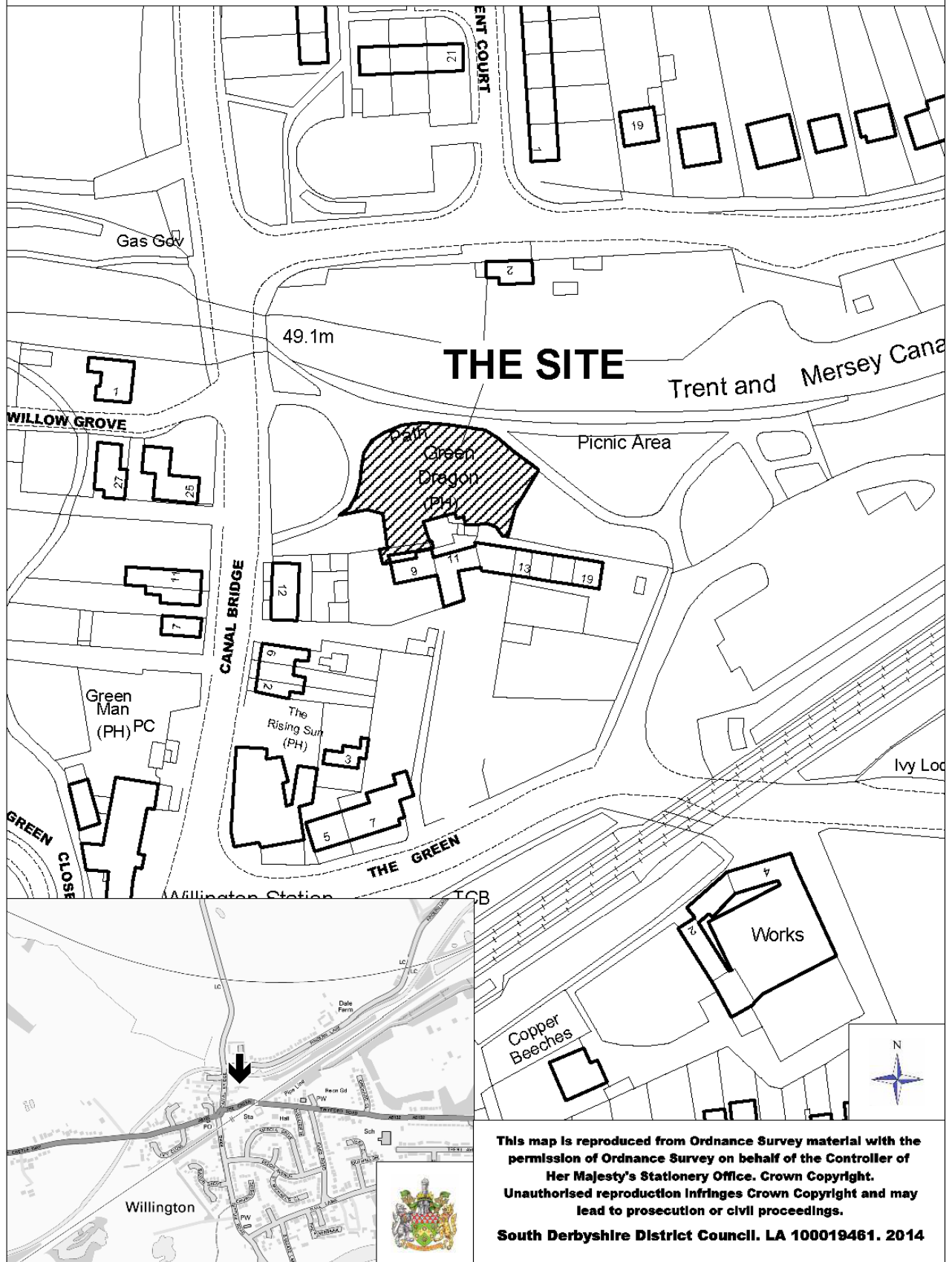
Applicant's supporting information

The applicant has submitted relevant plans and elevations of the canopy structure and, in addition, has provided details of the proposed lighting installation in terms of location, number and brightness.

Planning History

9/2010/0982 Alterations to existing public house to rearrange kitchen, toilets and living accommodation, provision of new access from canal side including new external eating/dining/drinking area, erection of a smoking shelter and alterations to car parking layout – Approved 23-12-10

9/2019/0699 - 11 The Green, Willington, Derby DE65 6BP



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
9/2013/0627	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 rd October 2019 gave the applicant two months notice to remove the structure.
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 notes that the lighting proposed is low intensity decorative lighting of lower power than domestic internal lighting. Their output would be insufficient to impact upon

neighbouring residential amenity significantly when compared to the levels in the Institute of Lighting Engineers guidance on intrusive lighting.

The Conservation Officer states that the sun canopy is a well-designed lightweight glazed structure of contemporary design offering additional seating space in inclement weather and enhances the viability of the business as well as help animate the space. The impact on the conservation area is considered to be moderately beneficial. Provided that there has been no discernible increase in neighbour nuisance (specifically noise and light pollution) no objection is proposed.

Responses to Publicity

Nine letters of objection have been received, raising the following concerns/points:

- a) The sun canopy structure is subject to enforcement action. How can something not compliant be amended?
- b) Lighting detrimental to the character of the conservation area.
- c) Planning committee added this condition, they should determine this application.
- d) Potential for stress and anti-social behaviour
- e) Lights will cause lack of sleep and lead to health issues.
- f) The Dragon cannot facilitate the customers it already has never mind accommodate more customers. Parking is insufficient.
- g) External speakers continue to play music.
- h) Conditions relating to noise limits ignored.
- i) Impact on neighbours including narrow boats.
- j) Conditions are put on for a reason, why would the council change their mind?
- k) The character of the conservation area is important and should not be degraded.
- l) Lights a distraction to the wildlife including the bats
- m) The area is part of public open space and forms an integral part of the conservation area. The sun canopy spoils the CA and resident's peaceful enjoyment of it.
- n) The applicants have consistently ignored planning conditions and regulations.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE2 (Heritage Assets).
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE9 (Advertisements and Visual Pollution), BNE10 (Heritage).

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:

- Design and impact on the character of the conservation area; and
- The effect of lighting on residential and visual amenities of the area;

Planning Assessment

Background

The original application (ref. 9/2017/1357) for the canopy structure was presented to the Committee in February 2018. Permission was given in March 2018 following a confirmation of no objection from the Canal and Rivers Trust. A further application was submitted to agree the structure in the same location but rotated by 90 degrees (ref. 9/2018/0503). This was approved under delegated powers in July 2018. Both permissions include a condition preventing the affixing of lights to the approved structure.

A further Section 73 application was made (9/2018/0959) which also came before Committee seeking to vary conditions 1 and 3 of 9/2018/0503 which Members agreed to approve subject to the addition of a condition limiting the lighting to a six-month period after the first use to assess the effect of the lighting on the local amenity.

It should be noted that a further application was submitted (9/2018/1192) for the retention of the sun canopy as built with full glazing on all sides. This application was refused under delegated authority due to the lack of visual permeability.

