

REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES

SECTION 1: Planning Applications

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.

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

Item **1.1**

Reg. No. **9/2016/0466/NU**

Applicant:
Mr John Casey
1a Sutton Road
Church Broughton
Derby
DE65 5DB

Agent:
Mr John Casey
1a Sutton Road
Church Broughton
Derby
DE65 5DB

Proposal: **THE ERECTION OF AN AMENITY BUILDING
(AMENDMENT TO INCREASE THE SIZE OF THE
BUILDING PERMITTED UNDER PERMISSION REF:
9/2010/1085) ON PLOT 1A BROUGHTON CARAVAN
PARK SUTTON ROAD CHURCH BROUGHTON DERBY**

Ward: **HILTON**

Valid Date: **08/06/2016**

Members will recall this application was deferred from the 6th September 2016 Committee in order for a Member site visit to be carried out. The report remains as it appeared on the agenda for that committee although minor corrections to the planning history section have been made.

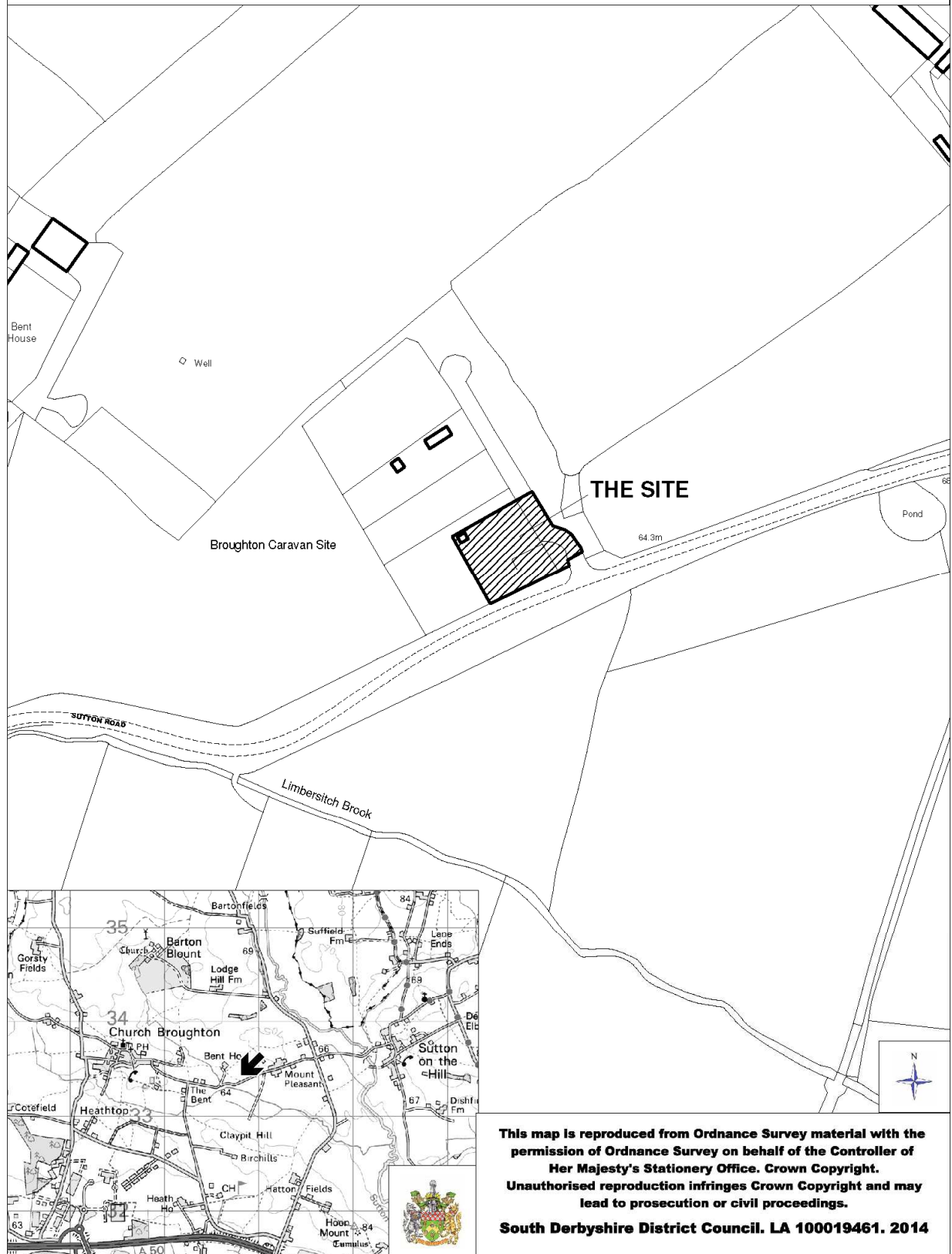
Reason for committee determination

The item is presented to Committee at the request of Councillor Plenderleith as local concern has been expressed about a particular issue.

Site Description

The site lies to the north of Sutton Road approximately 600m west of the hamlet of Mount Pleasant and just over 1km east of the village of Church Broughton. The site area is 0.09 Ha and forms part of the larger Broughton Caravan site accessed from Sutton Road. Church Broughton Footpath 8 runs to the west and Footpath 6 runs to the north of the site. The Sutton Road boundary has 2m high hedging and entrance gates. The site is hard surfaced and enclosed by 1.8m fencing with hedging behind. Plot 1A is the southernmost plot adjacent to the road boundary and the internal access road runs to the east.

9/2016/0466 - Plot 1A Broughton Caravan Park, Sutton Road, Church
Broughton, Derby DE65 5DB



Proposal

A larger amenity building than previously approved under permission 9/2014/0974 is proposed. The building would measure 11m by 8m with an eaves height of 2.7m and a ridge height of 5.5m. The previously approved building measured 8m by 4.5m by 2.8m to eaves and 4.1m to the ridge. The proposed location would be approximately 10m from the Sutton Road boundary.

