

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

**[Section 1: Planning Applications](#)**

**[Section 2: Appeals](#)**

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

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## 1. Planning Applications

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

Reference	Item	Place	Ward	Page
<a href="#">DMPA/2020/0435</a>	<a href="#">1.1</a>	Woodville	Woodville	6
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When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

1. The issues of fact raised by the 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/2020/0435](#)

**Valid date:** 07/05/2020

**Applicant:** Eyley

**Agent:** JVH Town Planning Consultants Ltd

**Proposal:** The variation of condition no. 2 of permission ref. 9/2015/0976 (relating to the retention of the installed path and post and rail fencing) for the erection of 10 dwellings including access, internal road and garages on Land adjacent to 59, Ashby Road, Woodville, Swadlincote, DE11 7BZ

**Ward:** Woodville

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

This application is presented to the Committee at the discretion of the Head of Planning and Strategic Housing.

#### **Site Description**

The site is located close to the eastern boundary of the District and relates to a near completed housing development accessed from Ashby Road. The development is comprised of 10 dwellings; a terrace of three fronting Ashby Road and seven detached dwellings addressing the internal access road.

The site is bound by existing residential development to the east and west (Millfield Street and Ashby Road), with the northern boundary of the site to an area of allotments owned and managed by Woodville Parish Council.

#### **The proposal**

This application has been submitted under Section 73 of the Act, which allows an application to be made to vary (or remove) conditions attached to planning permissions. This application has been amended since its first submission and seeks approval for the development as implemented. Minor alterations to the appearance of the dwellings themselves have recently been approved through 3 Non-material amendment applications as detailed within the planning history section below.

The substantive changes to the scheme relate to the treatment of the northernmost area of the site in-between Plot 10 and the boundary of the site shared with the Woodville Parish Council allotments. The proposal is in two parts;

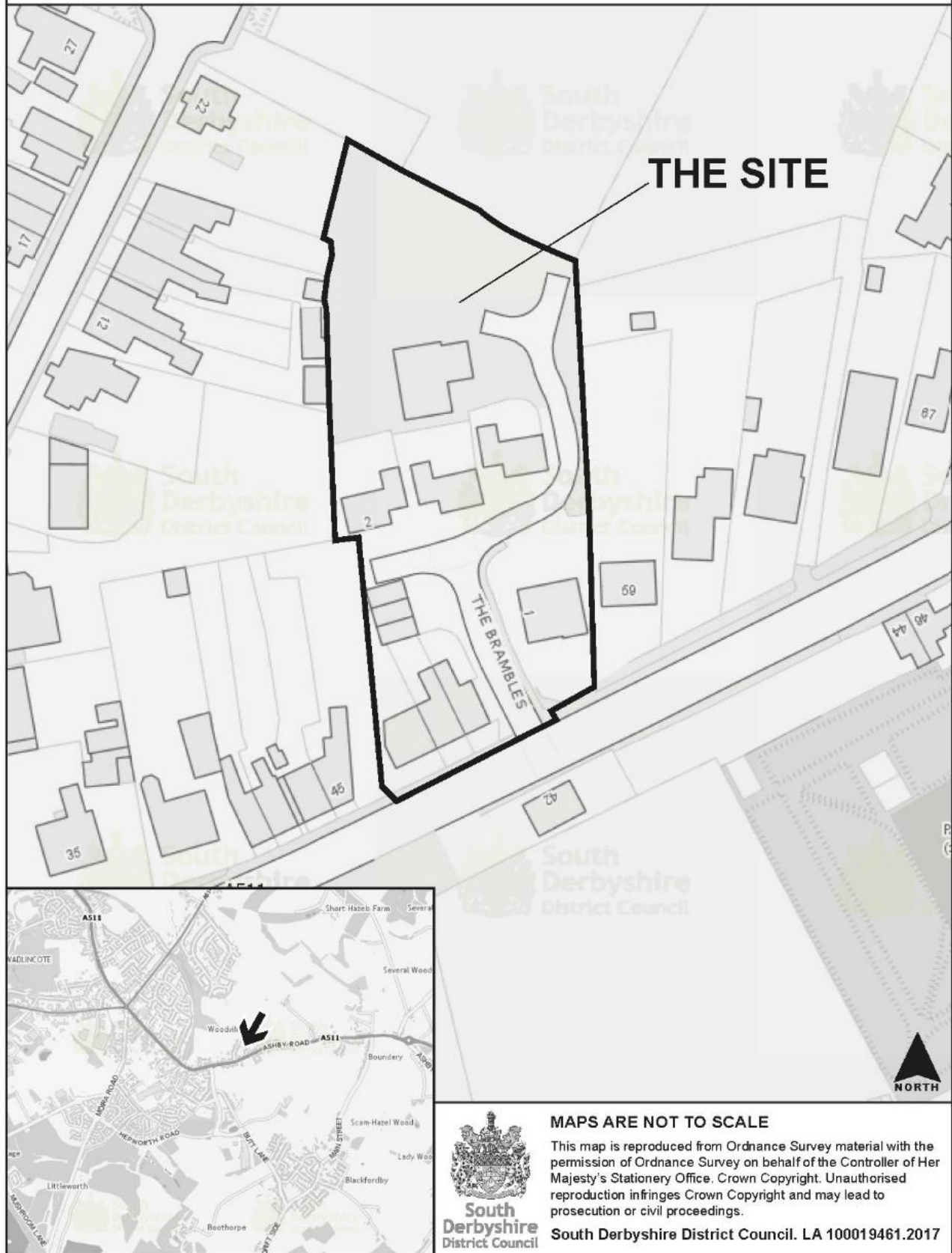
- Retention of the pedestrian side access surfacing as installed which extends to a width of 1.8 m, 0.8m wider than previously approved; and
- Retention of the installed post and rail fencing along this boundary.

The application site for this application remains the same as the previous application (it being an amendment to that application). However, whilst outside the control of this application and not being development requiring planning permission the applicant has also planted a native hedgerow on the northern side of the installed post and rail fence (outside the application site).

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

None.

**DMPA/2020/0435 - Land adjacent to 59 Ashby Road, Woodville,  
Swadlincote DE11 7BZ**



## **Relevant planning history**

9/2015/0976: The erection of ten dwellings including access, internal road and garages. Approved 18/05/16.

DMOT/2020/1440: Non-material amendment to permission 9/2015/0976 relating to the installation of additional windows and alterations to garage (Plot 8). Approved 25/01/21.

DMOT/2020/1441: Non-material amendment to permission 9/2015/0976 relating to the installation of additional windows (Plot 10). Approved 25/01/21.

DMOT/2020/1442: Non-material amendment to permission 9/2015/0976 relating to the installation of additional windows (Plot 9). Approved 25/01/21.

## **Responses to consultations and publicity**

Following the initial and subsequent consultation on the scheme 9 comments have been received, the salient points raised are summarised as follows;

- a) The hedgerow is required for the Allotment holders birds bees moths and butterflies who pollinate the land and should not be again removed;
- b) Support for the application, it at long last replaces the hedgerow with a native mixed hedge which will encourage wild life to live and feed off the hedge, considers that it looks great and fits in really well whilst at the same time providing a good physical barrier to a neighbouring house;
- c) Disagreement with the opposition from Woodville Parish Council
- d) Considers the hedgerow and boundary is more than adequate for plot holders safety and security;
- e) Concern raised in respect of the impact of additional windows installed in the approved dwellings in terms of overlooking (note that these amendments to the design of the dwellings including the installation of rooflights have been approved though Non-material amendments to the permission).