Following refusal of this application enforcement action was instigated. The applicant appealed but the appeal was dismissed. The applicant was given two months to remove the structure. This has not been done as the applicant had made an application to amend the design of the canopy and, at the same time, remove the temporary lighting condition. Action has not been taken to allow this application to be determined.

It should also be noted that Derbyshire County Council, the owners of the land on which the beer garden is located, has a number of conditions set out in the lease with the applicant. DCC has made it known that it is not happy with certain aspects of the applicant's use of the site. As landlord, it is in a position to cease any activity that may not comply with the conditions of the lease. However, as landlord, it is also the subject of the Enforcement Notice.

Design and impact on the character of the conservation area

As can be seen from the above planning history the sun canopy has had three separate permissions. Unfortunately, since it was first installed it has not been built in accordance with any of the approved plans. This current application which in part seeks the variation of condition 1 for an amended design lowering the glazing on the structure to a height of 1.5m, the same height as previously approved in 9/2018/0959 but with the introduction of gravel boarding at ground level to a height of approximately 500mm.

Previous reports have discussed the importance of the sun canopy to appear lightweight and visually permeable. The removal of the full height glazing on the existing structure which was considered unacceptable appears to suggest that the applicant has gone some way towards complying with the enforcement notice and would implement the details of this proposal, should it be considered acceptable. Whilst full height glazing might appear permeable, in different lighting conditions and in cold weather the structure can appear solid and impermeable. This proposed 'half-height' glazing – provides a gap of 1.1m between the top of the glazing and the upper horizontal metal bar of the structure. This gap provides valuable permeability allowing views through the structure at all times and helps the structure to be part of the landscape whilst also providing an element of protection from the sun and moderately inclement weather. The gravel boarding would be predominantly screened by the boundary hedge and therefore would have little impact on the permeability of the structure. However, whilst previous approvals have all shown the continuation of the hedgerow on the canal side of the structure, this proposal reflects that the structure is on the boundary of the land being rented by the applicant and as such the replacement of the hedgerow would be outside of land in use by the applicant. An alternative to a hedgerow outside of the applicant's control would be the addition an artificial hedgerow attached to the gravel panels retaining the appearance of a continuous hedgerow maintaining the appearance of the previously

approved scheme which could be required by condition. The revised design with this addition is considered to comply with BNE1, BNE2 and BNE10 of the Local Plan.

Following deferral of the item at Committee on 4 February, the applicant has proposed an amended scheme which differs from the scheme described above by omitting the gravel boarding and glazing on the north elevation of the sun canopy, allowing the reinstatement of the hedgerow albeit without removing the structure. This would have the benefit of reintroducing the hedgerow and reduce the amount of glazing proposed, taking the design back to its original concept. This revised proposal is considered both preferable and compliant with policies BNE1, BNE2 and BNE10 of the Local Plan.

The effect of lighting on residential and visual amenities of the area

As was previously noted when temporary permission was granted for the lighting (9/2018/0959), the installation of lighting would not enable patrons to sit outside in less inclement weather any longer than they currently could, particularly when low level lighting could be used on tables without the need for planning permission. Environmental Health has commented that the lights to be retained, 48 1 watt bulbs on a string around the structure are low density decorative lighting (lower than domestic internal lighting) and unlikely to impact on residential amenity when compared to the levels provided in the Institute of Lighting Engineers guidance on intrusive lighting. The previous application provided a lighting spill plan and this showed light levels quickly diminish to 0.2 and 0.1 lux on the canal towpath and drop to less than 0.1 lux before reaching the water. A similar drop in lighting levels is seen in the remaining directions. This is not considered to bring about an undue adverse effect, and given there are no objections from the Environmental Health Officer, particularly as it has confirmed that they have not had any formal complaints regarding lighting from the above premises in the last 12 months, the proposal is considered to comply with policy SD1.

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

GRANT permission subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with drawing ref. 23N, 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.

2. Notwithstanding the approved plans, prior to the first use of the reconstructed sun canopy details and species types of the hedgerow to be reinstated shall be submitted to, and approved by, the Local Planning Authority.

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

3. Notwithstanding the approved plans, before their installation, the materials to be used in the creation of the solid floor beneath the canopy shall be submitted to and approved in writing by the Local Planning Authority. Only the approved materials shall then be used.

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

4. All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding season following the first occupation of the buildings 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 phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

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

Item No. 1.5

Ref. No. [DMPA/2019/1177](#)

Valid date: 11/10/2019

Applicant: Mr & Mrs Partington

Agent: Richard Giles-Grant
A I Designs

Proposal: The retention of a septic tank and formation of a vehicular access to serve Tiddly Frog Barn, Unnamed Road from Twyford Road to Buckford Lane, Stenson, Derby, DE73 7GB

Ward: Stenson

Reason for committee determination

This item is presented to Committee at the request of Councillor David Shepherd as it is considered the issues in this case are very finely balanced and the unusual site circumstances should be considered and debated by Committee.

Site Description

The site lies in open countryside but is part of a group of buildings to the south of an unnamed section of road connecting with Buckford Lane to the west. The applicants dwelling is one of several traditional buildings now converted to residential accommodation. The dwellings, farmsteads other uses in the locality are all served by long driveways from the highway and Tiddly Frog Barn shares the existing driveway with other dwellings and commercial uses.

The proposal

This application seeks permission for a new separate access for Tiddly Frog Barn and latterly to regularise the installation of a septic tank in the south eastern corner of the field located to the north east of the applicant's property, which is outside the domestic curtilage.