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

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), and INF2 (Sustainable Transport);
- Local Plan Part 2 (LP2): BNE7 (Trees, Woodland and Hedgerows)

The relevant national policy and guidance is:

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

## **Planning considerations**

This application seeks to vary or remove conditions attached to a previous approval, pursuant to section 73 of the Town and Country Planning Act 1990 (as amended). The principle of development has therefore been established and hence the following assessment takes into account only the matters which are relevant to the conditions concerned. Taking this into account along with the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issue central to the determination of this application is whether the proposed variation of condition 2 (the approved plans) would bring about unacceptable impacts on the character and appearance of the development and the area in general.

It is important to note that the determination of this application must be undertaken on the planning merits of the case. It is understood that there are currently on-going land ownership disputes in relation to the extent of land ownership on the northern boundary of the site, but this is not a matter for consideration at this meeting.

Furthermore, as a grant of permission under section 73 of the 1990 Act results in a further permission, leaving the original permission and its conditions in tact; consideration also needs to be given to the remaining conditions and whether they have been discharged (either in part or in whole).

## **Planning assessment**

### The 2015 approved scheme

The scheme as originally approved included the provision of a 1m wide pedestrian access to the north of Plot 10, condition 13 of the permission explicitly approved a scheme of boundary treatments to be implemented in accordance with the approved drawing, and condition 14 required the submission (and approval) of a landscaping scheme.

The approved layout and boundary treatment plan (drawing number 215-46.02 B) is silent on what boundary treatment was approved for the northern boundary of the site (adjacent to the allotments), which is unfortunate especially as all other boundaries are specified including where existing hedges are to be retained. There is/was therefore no requirement as part of the planning permission for the former hedgerow along this boundary to be retained (notwithstanding any civil matters including ownership). There were no representations raising concern over the removal of the hedgerow when the original application was granted by the committee in March 2016. It is presumed by the current Officer that the imposition of a condition requiring the submission of a landscaping scheme for the site was done so in order to provide the detail lacking from the approved plan and also to secure a new hedgerow along the northern boundary but this is not explicit from the approved plans or the original report.

The dwellings themselves and their position within the site have been the subject of a detailed survey, which has confirmed that the dwellings are located in the approved positions.

### Variation of condition 2

The main effect of the proposed variation relates to whether the retention of the development as implemented is acceptable. The widening of the pedestrian access to the side of Plot 10 has resulted in a path 0.8m wider than previously approved, this element of the scheme in its own right is considered to be acceptable. However, the implications of this increased access has seen a reduction in the land available to secure any planting along this boundary (within the application site and notwithstanding that the applicant has planted a hedgerow outside of the application site) such that for the purposes of this application it must be taken that the boundary in this location will remain as a post and rail fence.

In assessing the suitability of this boundary treatment the character and appearance of this immediate area and its surroundings needs to be considered. This boundary is adjacent to an existing allotment, beyond which lies open countryside where there are long ranging views out towards Hartshorne and beyond. This boundary does not front open countryside directly and is screened from wider views by the structures, sheds and paraphernalia of the adjacent allotments. Whilst at the edge of the development itself this boundary is not one which is overly sensitive in terms of impacting upon the general character and appearance of the area, it is seen in the context of a new housing development where the lower level of development (any fencing and/or landscaping) are screened by the structures and paraphernalia associated with the allotments. To conclude, whilst the provision of a hedgerow within the application site along this boundary would have been preferable, the retention of the widened path and post and rail fencing along this boundary without the provision of any new landscaping is not considered to result in any significant detrimental harm to the character and appearance of the area hence this recommendation for approval.

## Status of remaining conditions / Unilateral Undertaking

The original permission included a Unilateral Undertaking under Section 106, which required the payment of financial contributions to mitigate the impact of the development on open space, built facilities and education. The contributions have all been received and as such it is not considered necessary for the agreement to be re-submitted or varied. Subject to the above being found acceptable other conditions where suitable details have been provided or discharged have been removed or amended as appropriate.

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**

**Approve** the application subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with drawings numbers 215-46.02 D, 215-46.03 A, 215-46.04 Nil, 215-46.05 A, 215-46.08 B, 215-46.09 B, 215-46.10 C; 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.

2. The site access shall be retained with a minimum width of 4.8m, be provided with 2m x 2m x 45° pedestrian intervisibility splays and visibility sightlines of 2.4m x 65m in the westerly direction and 2.4m x 90m to the east, the area forward of which shall be cleared and maintained throughout the life of the development clear of any obstruction exceeding 1m in height (600mm in the case of vegetation) relative to the nearside carriageway edge.

Reason: In the interests of highway safety.

3. Prior to the first occupation of any dwelling, the access, parking and manoeuvring space shall be provided in accordance with the approved drawings and maintained throughout the life of the development free of any impediment to its designated use.

Reason: In the interests of highway safety.

4. The bin stores identified in the approved drawings shall be provided prior to the first occupation of Plots 8-10 and shall be retained thereafter free from any impediment to its designated use.

Reason: To prevent refuse bins and collection vehicles standing on the busy classified Ashby Road for longer than necessary causing an obstruction or inconvenience for other road users, in the interests of highway safety.

5. The drainage system shall be implemented and thereafter maintained in accordance with the following drawings and documents; General Arrangement, 22125\_02\_020\_01 Rev E; Drainage Construction Details, 22125\_02\_080\_02 Rev B; 59 Ashby Road, Woodville: Drainage Asset Maintenance Schedule; and Emails received by the LLFA from the developer on 13th March 2020 and 25th June 2020 prior to the first occupation of the dwellings hereby permitted.

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



6. No dwelling shall be occupied until the associated boundary treatment related to the dwelling has been completed in accordance with the approved drawings.

Reason: In the interests of the appearance of the area and to protect residential amenity.

7. The landscaping scheme as detailed in drawing number LS-215-46.02 F shall be implemented in the first planting and seeding seasons following this permission; 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.

8. Notwithstanding the provisions the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order), none of the dwellings hereby approved shall be enlarged, improved or altered, nor shall any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouses be provided unless planning permission has first been granted by the Local Planning Authority.

Reason: To enable the Local Planning Authority to retain control over future development in view of the form and density of the development proposed.

9. 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 window hereby approved serving bedroom 1 in the south elevation of Plot 7 shall be glazed in obscure glass and permanently maintained thereafter as such.

Reason: To avoid overlooking of adjoining property in the interest of protecting privacy.

**Item No.** 1.2

**Ref. No.** [DMPA/2020/0910](#)

**Valid date:** 26/08/2020

**Applicant:** R Hallberg

**Agent:** Lawrence & Finley Architects Ltd

**Proposal:** The erection of first floor side extension, two-storey rear extension and the conversion of garage into living space at 7 Cavendish Close, Newhall, Swadlincote, DE11 0NE

**Ward:** Midway

### **Reason for committee determination**

This item is presented to the Committee at the request of Councillor David Angliss to assure all parties that the most appropriate final decision has been reached.

### **Site Description**

The site is host to a two storey detached property set back from the highway by a hard surfaced driveway that leads to a garage attached to the side of the dwelling. The front is open plan. To the rear, the garden is approx. 12m deep and enclosed by fencing.

### **The proposal**

The application seeks permission for the erection of a first floor side extension, two storey rear extension and the conversion of garage to living space.

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

None submitted.

### **Relevant planning history**

None.

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

County Highway Authority has no objections.

One letter of objection has been received from a nearby neighbour. The issues raised are listed below and will be addressed within the main body of this report:

- Loss of sunlight
- Extension to be built of shared drains
- Loss of off street parking

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

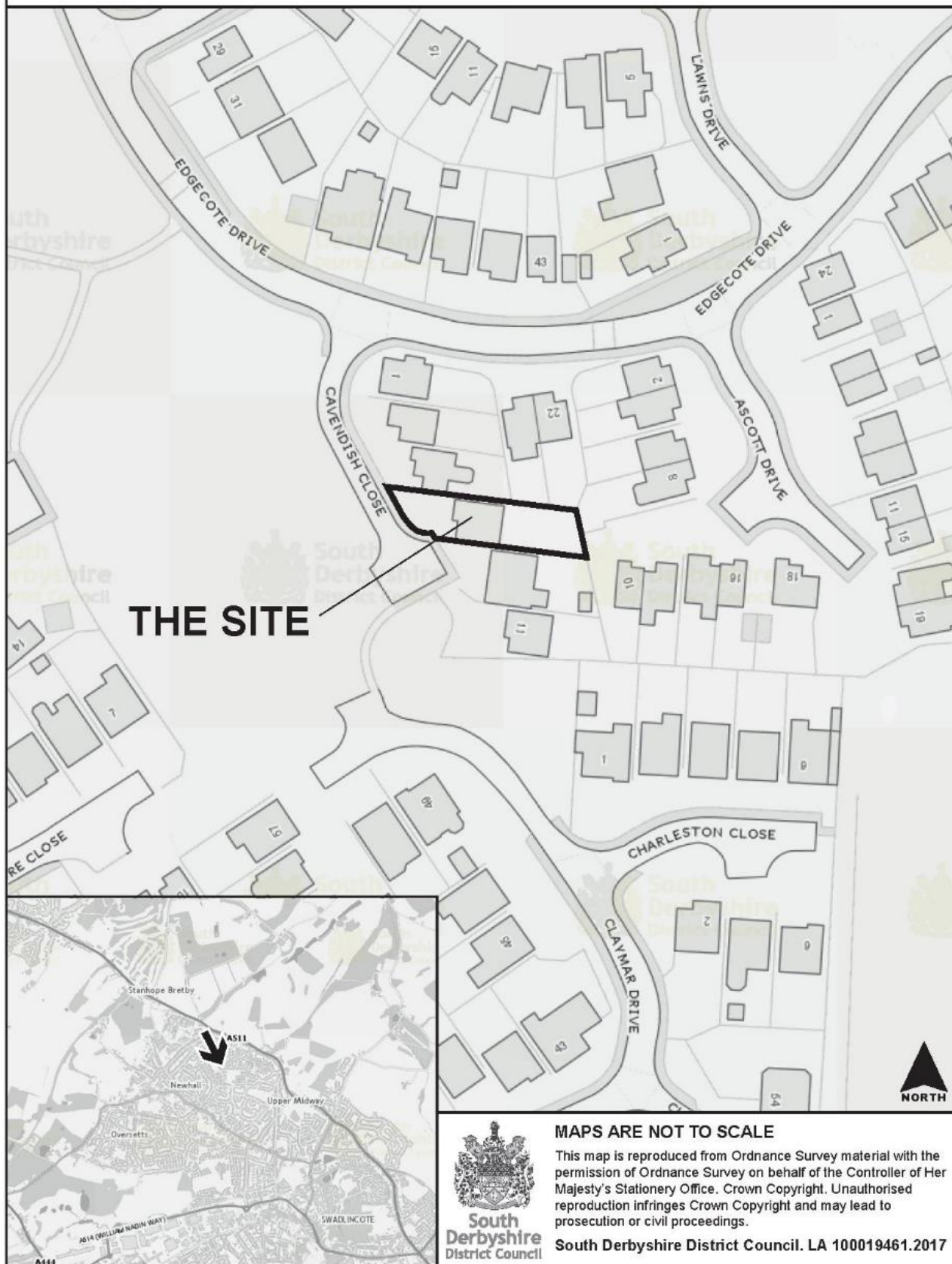
The relevant Development Plan policies are:

- South Derbyshire Local Plan Part 1 (LP1): SD1, BNE1, INF2
- South Derbyshire Local Plan Part 2 (LP2): H27

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD) November 2017

**DMPA/2020/0910 - 7 Cavendish Close, Newhall, Swadlincote DE11 0NE**



The relevant national policy and guidance is:

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

### **Planning considerations**

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

- Design
- Amenity; and
- Highways Issues

### **Planning assessment**

#### Design

The two storey extension projects 2.9m from the rear elevation of the host dwelling and covering the rear width of the dwelling. It would not be visible from the public realm.

In terms of the first floor side extension, it is above the existing ground floor garage, therefore would not create any additional footprint to the side of the house, it would extend the length of the house.

Finally, the existing garage would be converted to living accommodation, the garage door being replaced by a window.

The extensions are subordinate to the host dwelling and the impact on the general character of the area would be minimal. The application specifies materials to match those of the host dwelling. Although part of the proposal is visible from the streetscene it is considered to not have a detrimental impact upon the existing streetscene given the mixed design, cul-de-sac location, and the fact it is set back from the neighbouring property. The proposal would therefore be acceptable and in accordance with the Design SPD and Policies BNE1 and H27.

#### Amenity

The side and rear extensions have a separation distance of 12m from the neighbour at 20 Edgecote Drive, with this elevation being blank it complies with the guidance set out in the Design SPD.

However, it is considered that the extension would overbear upon and overlook the neighbour at 5 Cavendish Close. The Design SPD outlines that in this situation, a new blank elevation should have a separation distance of at least 9m to the neighbouring conservatory. However, the proposed separation distance falls below this at 3.7m and therefore does not comply with Policies SD1 and H27 and The Design Guide SPD.

#### Highways Issues

The South Derbyshire Design Guide recommends that for homes of four or more bedrooms, three car parking spaces should be provided. In this instance the site can easily accommodate this number of vehicles, owing to the presence of an existing adequate parking area to the front of the dwelling.

#### Other Issues

An objection was raised by a nearby neighbour regarding the shared drainage being build over; this is not material planning consideration and will be addressed by Building Control.

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** for the following reason;

1. The proposed extensions would overbear and overlook the neighbouring property due to insufficient separation distances. Policy SD1 of The Local Plan Part 1 seeks to protect the amenity of existing and future occupiers within or around proposed developments. This is echoed in Policy H27 of The Local Plan Part 2, which goes on to say that extensions to dwellings will not be permitted where they are unduly detrimental to the living conditions of adjoining properties. To that end, the application is contrary to the provisions of those current policies and guidance of the National Planning Policy Framework (NPPF) which adds weight to protecting the amenity of neighbouring properties.

**Item No.** 1.3

**Ref. No.** [DMPA/2020/1291](#)

**Valid date:** 26/11/2020

**Applicant:** Mulligan-Freeman

**Agent:** The Planning Hub

**Proposal:** Demolition of existing bungalow and outbuilding and construction of detached bungalow and car port and the creation of an additional access (resubmission of the scheme approved under Ref. DMPA/2020/0751) at The Croft, 4 Main Street, Ambaston, Derby, DE72 3ES

**Ward:** Aston

### **Reason for committee determination**

This item is presented to the Committee at the request of Councillor Peter Watson as local concern has been expressed about a particular issue and it is considered that the Committee should debate the issues in this case which are very finely balanced.