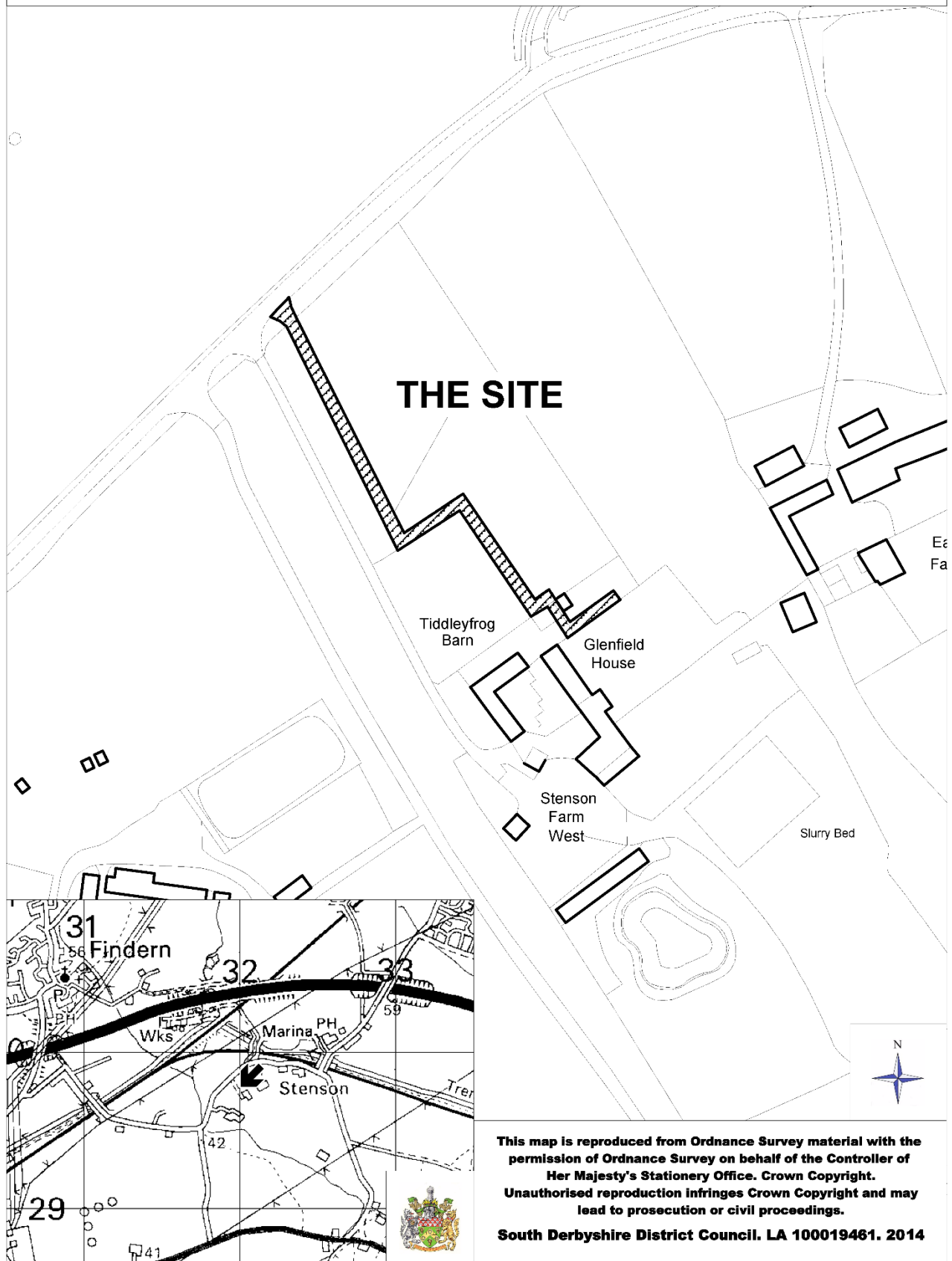
Applicant's supporting information

The applicant has provided plans identifying the location of the proposed access and track, the location of the septic tank and both a planning statement and a personal statement setting out the reasons for the need for a separate dedicated access for these premises. The Planning Statement notes the character of the area to be one where buildings are set back from the highway and have long driveways. The statement notes the conflict between users of the cattery and domestic vehicles and highlights that there are no passing places along the existing driveway which is approximately 130m from highway to existing access and goes on to set out how the proposal complies with BNE5 of the Local Plan.

Relevant planning history

9/1986/0654 - Conversion into two dwellings of agricultural buildings and two detached garages to the west of the farmhouse at West Farm - Refused 20 March 1987 but allowed on Appeal

9/1989/0015 - Total reconstruction in the form permitted under 9/1186/0654 to form a dwelling out of the detached barn at West Farm - Approved 25 May 1989



- 9/1999/0666 - The erection of a detached double garage at Glenfield House - Approved 8 December 1999
- 9/2004/0682 - Application for a certificate of lawfulness for an existing use for the storage of a horse lorries, horse trailers, caravans and ice cream vans at Fryzms House - Refused 16 July 2004
- 9/2007/1383 - The formation of a vehicular access to serve Glenfield House - Approved 24 Jan 2008 (unimplemented)
- 9/2010/1123 - The erection of a dog boarding facility at West Farm - Approved 27 April 2011
- 9/2011/0645 - Resubmission of application for the erection of a dog boarding facility at West Farm - Approved 28 September 2011
- 9/2018/0481 - The erection of a first floor front extension at West Farm Approved 3 July 2018
- 9/2018/0580 - The enlargement of an existing double garage and addition of a garden room at Tiddly Frog Barn - Approved 14 August 2018
- 9/2019/0047 - The erection of extensions at Tiddly Frog Barn - Approved 14 August 2018

Responses to consultations and publicity

The County Highway Authority states that the originally proposed driveway would emerge onto an existing access point to Buckford Lane. This is likely to lead to driver confusion and conflict when drivers entering or exiting the existing driveway meet drivers entering or exiting the proposed driveway. A revised access separate from the existing access has been provided and is considered acceptable, subject to conditions. The County Highway Authority notes the tight 90 degree corners set out within the field and suggests a condition for a revised layout using additional land within the owners control.

The County Archaeologist states that the proposals would have no archaeological impact.

The Environmental Health Officer states there are no concerns with potential environmental impacts and has no comments to make.

Two representations have been received, raising the issue that ownership of the land may be in dispute, but following amended plans have no objection.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport); and
- 2017 Local Plan Part 2: SDT1 (Sustainable Boundaries and Development), BNE5 (Development in Rural Areas) and H26 (Residential Gardens in Rural Areas).

The relevant National Guidance is:

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

Planning considerations

In taking account of the application 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;
- Character and appearance of the area; and
- Highway safety.

Planning assessment

Principle of development

Policy SDT1 states that *"Outside 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"*. In addition to policies specifically referenced the policy sets out criteria which proposed development must comply. Development which is not covered by policies set out in criterion (i) must be:

- ii) Otherwise essential to a rural based activity; or*
- iii) Unavoidable in the countryside; or*
- iv) considered to be infill that is in keeping with the character of the locality and represents the infilling of a small gap for not normally more than two dwellings, within small groups of housing; and*
- v) will not unduly impact on: landscape character and quality, biodiversity, best and most versatile agricultural land, and heritage assets.*

Tiddly Frog Barn is a dwellinghouse created from a former agricultural building and shares its access with West Farm, which also runs a dog kennel business and cattery, and Glenfield House, another former barn. There is other development in the vicinity that have their own accesses from the highway and therefore long driveways are a pattern of development in the area. The application site has been a residential dwelling since the early 1990s and has right of access, although the access itself is owned by West Farm. It would appear that the dog kennels and cattery have only operated since around 2011 when permission was granted.

More recently permission for an extension to Tiddly Frog Barn has been granted which appears to have obstructed access to the field from within the residential curtilage, thus making access to a empty a new septic tank difficult. In addition, works being undertaken to the property has led to concerns from the owner of the dog kennels and resulting in some restriction of access and parking for the applicant, leading to the applicant installing a temporary access through the field from half way down the existing access. This was clearly done as a solution to a temporary problem but the applicant has stated that this would be a more useful access to their existing historic access. Nonetheless the shared use of existing access is well established and a new dedicated access for Tiddly Frog Farm, whilst this may be desirable, cannot be considered to be unavoidable and cannot be justified as otherwise essential to a rural based activity.

This application also seeks regularisation for the locating of a septic tank in the field adjacent to the dwelling following approval and implementation of extensions to the dwelling. In principle, there is no objection to this element of the proposal. Overall however, the proposal fails to meet the criteria set out in policy BNE5.