### **Site Description**

The application site is within the village of Ambaston and comprises an area of land of approx. 3,300 square metres. It is located on the eastern side of Main Street, 55m to the north of the 'entrance' into the village, where Main Street heads north from its junction with Ambaston Lane. The application site is roughly square in shape, with a 55m wide frontage to Main Street and a depth of approximately 60m. The site is level and with the exception of the existing dwelling is mainly laid to grass, with well-landscaped boundaries and many trees within the site. The site is bound by residential properties at either side and to the front, with dwellings located either side of Main Street forming a linear settlement pattern. The site currently comprises a bungalow set back from the road and located centrally but towards the southern side of the plot, it is constructed from buff brick with a large stone feature chimney and a tiled gable roof and also features an attached flat roof garage and red brick outbuilding which fronts the highway, all of which would be demolished in order to accommodate the proposed replacement dwelling. Two trees at the front of the site and seven trees at the rear of the site are protected by Tree Preservation Order No.536, in order to protect the long-term amenity and biodiversity value the trees provide for the area.

### **The proposal**

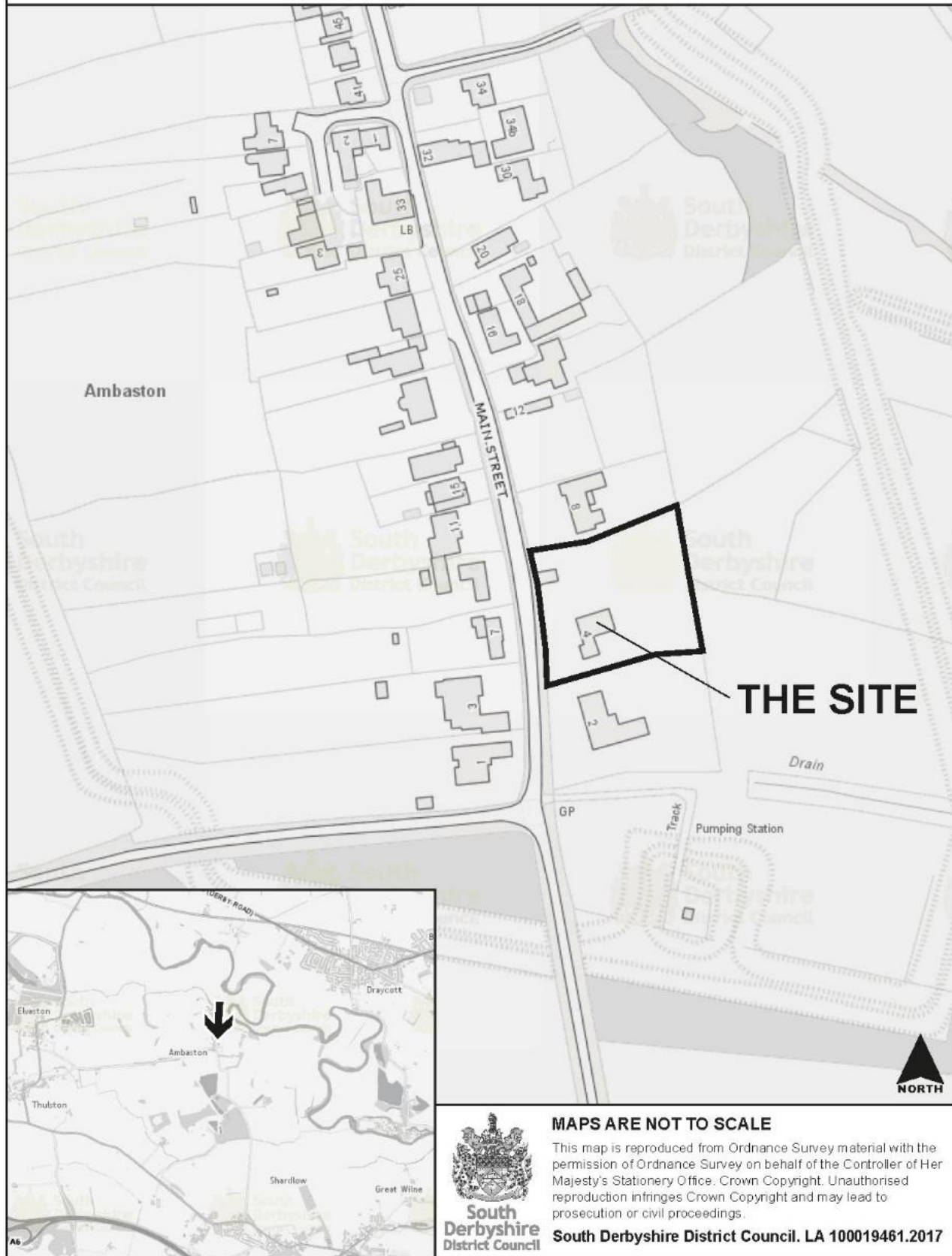
The proposal is for full planning permission for the demolition of an existing bungalow and outbuilding and the construction of a replacement dwelling in the form of a detached bungalow, with car port and the creation of an additional new access onto Main Street. This application is a resubmission of the scheme previously approved under application Ref. DMPA/2020/0751.

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

The Flood Risk Assessment is a requirement of the NPPF as the site lies within Flood Zone 3. Indicative flood maps show the site to lie entirely within an area benefiting from flood defences. The site is protected from the 100 year scenario from the River Derwent but is at risk during the 1 in 1,000 year scenario and during a breach of defences. A breach of the defences around Ambaston has not been modelled by the EA, as such the 1 in 1,000 year flood level is considered as the design flood level. The development is considered appropriate within this flood zone, given the proposed use and that there is no increase in the number of dwellings on site and therefore increased vulnerability of occupants, this is provided that site specific mitigation is adopted as set out within the assessment.



**DMPA/2020/1291 - The Croft, 4 Main Street, Ambaston, Derby DE72 3ES**



The Planning Statement seeks to demonstrate the design principles and concepts that underpin the development proposals indicating how the scheme will contribute towards the creation of a high-quality sustainable development. The proposed design and layout have been informed by a thorough assessment of the site and appreciation of the local context, with particular attention to the natural and built environment and that the proposal has been considered in accordance with the design principles set out in the current guidelines. The statement concludes that the proposed development is wholly in accordance with the national planning guidance set out in the National Planning Policy Framework and the National Planning Practice Guidance and at a local level, it is clear that the proposed development complies with the relevant policies within the Adopted Local Plan Parts 1 and 2, and the guidance as set out in the 'South Derbyshire Design Guide' SPG.

The Arboricultural Report includes an assessment of trees on site, with 32 individual trees, 2 groups of trees and 3 hedgerows in total, the trees are categorised based on their condition and life expectancy. The report details the trees suitable for retention and those that require removal and also any preliminary management recommendations. The report also includes an Arboricultural Impact Assessment, Method Statement and Tree Protection Plan, given that the site has a number of trees protected by a preservation order, the protection measures outlined within the report are vital to their long term protection and ensuring they are not damaged during any of the construction works on site.

The Bat Survey Report found no evidence of bats during either the building inspection or during the two nocturnal surveys and as such no further surveys were considered necessary. Nesting birds were noted within the vegetation covering parts of the outbuilding. All birds are protected whilst on the nest under the Wildlife and Countryside Act 1981 (as amended). Therefore any works to this section of the building including vegetation removal would need to take place outside of the bird breeding season and if this is not possible the building/vegetation should be checked by an experienced Ecologist prior to removal. It is also recommended that where feasible within the development design, consideration should be given to the provision of bird/bat boxes or bat bricks on the new buildings and/or retained trees once works are completed.

### **Relevant planning history**

9/1990/0454 The erection of one dwelling - Approved September 1990.

DMPA/2020/0751 Demolition of existing bungalow and outbuilding and construction of detached bungalow and car port and the creation of an additional access - Approved November 2020

DMOT/2020/1328 The crown reduction of various tree(s) covered by South Derbyshire District Council Tree Preservation Order no. 536 - Refused February 2021

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

Derbyshire Wildlife Trust advise that sufficient information on protected species has been submitted to enable the local planning authority to determine the application in the knowledge that roosting bats are unlikely to be present and affected by the proposed development. They support the proposed biodiversity enhancement measures.

The Lead Local Flood Authority considers that due to the scale and nature of the proposals they have no comments to make.

The Environment Agency considers that the proposed development will only meet the National Planning Policy Framework's requirements in relation to flood risk if a condition is attached on any consent granted requiring the development to be carried out in accordance with the submitted Flood Risk Assessment and mitigations measures that it details.

The County Highways Authority considers that the proposal does not appear to differ in highway terms from application DMPA/2020/0751 and such the same comments apply, with no objections.



## **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), S6 (Sustainable Access), S8 (Green Belt), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport)
- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), H24 (Replacement Dwellings in Rural Areas), BNE5 (Development in the Countryside) and BNE7 (Trees and Development)

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:

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

## **Planning considerations**

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

- Principle of development;
- Biodiversity and tree protection;
- Design; and
- Neighbouring amenity.

## **Planning assessment**

### Principle of development

The site is the subject of an extant full planning permission, approved as recently as November 2020, the proposed plans and elevations for this scheme are identical to those previously approved under application ref. DMPA/2020/0751. The purpose of this resubmission is to address as many of the 'pre-commencement' and 'pre-occupation' conditions as possible and provide a permission with less overall conditions which would delay the construction of the replacement dwelling, this is through the submission of further information and details, but to also provide justification for the removal of condition 15 on the previous permission which related to specified windows having obscure glazing. Therefore what needs to be considered here primarily are the additional issues around design, biodiversity and neighbouring amenity as a result of the additional information being submitted.

The site received permission in 2020 because it was considered to be a replacement dwelling and complied with the requirements of Policies BNE5, H24 and S8. The site is within an existing residential area, with neighbouring dwellings surrounding the site. The principle of the proposed development for the erection of a new dwelling to replace an existing dwelling is considered to be acceptable, appropriate development as it is compliant with policies of the Local Plan and the NPPF.

### Biodiversity and tree protection

The Bat Survey Report found no evidence of bats during either the building inspection or during the two nocturnal surveys and as such no further surveys were considered necessary. Following consultation with Derbyshire Wild Trust they confirmed that sufficient information on protected species has been

submitted to enable the local planning authority to determine the application in the knowledge that roosting bats are unlikely to be present and affected by the proposed development. The applicant has also shown on the proposed plans and elevations the incorporation of bird/bat boxes and bat bricks, these are in line with the biodiversity enhancement measures recommended within the report and are supported by the Wildlife Trust and as such the proposal would comply with the requirements of Policy BNE3.

The tree protection plan indicates where protective fencing is to be erected on site in order to protect the large amount of trees and vegetation on the site during all stages of the demolition of the existing dwelling and the construction of the replacement dwelling, this includes several trees that are protected under Tree Preservation Order No. 536. Condition 3 of the extant planning permission required protective fencing to be erected on site prior to any preparatory works on site, but to also extend the fencing around trees T1 and T2, to extend to the full 'Root Protection Areas'. The applicant has acknowledged that if the fence around these two trees was to be extended, due to their location in close proximity to the existing access and to the proposed driveway, it would mean the access could not be used during construction and the driveway could not be fully implemented. Although there is an error within the arboricultural impact assessment as it states that the proposed site layout does not include any conflict between the necessary construction working spaces and retained trees, which is clearly not the case due to the impact on T1 and T2. The assessment does still include temporary ground protection measures as set out in the British Standard 5837:2012 and also protection measures to ensure that any hard surfacing within the root protection area (proposed new driveway in this case) does not damage the roots. As such, it is considered that subject to these measures being implemented the requirement for the protective fencing to cover the entire Root Protection Area is not necessary and would allow the development to be constructed in accordance with the approved plans, whilst maintaining the long term health of the trees and as such the proposal would comply with the requirements of Policy BNE7.

### Design

Whilst the proposed plans and elevations for this scheme are the same as those approved under the extant permission, additional design details have been included in order to reduce the number of conditions under any new permission granted. The proposed facing materials for the dwelling are a combination of ivory colour smooth render, azure grey bricks and several stone cladding feature walls, with the proposed car port also utilising reclaimed bricks from the existing outbuilding, these materials will be complemented by the use of natural Spanish slate roof tiles, which provides a contrast to the lighter colour facing materials. The proposed materials are considered acceptable as they would provide a high quality design which would also enhance the street scene along this part of Main Street and also integrating well with style of the dwelling located opposite the site, No.3 Main Street, which is rendered throughout. As such it is considered that the additional design details provided would result in a high quality scheme that would not be detrimental to the character of the surrounding area and therefore complies with Policy BNE1.

### Neighbouring amenity

Whilst there is no change to the design or layout of this scheme to the plans previously approved under the extant permission and therefore the impact on neighbouring dwellings has already been found acceptable, the applicant is now seeking to remove the requirement of condition 15 attached to the previous permission which requires the provision of non-openable, obscure glazing to the windows within the utility room and WC on the north facing elevation of the proposed dwelling. Having weighed up the potential impact on the amenity of the neighbouring dwelling No.8 Main Street to the north, it is considered that this requirement is unnecessary and would not be required on any new consent granted. The north facing windows in question are set back more than 7m from the boundary with No.8, due to it being set underneath the proposed roof overhang. There is also a separation buffer in the form of tall dense vegetation which runs along the boundary, further reducing the potential impact between the two properties. It should be noted that this vegetation could be removed by the applicant in the future, but there would be a requirement for a soft landscaping scheme by way of condition on any consent granted, this would ensure that a landscaping buffer along this boundary is either retained or

new trees planted. There is also no primary window to the southern side elevation of No.8 and the ground levels of both sites are the same. As such it is considered that there are no concerns of overlooking and the amenity of No.8 is not demonstrably impacted if the windows of WC and utility were not to be fitted with obscure glazing and the proposal would therefore comply with the requirements of 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**

**Approve** 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 Drawing No.'s 11438/10B, 11438/11B and the Location Plan; 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 protective fences have been erected around trees as shown on the Tree Protection Plan (Drawing No. RSE\_3830\_TPP). The works shall also be in accordance with all of the protective measures set out within sections 'Arboricultural Impact Assessment' and 'Arboricultural Method Statement' of the Tree Report (Ref: RSE\_3830a\_02\_V1) dated July 2020, particularly in regards to Trees T1 and T2 where it is not possible to fully fence the entire RPA due to access restrictions and therefore their RPA's would be entered to access the site and for hard landscaping. Protective fencing shall conform to 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 fences shall be retained in situ during the course of ground and construction works, with the protected areas kept clear of any building materials, plant, debris and trenching, and with existing ground levels maintained; and there shall be no entry to those areas except for approved arboricultural or landscape works.

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.