Character and appearance of the area

Policy BNE4 seeks to retain the character, local distinctiveness and quality of South Derbyshire's landscape and soilscape will be protected and enhanced. The applicant's statement references the Landscape Character of Derbyshire, noting the site is within the Trent Valley Washlands area and

the character is of lowland village farmland with pasture giving way to mixed farming and with larger and more regular fields. It also references the power stations and their cooling towers which dominate the scene and the evidence of sand and gravel extraction and subsequent restoration. The applicant states that there is nothing in the landscape character assessments that indicates any conflict with the proposal. However, the introduction of an additional access would further urbanise the immediate environment by creating a third driveway in close proximity to others and would also see the loss of a significant section of hedgerow to achieve adequate visibility splays, having an unacceptable impact on the landscape character and visual amenity contrary to policy BNE4.

Highway safety

The original proposal showed the proposed new driveway close to the existing access and, in effect, sharing part of the access junction with the existing access. The Highway Authority states that this is likely to lead to driver confusion and conflict when drivers entering or exiting the existing driveway meeting drivers entering or exiting the proposed driveway. An amended scheme as suggested by the Highway Authority was submitted and is deemed acceptable subject to conditions relating to the inclusion of visibility splays along with a more detailed access design to avoid the potential problems with 90 degree turns along its length. The scheme is therefore considered to comply with policy INF2.

Conclusion

Despite there being no objection from a highway safety point of view, the need for the driveway has not been demonstrated to be unavoidable or otherwise essential to a rural based activity in this location. The applicant retains a right of access to their property over the existing access track and, whilst desirable, the proposal would cause unnecessary harm to the character and appearance of the area.

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 can be attached to certain types of application where meeting the relevant tests for their imposition. Where necessary, 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).

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. The proposed driveway and access would pass through open countryside and would lead to the detrimental domestication of the field. Furthermore, given that the access is not considered to be unavoidable - the existing shared access having served the property since the building was first used as a residential dwelling and there being no evidence which would demonstrate that this access is no longer available for use; the proposal is contrary to policies H26, BNE4 and BNE5 of the Local Plan Part 2 and paragraph 11 of the National Planning Policy Framework.
2. The introduction of an additional access and driveway which would see the loss of a significant section of hedgerow to achieve adequate visibility splays would have an unacceptable impact

on the landscape character and visual amenity of the hedgerow fronting the highway, as well as lead to a net loss of biodiversity, contrary to policies BNE3 and BNE4 of the Local Plan Part 1.

2. Planning and other Appeals

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

Reference	Place	Ward	Outcome	Decision level
9/2018/0911	Dish Lane, Sutton on the Hill	Hilton	Dismissed	Delegated
9/2019/0583	The Castle Way, Willington	Willington & Findern	Allowed	Committee
9/2019/0651	St. Brides, Stanton by Bridge	Melbourne	Allowed (costs refused)	Delegated
E/2018/00110	Acresford Road, Netherseal	Seales	Upheld with variation to Notice	Delegated



Appeal Decision

Site visit made on 17 March 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th April 2020

Appeal Ref: APP/F1040/W/19/3243993

Land at Dish Lane, Sutton on the Hill, Derby DE6 5JA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by F W Hall & Sons against the decision of South Derbyshire District Council.
 - The application Ref 9/2018/0911, dated 10 August 2018, was refused by notice dated 28 June 2019.
 - The development proposed is the erection of one cottage and garage.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect on the character and appearance of the street scene and the village.

Procedural matter

3. I have adopted the amended site address used in the Council's decision notice, which I find more accurate.

Reasons

4. The appeal site is on the corner of Dish Lane and Brook Lane, with hedges along both of those boundaries and a gated access onto Brook Lane. The main body of the site is raised and partly visible above road level and contains three Scots Pines protected by a tree preservation order.
5. Sutton on the Hill is a small village loosely arranged along narrow lanes without footways. Its character and appearance derive from the informal layout of lanes and buildings, with consistency in materials, complemented by landscape features including verges, hedgerows and mature trees. Significant green spaces, some forming part of the countryside and others within the settlement boundary, punctuate views along the lanes within the village. The site is an example of the latter, forming a prominent green landmark when approached southwards on Dish Lane. For this reason, it makes an important positive contribution to the village's landscape character and informal appearance.
6. The proposal has been designed with sensitivity to site features including the protected Scots Pines and the hedgerows to Dish Lane and Brook Lane, all of which would be retained. However, its raised topography accentuates the

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contribution it currently makes to the landscape character and appearance of the village. In this sense, the site's undeveloped nature is, of itself, an important landscape feature and it has not been demonstrated that this can be lost without harm to the local landscape. The proposed dwelling would, for the same reason of topography, be highly visible in views from the north and bring about a significant shift in the balance of built and green form within the village, to the detriment of its character and appearance.

7. My attention has been drawn to appeal decisions from 1987 and 1991¹. The earlier decision related to adjacent land on Brook Lane and the Inspector justified her decision to permit a house on that site by distinguishing it from this one, which she viewed as a vital element in the village character by reason of its openness. The later decision related to this site and the Inspector took a similar view, finding that even single storey development would damage the character and appearance of the village. While there have since been changes in national and local planning policies, the nature of the site and its contribution to the character and appearance of the village have not changed and lead me to a similar conclusion.
8. Although examples of corner plot development may be found in the village, none are identified in the evidence before me and I did not see recent examples when I visited. While reference has also been made to infilling in other villages, details have not been provided and this appeal must be determined with regard to the character and appearance of Sutton on the Hill.
9. Accordingly the proposed development would be contrary to policies BNE1 and BNE4 of the South Derbyshire Local Plan, which seek to ensure development retains key valued landscape components and adheres to design principles including responding to its context and respecting important landscape, townscape and historic views and vistas, and Part 12 of the National Planning Policy Framework, which seeks to achieve well-designed places.

Conclusion

10. For the reasons given above, the proposed development is unacceptable, and the appeal should be dismissed.

Mark Harbottle

INSPECTOR

¹ T/APP/F1040/A/86/055708/P3 and T/APP/F1040/A/90/167995/P8

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: 23 March 2020

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.
-

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 5 February 2020.

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

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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 2200 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.



Appeal Decision

Site visit made on 30 January 2020

by **R Morgan MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 March 2020

Appeal Ref: APP/F1040/W/19/3240900

St Brides Barn, Shepherds Lane, Stanton by Bridge, Nr Swadlincote, Derbyshire D73 7NF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Andrew Moseley against the decision of South Derbyshire District Council.
- The application Ref 9/2019/0651, dated 14 June 2019, was refused by notice dated 9 September 2019.
- The application sought planning permission for conversion of the existing timber frame barn to a dwelling without complying with conditions attached to planning permission Ref 9/2018/0887, dated 7 November 2018.
- The conditions in dispute are Nos 2, 4, 5 and 6 which state that:

(2) The development hereby permitted shall be carried out in accordance with drawing ref's MOSELEY/1/SLP Rev A received on the 17th August 2018 and MOSELEY/1/PL01 Rev B, MOSELEY/1/BP Rev B, MOSELEY/1/PL07 Rev A, MOSELEY/1/PL08 Rev A, MOSELEY/1/PL06 Rev C, MOSELEY/1/PL05 Rev C, MOSELEY/1/PL09, MOSELEY/1/PL10 and MOSELEY/1/PL11 received on the 24th October 2018, 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).