4. The development shall be constructed using the facing materials as detailed on Drawing No. 11438/10B and the Jowett Stone Ltd Window Cill as detailed in the applicant's covering letter dated 26th November 2020.

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

5. All hard landscaping shall be carried out in accordance with the approved details as shown on Drawing No. 11438/11B, prior to occupation of the dwelling, whilst all planting, seeding or turfing as detailed in the letter from the planning hub dated 26 November 2020 shall be carried out in the first planting and seeding seasons following the first occupation of the dwelling 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: To ensure there is no net loss of biodiversity and in the interest of the character and appearance of the surrounding area.

6. Prior to the occupation of the dwelling hereby permitted the parking and manoeuvring area shall be laid out in accordance with the approved plans 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.

7. The development shall be carried out in accordance with the submitted flood risk assessment (ref RSE\_3830\_01\_V1 produced by Ramm Sanderson and dated June 2020) and the following mitigation measures it details:

- Finished floor levels shall be set no lower than 36.34 metres above Ordnance Datum (AOD) as detailed in section 5.2 of the FRA
- Flood resilience and resistant measures are included in the development, as detailed in section 5.4 of the FRA.

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: To reduce the risk from flooding to the proposed development and its future occupants.

8. The biodiversity enhancement measures as specified in applicant's cover letter dated 26th November 2020 and as shown on Drawing No.'s 11438/10B and 11438/11B, specifically for the installation of two bat access slates in the garage roof and two starling boxes on retained trees, shall be implemented in full as construction proceeds and prior to first occupation of the development and thereafter maintained as such.

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

9. No removal of trees, hedges, shrubs or ivy 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 or ivy 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.

10. 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 enlarged, extended or altered, and no buildings, gates, walls, fences or other means of enclosure (except as authorised by this permission or allowed by any condition attached thereto) shall be erected on the site without the prior grant of planning permission pursuant to an application made to the Local Planning Authority in that regard.

Reason: To maintain control in the interest of the effect upon neighbouring properties.

11. During the period of construction there should be no clearance of vegetation by burning, or disposal of other materials by burning owing to the proximity of neighbouring sensitive receptors.

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

12. During the period of construction, no ground, construction or fitting out works shall take place other than between 0730 and 1800 hours Monday to Friday and 0800 and 1300 hours on Saturdays. There shall be no works on Sundays or public holidays except in an emergency.

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

13. 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.

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.

14. Prior to the first occupation of the dwelling a recharge point for electric vehicles shall be provided in accordance with Drawing No.'s 11438/10B and 11438/11B and the Wallpod:EV specification document and thereafter be maintained in full 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. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, 6 weeks prior notification shall be given to the Department of Economy, Transport and Communities at County Hall, Matlock regarding access works within the highway. Information and relevant application forms, regarding the undertaking of access works within highway limits, are available via the County Council's website [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk), email [Highways.Hub@derbyshire.gov.uk](mailto:Highways.Hub@derbyshire.gov.uk) or telephone 01629 533190.
- b. The County Flood Risk Team advises:
- Any alteration to existing impermeable surface area of the site may exacerbate surface water flood risk, so new impermeable surfaces should be limited where possible. Where an increase in impermeable area is unavoidable, Derbyshire County Council (DCC) strongly promote Sustainable Drainage Systems (SuDS) to be incorporated within the design of a drainage strategy for any proposed development, applying the SuDS management train with an appropriate number of treatment stages. The applicant should demonstrate, to the satisfaction of the Local Planning Authority, the appropriate level of treatment stages from the resultant surface water in line with Table 4.3 of the CIRIA SuDS Manual C753. This type of development usually requires >2 treatment stages before outfall into surface water body/system which may help towards attainment of the downstream receiving watercourse's Water Framework Directive good ecological status. Surface water drainage should be designed in line with the non-statutory technical standards for SuDS (March 2015) where reasonably practicable, and ground infiltration to manage the surface water is preferred over discharging to a surface water body or public sewer system.
  - Any SuDS should be designed to ensure that the maintenance and operation requirements are economically proportionate and that a maintenance plan is available to the persons/organisations that will be responsible for ongoing maintenance.
  - The applicant is advised to contact the Environment Agency (EA) that hold modelling data for Main Rivers and some ordinary watercourses if fluvial flood risk is a concern.
  - Due to the historic mining and mineral extraction operations in Derbyshire, adits may exist beneath the surface. The applicant is therefore advised to investigate the potential for hidden watercourses existing on the land prior to any works being undertaken.
  - Development located in areas where the water table is at a shallow depth may be susceptible to groundwater flooding. Development site drainage should be considered carefully to avoid any increased risks associated with groundwater. DCC would not recommend infiltration as a means of development site surface water disposal in areas where geohazards or ground instability are deemed likely without appropriate analysis of the risks involved. Infiltration of surface water to the ground is also not advised in sensitive groundwater areas without an appropriate SuDS management train.

**Item No.** 1.4

**Ref. No.** DMPA/2020/0591

**Valid date:** 13/07/2020

**Applicant:** Rahul Patel

**Agent:** Wilson Architects Ltd

**Proposal:** **Change of use from funeral directors (A1 Use Class) to nine-bedroom House in Multiple Occupation (HMO) (Sui Generis Use Class) including external alterations 1 High Street, Woodville, Swadlincote, DE11 7DU**

**Ward:** Woodville

### **Reason for committee determination**

The item is presented to Committee as the development does not accord with the provisions of the Development Plan but the recommendation is of approval.

### **Site Description**

The application property is situated off a large roundabout on High Street, known locally as the 'Clock Roundabout' due to the Clock Garage also being located off the roundabout opposite the application site. The host building is a large two-storey property which is connected at the side to the Woodville Box Club, it features a steep pitched, tiled M shaped gable roof, built from red facing bricks. The property is traditional in character with features such as the shop frontage, stone cills/lintels and large sash style windows. The street scene in this location characterised by a combination of residential and commercial uses, including shops, hairdressers, car garages and a library. The property is not separated from the footway, which is typical of the character along this part of the High Street, with the area being well built up and comprising of a number of traditional style buildings, which whilst being altered over time still retain their traditional character.

### **The proposal**

A change of use is proposed from a funeral directors (Use Class A1), to a house in multiple occupation with a total of 9no. bedsit rooms (Use Class Sui Generis) with associated alterations, which includes the removal of the existing shop frontage.

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

Supporting Marketing Evidence has been submitted to demonstrate that the unit has been fully marketed for a period in excess of 6 months; this includes a report detailing all of the enquiries received and evidence of the different types of marketing that have been used.

The Planning Statement provides information in regards to the existing and proposed use of the building and information in regards to the site context. It also seeks to demonstrate how the proposed change of use is considered acceptable by policies of both the NPPF and Local Plan, by contributing toward the development of a more mixed and sustainable community.

### **Relevant planning history**

9/1999/0017: The installation of new shop front on the Hartshorne Road High Street and corner of Hartshorne Road High Street frontages of the premises - Approved May 1999.

**THE SITE**

A511

Woodville Box Club

A514 (SWADLINCOTE ROAD)

MOIRA ROAD

NORTH

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**South Derbyshire District Council**

LA 100019461.2017



**South  
Derbyshire  
District Council**

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## **Responses to consultations and publicity**

County Highways Authority consider that whilst there is no off-street parking proposed, in view of the central location and the existing/previous use of the site, there are no objections to the proposal from a highway point of view subject to a condition being attached on any consent granted which ensure that the footway is reinstated.

Environmental Health consider due to the proximity of the 'Woodville Box Club' a scheme of noise mitigation is required, which can be secured by an appropriately worded planning condition.

Woodville Parish Council objects as there is a lack of parking provision and inadequate parking for 9 cars.

3 objections have been received, raising the following comments:

- Barriers in front of the property have been severely buckled on many occasions, it is only a matter of time until a car or lorry hit the front of the building causing structural damage and danger to life
- Doubt very much young professionals would want to live on a busy traffic island, the property would end up being used as temporary low rent accommodation and a breeding ground for anti social behaviour and drug use.
- The building should be demolished and the traffic island improved.
- Concerns over the proposed 9 car parking spaces which cannot be achieved on the site.

## **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), S7 (Retail), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE11 (Shopfronts) and INF2 (Sustainable Transport).
- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development) and RTL1 (Retail Hierarchy).

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:

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

## **Planning considerations**

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

- Principle of development;
- Neighbouring amenity;
- Design; and
- Highway safety.



## **Planning assessment**

### Principle of development

The site is located within the Swadlincote urban area, with the locality being well built up and consisting of a mix of residential properties, retail units and other commercial uses including pubs, library and car garages. The development would result in a loss of a retail unit, with the unit being used last as a funeral directors and as such the proposal needs to be considered assessed against Policy RTL1. The site is located within an existing local centre as identified on Map 1 of RTL1.

Point F of Policy RTL1 refers to the loss of retail within local centres; it states that that the loss of retail units in centres will be permitted where:

- i) The current use can be demonstrated to be no longer viable; and
- ii) The unit has been sufficiently and actively marketed for a range of retail uses over a 6 month period; and
- iii) The impacts arising from the resulting use do not cause an adverse effect on amenity, parking needs or highway safety.

Insufficient evidence has been provided to enable a judgement to be made as to whether the property has been adequately marketed for the required period of 6 months. Although a marketing report was produced by the Estate Agents - Johnson Fellows, it has not been disclosed and the asking price was not agreed with the Council in advance. It is known that no press advertising or mailshots were undertaken. Other than the case for a proposed HMO, no evidence has been provided as to the nature of any of the enquiries received, nor of the reasons for not proceeding to purchase. Therefore the marketing evidence submitted fails to fully demonstrate that the current use of the unit is no longer viable and as such it is considered that the proposal does not fully comply with Policy RTL1.

Notwithstanding this, it is considered that the evidence submitted does show that there has been limited interest in the property for its extant retail use. The unit was originally placed on the market back in September 2018, with advertising boards erected at the front of the building. It was later put to auction, but it is understood that the reserve price was not met and the unit was not sold. The retail unit was then advertised by the estate agents on a number of other websites/platforms and also on their own website. There is also evidence of the unit being advertised in SDDC's Vacant Commercial Property Bulletin Autumn-Winter 2019/2020 edition . The enquiries report submitted shows that there have been only 7 viewings of the property to date, with the property being marketed for a sustained period of nearly 2 years. Although other forms of marketing such as mailshots and press advertising may not have been used, it is clear that the unit has been marketed thoroughly across multiple platforms, with the aim of reaching a wide audience and was even unsuccessful at auction. Therefore it is considered that although the applicant has failed to fully comply with the requirements of Policy RTL1, the proposal would allow for what is currently a vacant retail unit to be turned into a building that would provide living accommodation for 9 people. As the site is within the Swadlincote urban area as defined by Policy H1 and SDT1 it is considered a sustainable location where there is a presumption in favour of sustainable development.

### Neighbouring amenity

No extensions are proposed as part of the application only internal alterations and some minor external alterations to include several new window openings, the bricking up of the existing shop frontage, to include 3 new windows and an entrance door on the front elevation and some minor alterations at the rear to improve the entrance and functionality of the building as a HMO. These changes are required in order for the property to provide 9 separate bedsits. The previous use of the rooms within the retail unit would likely have been used for office/retail space. The proposal introduces several new windows on the ground floor, in order to provide light for the habitable rooms. In terms of the use of the property as bedsits, it is not considered that this change to the building and introduction of new windows would result in a level of disturbance that would be unacceptable, with there being no neighbouring dwellings directly surrounding the property. It could also be argued that this proposed use would generate fewer

disturbances than that of a potential new retail use, and the comings and goings of both staff and customers. It is also noted that Environmental Health raised no objections subject to conditions and as such the proposed use is considered to comply with Policy SD1 and iii) of part F of Policy RTL1.

### Design

The property is clearly visible from the public realm, with no separation from the footway and clear views from the highway and roundabout. The property currently features a timber framed, heavily glazed shop frontage on the ground floor, and large sash style windows on the first floor. The proposal is to brick up the existing shop front and to install three new sash windows with stone cills and headers and a new entrance door, matching the style of the first floor windows and that of the neighbouring properties, such as the library located opposite the site. A condition would be attached on any consent granted to ensure that the proposed facing materials used match that of the existing building. It is considered that the proposed change of use would have limited harm on the character of the area and has no impact on the street scene as it would integrate well with the character of the neighbouring properties. As such it is considered that the proposal would not be detrimental to the character of the surrounding area and is of a high quality design that integrates well with the existing character of the building and therefore complies with Policies BNE1.

### Highway safety

There are no car parking spaces included within the red line of the application site, as shown on the location plan, the existing outward swinging double gates are to be replaced with a fence and pedestrian access gate. Comments have been raised as to the lack of parking provision and the impact that this would potentially have on the highway. The existing courtyard currently only provides very limited parking on site and it is considered that the proposed change of use would not result in an increase in the requirement for parking on site, with the current lawful retail use potentially generating significant traffic and parking from both customers and staff. It is noted that the County Highway Authority have raised no objections in regards to parking or highway safety and as such it is considered that the proposal complies with Policy INF2 and iii) of part F of Policy RTL1.

### Conclusion

Although technically the applicant has failed to fully demonstrate that the current use is no longer viable in line with the strict policy requirements and therefore would not be fully compliant with Policy RTL1, when considering the planning balance, the benefits of filling what is currently a neglected vacant unit and providing bedsit accommodation within a sustainable location as a result of being within the settlement boundary of Swadlincote, it would outweigh the negative impacts of the potential loss of a retail unit within the local centre and is therefore considered acceptable.

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**

**Approve** 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 Drawing No. 20039-P-001, 20039-P-102 Rev A and 20039-P-103; 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. Prior to their incorporation in to 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.

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

4. Prior to their incorporation into the development hereby approved details of the external joinery, 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 of the external joinery, including horizontal and vertical sections, precise construction and method of opening. The external joinery shall be constructed in accordance with the approved drawings.

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

5. Prior to the first use of the bedsits, details of secure cycle parking facilities for the occupants of, and visitors to, the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the occupation of the development hereby permitted and shall thereafter be retained for use at all times.

Reason: In the interests of ensuring secure cycle storage is available to all residents and visitors of the HMO.

6. Prior to the 'change of use' of the building, a scheme of noise mitigation for protecting occupants of the development from noise from the neighbouring public house's and industrial units shall be submitted to and approved in writing by the Local Planning Authority. The building shall be converted in accordance with the approved scheme and noise mitigation measures shall be completed before the first occupation of each respective bedsit and thereafter maintained. Subsequent replacement or insertion of windows and doors and any conversion of loft space by owner/occupiers of the bedsits shall be done in a manner to ensure the same level of acoustic protection as achieved by the noise mitigation measures approved under this condition.

Reason: To protect those living in the bedsits from traffic or other external noise sources, in accordance with local planning policy SD1.