The reason given for the condition is:

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

(4) Prior to the occupation of a dwelling created by this permission a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. All hard landscaping shall be carried out in accordance with the approved details prior to occupation of the dwelling created by this permission, whilst all planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of the dwelling created by this permission 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, unless the Local Planning Authority gives written consent to any variation.

The reason given for the condition is:

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

(5) Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) prior to the construction of a boundary wall, fence or gate, details of the position, appearance and materials of such boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be completed in accordance with the approved details before the respective dwelling(s) to which they serve is/are first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

The reason given for the condition is:
In the interests of the character and appearance of the area.

(6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; the dwelling hereby permitted shall not be altered, enlarged or extended, and no buildings, gates, walls or other means of enclosure (except as authorised by this permission or required by any condition attached thereto) shall be erected on the site without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.

The reason given for the condition is:
To maintain control in the interest of the character and amenity of the area, having regard to the setting.

Decision

1. The appeal is allowed and planning permission is granted for conversion of the existing timber frame barn to a dwelling at St Brides Barn, Shepherds Lane, Stanton by Bridge, Nr Swadlincote, Derbyshire D73 7NF in accordance with the application Ref 9/2019/0651, dated 14 June 2019, and subject to the conditions on the attached schedule.

Application for costs

2. An application for costs was made by Andrew Moseley against South Derbyshire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Council granted planning permission on 7 November 2018 for the conversion of a barn to a two bedroomed dwelling, subject to 7 conditions. The current appeal seeks to make amendments to the approved scheme through the variation of condition 2, which specifies plans. Conditions 4, 5 and 6 are proposed to be removed.

Main Issue

4. The main issue is the effect of varying the conditions on the character and appearance of the area.

Reasons

5. The appeal property is a timber framed barn which is located in a wooded area in the countryside. The barn is adjacent to a small area of pasture land and is accessed via a track through the woods from Shepherds Lane. The barn has

three bays with the timber frame exposed in two sections and timber boarding around the third, with the frame of a lean-to along part of one side of the barn.

6. The approved scheme involves a sensitive conversion and limited extension of the barn, retaining the original frame and maintaining the character of the building in its woodland setting.

Condition 2

7. The proposal seeks to vary condition 2, which specifies approved plans, to allow alterations to the insulation, the lean-to extension and the fenestration detail.
8. The original permission involved the insertion of 123 mm of wall insulation within the frame and 170 mm outside of the structural columns. The proposed amendments would alter the insulation wall build up on the north, east and a small part of the western elevation. On these elevations, the insulation inside the frame would be removed and replaced with an additional 100 mm of insulation outside the frame.
9. The Council is concerned that the proposed revisions to the insulation would result in the existing structure being obsolete and the roof replaced. However, the appellant has confirmed that this would not be the case, that the existing structure would still provide support for the building and that there would be no change to the pitch of the roof.
10. Given the proposal to increase the insulation within the roof, I agree with the Council that it seems likely that the roof would need to be removed and replaced, and the result would be a slightly raised ridge height. However, re-roofing is a common part of many building projects, and provided that the same materials are used, this would not in itself render the proposal a new build rather than a conversion. There would be minimal impact to the appearance of the building.
11. The approved scheme involves the entire frame being wrapped around with timber cladding, so the original frame would not be visible externally. The current proposal to increase the insulation on the outside would result in a small increased projection of the northern and eastern elevation. However, the roof overhangs the structural columns and appellant has confirmed that the proposed wall would still sit within the extent of the existing piers.
12. The timber frame is an important feature of the building and the revisions would increase the extent of the visible frame, including the roof section, and avoid the need to cover the frame with insulation. Whilst this would be on the inside, the frame would be visible through the glazed sections, and would help to retain the original character of the building.
13. The approved scheme involves an extension to the existing lean-to structure, so that rather than occupying the width of one of the bays of the building as currently, the lean-to extension would occupy one and a half bays. The proposed revisions seek to further increase the width of the extension so that it would occupy two bays with an additional canopy overhang.
14. Whilst the proposed extension would be somewhat larger than that approved, the design would incorporate additional glazing which would reflect the open character of the original building, allowing the internal frame of the middle bay

to be revealed and mirroring the glazing on the other side of the building. The extension would still be well set back from the north elevation and the significant amount of glazing on the middle bay section would limit the visual impact of the extension. The canopy is modest in size and would not appear as a dominant feature.

15. The Council is concerned that the proposed extension would sit higher than the existing eaves line. I agree that the drawing for the proposed south elevation does appear to show the extension being raised above the eaves level, but this is not the case on the north elevation drawing so may be an error on the hand drawn plans. The appellant has confirmed that the intersection of the lean-to extension with the main building would be the same in the approved and revised plans.
16. The Council has suggested that, by sitting flush with the existing building, the extension would not appear as a separate or new entity. However, the existing lean-to sits flush with the main barn and the appellant has confirmed that the intention would be to make use of the existing structural frame. Given the existing situation, there appears to be little justification to set the extension back from the south elevation.
17. Changes to the fenestration on all four elevations are proposed as part of the revised scheme. Changes to the east elevation, which faces the site entrance and is therefore particularly sensitive, are minor and do not change the character of the building. On the north elevation, the size of the main window is proposed to be reduced, which would better reflect the proportions of this main elevation. Additional glazing is proposed on the west elevation of the lean-to, as discussed above. On the south side, the relocation of the chimney stack has allowed for a repositioning and an increase in the fenestration at first floor level. The proposed first floor window better reflects the position of the existing opening, although is wider. At ground floor level, the windows in the main elevation are similar to those already approved, with an additional window in the lean-to extension.
18. I note the Council's concerns that the proposed glazing would be overly domestic in its design, siting, symmetry and scale. However, on the most prominent east and north elevations the glazing is similar to that already approved, and respects the character of the building. The alterations to the west elevation are acceptable as discussed above. On the south side, reduced glazing to the first floor would be preferable but this is at the rear of the building, and compared with the approved plans, the proposed alteration better reflects the position of the existing openings.
19. Overall, the revisions to the insulation, lean-to extension and fenestration would not adversely affect the character of the building, nor would they result in a level of alteration which would change the scheme from a conversion to a new dwelling. Furthermore, the proposals would improve the thermal efficiency of the building and help to reveal the timber structure of the building.
20. The caravan on the site could be removed at any time, and unless its siting had been established through a certificate of lawful use, could not be accepted as a benefit of the scheme. The removal of the caravan does not form part of the proposals and I have given this matter no weight in this appeal.

Conditions 4 and 5

21. Condition 4 requires the submission of a scheme of hard and soft landscaping, and subsequent implementation of the approved works. Condition 5 requires details of boundary treatments. The appellant submits that drawing MA/6A provides the necessary information to fulfil these requirements, so the conditions can be removed.
22. The proposed landscaping shown on plan MA/6A is different from that previously approved. The large pond area is proposed to be split into two smaller ponds on either side of the repositioned lawn, with areas of native planting between the two ponds. A low retaining wall is proposed around the lawn, with steps from a York stone and gravel patio, which would be located adjacent to the barn.
23. Whilst reconfigured, the main features of the original landscaping scheme have been retained, with the ponds, native planting and a lawned area. The previous straight edge to the lawn has been replaced with a more contoured area, with planting beyond which will help assimilate the garden area into the woodland beyond. Areas of gravel around the building have been retained, with a patio replacing the area previously described as deck. The low retaining wall around the lawn would be constructed of stone from the site, and, once the pond and planting were established, would not be a prominent feature. The appellant has confirmed that such walls are a common feature in the local area and would not be out of place in this setting. Overall the proposals should continue to retain and respect the natural setting of the barn.
24. A metal estate railing is shown within on the plan which would provide a new boundary to the area of pasture adjacent to the house, beyond the previously approved area of curtilage. However, the appellant has accepted that this style of fencing, in the position proposed, would not be appropriate and that traditional post and wire fencing would be used instead in the position shown on the original plan.
25. With the exception of the metal estate railings, the details of hard and soft landscaping shown on drawing MA/6A would be acceptable and would meet the requirements for the submission of further details in condition 4. However, the condition also requires implementation of the approved landscaping scheme prior to occupation, and the replacement of any planting which dies, is damaged, diseased or removed. To ensure that the proposal respects the character of the area, this part of the condition is still necessary. Rather than removing condition 4, I have therefore varied it to require the implementation of the landscaping scheme shown in drawing MA/6A, specifying that the proposed estate railings do not form part of the approved drawing.
26. Condition 5 requires the submission of details of any boundary treatments. Given that the details of the railings shown on drawing MA/6A are not approved, but the alternative boundary treatment is not specified on any other plan, this condition is still necessary to ensure that the proposal respects the character of this sensitive woodland site. I have therefore retained condition 5.

Condition 6

27. The appellant is seeking the removal of condition 6, which removes permitted development rights for extensions and alterations. The proposed development

allows for the sensitive conversion of the timber framed building within its woodland setting, retaining the key features of the building and minimising the impact on the character of the area. The appellant has commented that the curtilage has been drawn tightly round the building which would limit the opportunity for alterations. However, the Council has confirmed that the approved domestic curtilage would include the wider setting of the barn. Unless removed, permitted development rights would enable the construction of buildings associated with the residential use within this wider area, which would have the potential to cause significant harm to the rural woodland setting of the barn.

28. The particular circumstances of the building and its setting, and its sensitivity to even relatively modest changes which could be associated with a new domestic use, mean that it is reasonable and necessary for the Council to retain control over future extensions and alterations. This need to protect the character of the building and its setting still applies even though it is not visible from the public domain.
29. I acknowledge that agricultural and forestry permitted development rights in the area surrounding the site could, if used, significantly impact on its landscape setting. However, if used these rights would permit development which would be typical of the countryside, and would not have the same impact on the area and its character as those associated with a domestic property might do. The existence of the agricultural and forestry rights do not therefore justify the removal of the residential permitted development rights. Similarly, decisions of the Council to allow other development in the surrounding area do not justify potentially harmful development in this sensitive location. Condition 6 therefore remains necessary and reasonable, and should be retained.
30. I conclude that the proposed amendments to the scheme which would be achieved through the variation of conditions 2 and 4 as described above, would not cause harm to the character and appearance of the area. I have found no conflict with Policies H1 of the South Derbyshire Local Plan Part 1 2016 or Policies SDT1, BNE5 and H28 of the South Derbyshire Local Plan Part 2 2017, which are concerned with development outside of settlement boundaries including residential conversions. Similarly, there is no conflict with paragraph 79 of the National Planning Policy Framework which seeks to avoid the development of isolated homes in the countryside. The proposal complies with Local Plan Part 1 Policy BNE4 regarding the protection of landscape and soilscape.

Conclusion

31. For the reasons given above I conclude that the appeal should be allowed and conditions 2 and 4 varied as set out in the attached schedule. Conditions 5 and 6 are still necessary and I have retained them. Minor alterations are needed to condition 1 to refer to the commencement of development date, and to condition 3 in the interests of precision and to reflect the appellant's intention to use, rather than replace, the structure of the existing lean-to.

R. Morgan

INSPECTOR

Schedule of Conditions

1. The development permitted shall be begun before the expiration of three years from 7 November 2018.
2. The development hereby permitted shall be carried out in accordance with the following drawings 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):

Site location plan MOSELEY/1/SLP Rev A;

Existing block plan MOSELEY/1/BP rev B;

Ground and first floor plan MA/1A;

North and west elevations MA/2A;

South and east elevations MA/3A;

Roof and wall build up detail MA/5A;

Hard and soft landscaping MA/6A – excluding details of metal estate railings

3. The development hereby approved shall relate solely to the conversion of the existing building. The existing timber building shall be retained, and altered and extended in so far as shown on the approved plans.
4. All hard landscaping shall be carried out in accordance with the approved details shown on drawing MA/6A prior to occupation of the dwelling created by this permission. All planting, seeding and turfing comprised in the approved scheme MA/6A shall be carried out in the first planting and seeding seasons following the first occupation of the dwelling created by this permission 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, unless the Local Planning Authority gives written consent to any variation.
5. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) prior to the construction of a boundary wall, fence or gate, details of the position, appearance and materials of such boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be completed in accordance with the approved details before the dwelling is first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; the dwelling hereby permitted shall not be altered, enlarged or extended, and no buildings, gates, walls or other means of enclosure (except as authorised by this permission or required by any condition attached thereto) shall be erected on the site without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.
7. The dwelling shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the dwelling will not exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations (2015). The developer must inform the building control body that this optional requirement applies.

Costs Decision

Site visit made on 30 January 2020

by R Morgan MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2020

**Costs application in relation to Appeal Ref: APP/F1040/W/19/3240900
St Brides Barn, Shepherds Lane, Stanton by Bridge, Nr Swadlincote,
Derbyshire D73 7NF**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Andrew Moseley for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of planning permission for the conversion of the existing timber frame barn to a dwelling without complying with conditions attached to planning permission Ref 9/2018/0887, dated 7 November 2018.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. Paragraph 047 of the Guidance lists examples of unreasonable behaviour by local planning authorities in relation to procedural matters at the appeal, which include a lack of cooperation with the other party.
4. In the applicant's view, greater cooperation and dialogue during the application process could have resulted in a better understanding of the scheme, enabling a number of the reasons for refusal to be resolved. Whilst I appreciate that this must have caused the applicant some frustration, the evidence before me suggests that the Council understood the scheme and made an appropriate analysis of the submitted plans. Advice had been provided at earlier stages, and although there may have been changes in approach, the Council was not bound by any informal advice it had previously given.
5. The applicant has highlighted the Council's failure to determine the application within the time limits without providing a reasonable explanation as to why. However this did not in itself result in an appeal, nor did it lead to additional cost during the appeal process.
6. Paragraph 049 of the Guidance gives examples of types of behaviour which may give rise to a substantive award of costs against a local planning authority. In this regard, the appellant contends that the Council has acted unreasonably in a number of ways, including preventing or delaying

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development which, having regard to the development plan, should have been permitted, and making vague, generalised or inaccurate assertions about the proposal's impact.