7. Prior to their incorporation in to the building hereby approved, details of the proposed pedestrian gate and fence, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed using the approved details.

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

8. Prior to the first occupation of a bedsit, the vehicular crossover on Hartshorne Road is to be reinstated as a footway in accordance with Derbyshire County Council's specifications for works within the public highway.

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

9. During the period of construction there should be no clearance of vegetation by burning, or disposal of other materials by burning owing to impact on local air quality.

Reason: In the interests of protecting the amenity of the area

10. No solid fuel combustion appliance shall be permitted within the building of the development.

Reason: To support a carbon zero district as per Climate Change Act and South Derbyshire District Council's Supplementary Design Guide.

Informatives:

- a. The granting of this planning permission does not in any way indemnify against statutory nuisance action being taken should substantiated complaints within the remit of part III of the Environmental Protection Act 1990 be received. For further information please contact the Environmental Health Service.
- b. The development is in close proximity to the a club which, by its very nature, periodically emits noise that could have a adverse material impact on the future occupiers of the proposed development. BS8233 provides guidance on sound insulation and noise reduction for buildings including change of use. Please note for proposed dwellings containing windows to noise sensitive rooms, defined in table 4 of as BS8233:2014 (a room used for either resting, dining or sleeping) shall be double glazed to an acoustic rating of at least 33 Rw and provided with sufficient trickle ventilation to meet the requirements of Building Control Approved Document F (Ventilation) and should ensure overheating is covered as per Acoustics, Ventilation and Overheating Guidance released.  
<https://www.association-of-noise-consultants.co.uk/acoustics-ventilation-and-overheating-guidance-released/>
- c. Pursuant to Section 127 of the Highways Act 1980, no work may commence within the limits of the public highway to close any redundant accesses and to reinstate the footway without the formal written Agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 127 Agreements may be obtained by contacting Derbyshire County Council via email – [highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 127 Agreement.

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

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

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Outcome</b>	<b>Decision level</b>
<a href="#"><u>DMPA/2020/0494</u></a>	Derby Road, Melbourne	Melbourne	Allowed	Delegated



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## Appeal Decision

Site visit made on 1 February 2021

**by Alison Partington BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12<sup>th</sup> February 2021

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**Appeal Ref: APP/F1040/W/20/3261374**

**Land West of Derby Road, Melbourne, Derby, DE73 8DE**

- 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 Steven Moody against the decision of South Derbyshire District Council.
  - The application Ref DMPA/2020/0494, dated 13 May 2020, was refused by notice dated 21 August 2020.
  - The development proposed is the change of use from agricultural to equine use and creation of an access track.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the change of use from agricultural to equine use and creation of an access track at land west of Derby Road, Melbourne, Derby, DE73 8DE in accordance with the terms of the application, Ref DMPA/2020/0494, dated 13 May 2020, subject to the conditions set out in Annex A.

### Procedural Matter

2. The application was made in the name of Miss Olivia Foster (Fisher German LLP) whereas the appeal is made by Mr Steven Moody. It has been confirmed in writing that the former was in fact the agent acting on behalf of Mr Moody at the application stage and that in this respect they incorrectly completed the application form.

### Main Issue

3. The main issue in the appeal is the effect of the proposal on highway safety.

### Reasons

4. The appeal site is an agricultural field. Vehicular access to the field is by a grass track from Derby Road, a relatively busy road linking Melbourne to the A50 and to Derby. The access is located on the outside of a bend in the road. Due to this and the vegetation and boundary treatments on either side, visibility at the access is substandard.
5. It is proposed to use the field for grazing the appellant's own horses. No stabling or livery is proposed. The single owner and the lack of stabling reduces the necessity to visit the site but nonetheless, for good animal husbandry the proposed use could be expected to generate at least one visit to the site a day.
6. The site at present does not appear to be being used for agricultural or any other purpose and so generates very limited vehicular traffic to and from the site. Nevertheless, as agricultural land it could be used for the grazing of



animals such as cows or sheep. Given any such animals would not be in sight or sound of the farmer/owner, on the basis of good animal husbandry, it could be anticipated that using the land in this way would generate at least one visit a day to the site.

7. At times, whatever animal is grazing, it could be necessary to move the animals on or off the site or for vets to come and visit. The former would require the use of a larger vehicle, trailer or horse box. However, overall, in these respects, I consider the use of the land for equine rather than agricultural purposes would not generate significantly more vehicular movements.
8. Consequently, I consider that the proposed use of the field for equine rather than agricultural purposes would not result in a significant intensification in the use of the access track or the junction of it with Derby Road. An area of hardstanding within the field would also ensure vehicles could turn so it would be possible for them to enter and exit the site in forward gear.
9. In the light of this, although visibility at the junction is substandard, I consider the proposal would not be detrimental to highway safety. Accordingly, there would be no conflict with Policy INF2 of the South Derbyshire Local Plan Part 1 (adopted June 2016) which requires that developments do not have an undue detrimental impact on highway safety.

#### **Other Matters**

10. Whilst the site can be seen from a nearby road and footpath the use of the land for grazing horses would not be out of keeping in this rural setting. In addition, as I have concluded the use would not generate significantly more trips to the site than if it was used for grazing other animals, the proposal would not have an unacceptable impact on the living conditions of the nearby houses whose gardens can be seen from the access track. As the field is simply to be used for the grazing of horses, there is no need for power to be provided to the site, and the waste created would be no more significant than if sheep or cows used the land.

#### **Conclusion and Conditions**

11. For the reasons set out above, I conclude the appeal should be allowed.
12. In addition to the standard implementation condition, to provide certainty it is necessary to define the plans with which the scheme should accord. Taking into account my reasoning above, for highway safety reasons conditions are necessary to ensure that: any gate across the access is set a sufficient distance from the highway; an area of hardstanding is provided on the site so vehicles can turn; no stabling or livery services are provided on the site; and that the site is only used for horses owned by the appellant. However, given the limited vehicle movements the use will generate and the access can already be used for agricultural purposes I consider the condition suggested by the Council that the first 6m of the track should be provided with a solid surface is not necessary.
13. A condition to ensure the proposal does not impact on the public footpath that crosses the access track is necessary to ensure the public footpath is maintained for users. As the site lies in the National Forest and is visible from

the public realm, a condition landscaping is provided on the site is reasonable and necessary.

*Alison Partington*

INSPECTOR



## **Annex A**

### **Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Dwg No KJ3050/01 Rev B; and Visibility Splays and Location Plan Dwg No 126281-001.
- 3) Any gates across the access track shall be set back at least 12m into the site from the public highway and open inwards.
- 4) Prior to the site first being brought into use for the use hereby permitted, space shall have been laid out within the site in accordance with a scheme first submitted to, and approved in writing by, the local planning authority for the parking and turning of vehicles so that they may enter and leave the site in forward gear. That space shall thereafter be kept available at all times for those purposes.
- 5) There shall be no permanent stabling or structures placed within the site boundaries and no livery services shall be provided on the site.
- 6) The permission for equestrian use at the site shall be for the benefit and use of the appellant's family's horses only and for no other person.
- 7) There shall be no obstruction or alteration of alignment of the public footpath, Melbourne FP6, which runs across the access track. The proposed surface material shall be laid so as to finish level with the ground either side of the track.
- 8) Prior to the site first being brought into use for the use hereby permitted, a scheme of 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 planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the site being brought into use; and any plants which within a period of five years (ten years in the case of trees) from the completion of the planting 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.