7. In my decision notice I concluded that the proposed amendments to the scheme would not conflict with Policy H28. However, whilst I came to a different decision to the Council, this was a matter of planning judgement. It is clear from the officer's report that the Council's decision was based on a detailed analysis of the case and I found there to be adequate explanation to justify its decision.
8. It is suggested that the Council could have dealt with certain matters by condition rather than refusal. However the Council had already imposed the conditions which it considered were necessary to make the scheme acceptable and were not obliged to make further changes to those conditions, or impose additional conditions. This was particularly the case as, in the Council's view, the amendments proposed were not acceptable.
9. The applicant contends that the Council has acted unreasonably by failing to implement Policy H28 in a way that is consistent, having regard to other examples nearby. However, the Council must make its decisions based on the merits of the particular case and the examples of nearby developments provided were not directly comparable to the appeal proposal.
10. In the applicant's view the Council imposed a condition which does not meet the guidance set out in the National Planning Policy Framework, but I have found that condition 6 is reasonable and necessary, and therefore the Council did not act unreasonably by imposing it.
11. I note the applicant's comments that a more helpful approach at the pre-application stage could have resulted in the appeal being avoided or narrowed in scope. However given the issues raised and the Council's response, it seems very unlikely that an appeal would have been avoided altogether. Furthermore, I am not convinced that further dialogue would have resulted in any significant resolution or narrowing of any of the issues.
12. I conclude that unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, an award of costs is not justified and the application for costs is refused.

R Morgan

INSPECTOR

Appeal Decisions

Site visit made on 10 March 2020

by S Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 April 2020

Appeal A Ref: APP/F1040/C/19/3237351

Appeal B Ref: APP/F1040/C/19/3237352

Appeal C Ref: APP/F1040/C/19/3237353

Land at Acresford Road, Netherseal, Swadlincote, Derbyshire

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
- The appeals are made by Ms Ellen McDonagh (Appeal A), Ms B Maughan (Appeal B) and Ms C McDonagh (Appeal C) against an enforcement notice issued by South Derbyshire District Council.
- The enforcement notice, numbered E/2018/00110, was issued on 29 August 2019.
- The breach of planning control as alleged in the notice is without planning permission, the formation of a concrete base and engineering operations to alter the land levels both of which constitute unauthorised operational development.
- The requirements of the notice are 1. Dig out and remove the rubble material from the land, with the exception of that which can remain in the area approved under 9/2018/0616 (Approved plan attached, dated 12 Jun 2018). 2. Remove the concrete base from the land. 3. Deposit the waste and material arising from compliance with steps 1 and 2 at an authorised waste transfer station.
- The period for compliance with the requirements is 60 days.
- The appeals are proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Act.

Appeals A, B and C – Decisions

1. The appeal is allowed on ground (f) and it is directed that the enforcement notice be varied by the deletion of the steps required to comply with the notice in section 5 'What you are required to do' and the substitution therefor by the following text:
 1. Dig out and remove the rubble material from the land, so as to comply with the terms including conditions and limitations of planning permission reference 9/2018/0616 granted by the South Derbyshire District Council on 17 October 2018 (Approved plan attached, dated 12 Jun 2018)
 2. Remove the concrete base from the land.
 3. Remove from the site any surplus material arising from compliance with steps 1 and 2.
2. Subject to these variations the enforcement notice is upheld.

Matters concerning the notice

3. It is open for me to correct the notice in accordance with my powers under section 176(1)(a) of the 1990 Act. I consider that the amendment to the

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wording of step 1 would be more precise. Furthermore, the requirement to “deposit the waste and material arising from compliance with steps 1 and 2 at an authorised waste transfer station” (step 3) is unnecessary because this would be addressed by other legislation and there is no need to impose it as a requirement in this instance. The notice should be varied accordingly, and I am satisfied that no injustice will arise to either of the main parties in me so doing.

Appeals A, B and C - ground (c)

4. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
5. The alleged breach of planning consent is the carrying out of operational development without planning permission. The appellants’ case on ground (c) relates only to the alleged engineering operations to alter the land levels, which constitute unauthorised operational development. The appellants concede that the concrete base falls outside the area as indicated by the red line, shown on the approved site plan¹, which accompanied the extant planning permission². It is agreed that this does require planning consent.
6. The Council purports that further material was “possibly” brought onto the site to create the extended area of hard-standing. The appellants argue to the contrary and believe that no further materials have been brought on to the site, other than to comply with the extant planning permission. I have no conclusive evidence to verify whether further material has been brought on to the site or not. In any event, it is the physical extent of the engineering operations that have taken place, which form the basis of the allegation.
7. It was clear from my on-site observations that the area of land that has been subject to engineering operations to alter the land levels to form an area of hard-standing goes beyond that shown on the approved plan. Furthermore, it appears to me that the appellants acknowledge that the hard-standing area does exceed the extent of the area benefitting from planning permission as illustrated by the approved plan. The appellants’ evidence appears to concede ground (c) because there is no dispute that the works, as alleged, constitute engineering operations beyond the area allocated as “hard surface” as indicated on the approved plan. The reason for the extension of the hard-standing area is a misunderstanding of the planning approval on the basis of the incorrect plan provided by the previous site owner.
8. There is no evidence before me to contradict the Council’s case that the area of hard-standing which has been created goes beyond that which was previously approved by the extant planning permission dated 17 October 2018. There is nothing in the appellants’ evidence to dispute this, and on this basis the balance of probabilities lies in favour of the Council regarding the area of hard-standing. Express planning permission is required for the engineering operation alleged in the notice.
9. I conclude that the formation of a concrete base and engineering operations to alter the land levels is unauthorised operational development and constitutes a

¹ Ordnance Survey map reference 8K2913SE dated as received on 12 June 2018

² Ref: 9/2018/0616

breach of planning control. On this basis and on the balance of probabilities, the appeal on ground (c) fails.

Appeals A, B and C - ground (f)

10. It is plain from s173(3) of the Act that there must be a connection between the specified requirements of the notice and the achievement, wholly or partly, of any of the purposes set out in s173(4) of the Act. The notice seeks to remedy the breach of planning control, the formation of a concrete base and the engineering operations to alter the land levels.
11. As commented on above, the appellants argue that the notice should only require the removal of the concrete base from the land, as its unauthorised nature is undisputed. However, the appellants argue that no additional "rubble material" has been brought onto the land over and above that which complied with the discharged conditions for the extant planning permission. Therefore, the requirement to remove the rubble material goes above and beyond that which is reasonably necessary to ensure compliance with the notice.
12. I have found under ground (c) that there is no evidence to confirm whether the amount of surfacing or hardcore materials brought onto the site, in compliance with the terms and conditions of the extant planning permission, was exceeded. The requirements of the notice should be varied to require compliance with the terms, including the conditions and limitations, of planning permission ref 9/2018/0616. Any surplus material resulting from the requirement to comply with the extant planning permission, should be removed from the site.
13. The appeal on ground (f) succeeds to this limited extent and I have varied the notice accordingly.

Appeals A, B and C - ground (g)

14. The appeals on ground (g) are that the period for compliance with the notice falls short of what is reasonable. The appellants consider that a compliance period of 60 days is insufficient and request that this is extended to 6 months. At the time of the appeal, the appellants were awaiting the decision on a planning application³ that had been submitted to the Council and sought to extend and intensify the use of the site to create 3 pitches including the construction of an amenity building/day room on the concrete base. The appellants sought a further period for compliance in order that the planning permission be determined and, if they were successful, there would be no need to undertake the requirements of the notice. The planning application was refused on 27 February. I not aware if an appeal has been submitted.
15. On the basis of the evidence before me it seems there would not be a significant amount of work involved in removing the rubble material from the land. I consider that the stated compliance period of 60 days is reasonable and proportionate given the nature of the works required in the circumstances. The appeal on ground (g) therefore fails.

³ DMPA/2019/1408 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

Conclusion

16. For the reasons given above, I conclude that the appeals should not succeed. I have upheld the enforcement notice with a variation.

S Hanson

INSPECTOR

REPORT TO:	PLANNING COMMITTEE	AGENDA ITEM: 5
DATE OF MEETING:	30th JUNE 2020	CATEGORY: Delegated
REPORT FROM:	STRATEGIC DIRECTOR (SERVICE DELIVERY)	OPEN
MEMBERS' CONTACT POINT:	TOM BEARDSMORE (01283) 595821 THOMAS.BEARDSMORE@SOUTHDERBYSHIRE.GOV.UK	DOC:
SUBJECT:	TREE PRESERVATION ORDER 519: LAND NORTH OF SNELSMOOR LANE, BOULTON MOOR, DERBY	REF:
WARD(S) AFFECTED:	ASTON	TERMS OF REFERENCE:

1.0 Recommendations

- 1.1 That the Committee endorse the use of emergency powers in confirming this Tree Preservation Order subject to the modifications as set out below.

2.0 Purpose of Report

- 2.1 To endorse the Chief Executive's use of emergency powers to confirm of this Tree Preservation Order (TPO), noting the provisional Order would have expired during the lockdown imposed in response to the COVID-19 pandemic.
- 2.2 The remainder of this report was originally written in preparation for a meeting in early May. This meeting did not take place resulting in the need to exercise emergency powers to confirm the TPO.

3.0 Detail

- 3.1 This TPO was made on 19 November 2019 in respect of multiple trees situated on land north of Snelsmoor Lane, Boulton Moor.
- 3.2 The TPO was made in order to protect trees within, and on the boundaries to, the site that provide both visual and landscape benefit in terms of screening development from vantage points in the wider locality, as well as providing features to act as focal points in the detailed design of the site and biodiversity value through association with watercourses and existing field boundaries. Their retention should be an integral part of the detailed design of the submitted outline development scheme (ref. 9/2016/0166) and appropriate protection should be afforded to ensure long term impacts on the trees are minimised by appropriate separation to built development. Without protection, there is a risk of these trees being unnecessarily felled or harmed, such that statutory protection is warranted in the interests of long-term visual amenity and biodiversity.
- 3.3 One letter of objection to the Order has been received raising the following points:

- The use of the woodland classification for W1 is considered inappropriate as the trees are not a woodland but rather a linear belt of hedgerow including areas where trees are not the primary feature;
- It is considered that where the collective impact and quality of trees (that are not woodlands or outlying individuals) merits protection, the group classification would be more appropriate, and the order should be modified on that basis; and
- The Arboricultural Impact Assessment submitted in support of the outline application records trees T1 and T2 as a pair of English Oak. This contrasts with the trees referred to on the TPO schedule and it is requested that this is corrected.

3.4 In response to these comments, the objection to W1 is centred on its unsuitability as a method of protection and suggests that a group order would be more fitting in this instance. The Council's Tree Officer has considered that, in principle, this would appear justifiable. However, a group order here would be ambiguous as group orders should be written to include all species within the group that warrant protection and indicating those that are not included. Given the number of trees that require protection it would be very difficult to achieve this accurately. In addition, if exact numbers of trees together with their species are unclear (and it would be in this instance) then enforcement (if required) becomes very difficult. Without being able to provide effective enforcement there is little point in protecting the trees in the first place defeating the objective of the order.

3.5 Trees T1 and T2 have been incorrectly identified on the schedule and should be modified accordingly.

4.0 Planning Assessment

4.1 It is expedient in the interests of amenity to make the trees the subject of a Tree Preservation Order in accordance with advice set out in the Government's Planning Practice Guidance.

4.2 As a result of incorrect tree species being listed previously, T1 should be changed from a Lime to Oak and T2 from an Ash to an Oak. These are the only modifications recommended to the Order following the consultation process.

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. 19 November 2019 - Tree Preservation Order made
- b. 23 December 2019 - Letter of objection received
- c. 23 December 2019 - Consultation end date

REPORT TO:	PLANNING COMMITTEE	AGENDA ITEM: 6
DATE OF MEETING:	30th JUNE 2020	CATEGORY: DELEGATED
REPORT FROM:	STRATEGIC DIRECTOR (SERVICE DELIVERY)	OPEN
MEMBERS' CONTACT POINT:	TOM BEARDSMORE (01283) 595821 THOMAS.BEARDSMORE@SOUTHDERBYSHIRE.GOV.UK	DOC:
SUBJECT:	TREE PRESERVATION ORDER 526: PRIMAVERA, TRENT LANE, NEWTON SOLNEY	REF: TPO 526
WARD(S) AFFECTED:	REPTON	TERMS OF REFERENCE:

1.0 Recommendations

- 1.1 That this Tree Preservation Order should be confirmed subject to the modifications set out below.

2.0 Purpose of Report

- 2.1 To consider confirmation of this Tree Preservation Order (TPO).

3.0 Detail

- 3.1 The multiple trees here have previously been protected by virtue of an Area Order (TPO427) swiftly made to protect the trees through the ongoing development of 4 new dwellings on the site. Guidance, however, sees it as good practice to revisit the Order prior to confirmation, identifying specific trees, groups or woodlands and to protect them only, and as a result a new Order was made (TPO457).
- 3.2 TPO457, however, appears not to have been confirmed potentially leaving the trees at risk from removal in the future. A new Order (TPO526) was therefore made to cover the same trees identified previously.
- 3.3 One letter was received during the consultation period, clarifying that approval was granted under application ref. 9/2019/0064 to fell and replace T1 and T8. It was confirmed that both trees had now been removed and their intended replacements would be planted in Spring 2020.
- 3.4 As a result of this letter being received, the Council's Tree Officer visited the site and confirmed that the replacement trees had now been planted. As a result, the new TPO should be amended to ensure that trees T1 and T8 accurately name the new species planted (*Malus Rudolph* flowering crab apple and *Liquidambar styraciflua* 'slender silhouette' American sweetgum).

4.0 Planning Assessment

- 4.1 It is expedient in the interests of amenity to make the trees permanently the subject of a TPO in accordance with advice set out in the Government's Planning Practice Guidance.
- 4.2 As a result of receiving evidence that, with the benefit of consent, two trees within the provisional Order have now been removed and replaced with different species; T1 and T8 should be altered accordingly in the TPO schedule.

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. 24 January 2020 - Tree Preservation Order made
- b. 3 February 2020 - Letter received regarding removal of trees
- c. 27 February 2020 - Consultation end date
- d. 17 March 2020 - Tree Officer confirmed that the trees have been replaced