Applicant's supporting information

None

Planning History

- 9/2015/0943 The creation of 3 additional pitches and the erection of an amenity building on plot 4 - Granted 13/5/16
- 9/2014/0974 The erection of an amenity block on plot 1A - Granted 23/12/2014
- 9/2012/0424 The retention of decking to plot one and proposed decking to plots 1a, 2, 3 & 4 and a timber shed to plots 1, 1a, 2, 3 & 4 - Granted 18/7/12
- 9/2010/1085 Retrospective application for the change of use of land to use as a residential caravan site for four gypsy families, each with two caravans, including laying of hardstandings, improvement of access and erection of amenity blocks - Refused 18/1/2011 but allowed at appeal 7/9/2011

The site approved at appeal under 9/2010/1085 also included an amenity block measuring approximately 6m x 4m.

Responses to Consultations

Church Broughton Parish Council considers that the previous proposal for an amenity block was considered an adequate size. The larger the block the more individuals the site would attract and move against the dominance planning policy for Travellers sites of August 2015, which states within rural or semi-rural settings these sites should not dominate the local community.

Responses to Publicity

Heather Wheeler MP considers the enlargement of the amenity block would increase the permanent built environment in this rural setting and it would be detrimental to the countryside.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), H22 (Sites for Gypsies and Travellers)

and for Travelling Showpeople), SD1 (Amenity and Environmental Quality), SD3 (Delivering Sustainable Water Supply, Drainage and Sewerage), BNE1 (Design Excellence), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport).

- 1998 Local Plan (saved policies): Environment Policy 1

Emerging Development Plan Policies

The relevant policies are:

- Draft Local Plan Part 2: BNE5 (Development in the Countryside)

National Guidance

- National Planning Policy Framework (NPPF) 7, 14, 17, 32, 58, 103, 109, 196, 197
- National Planning Policy Guidance (NPPG)
- Planning Policy for Traveller Sites (PPTS)
- Noise Policy Statement for England (NPSE)

Planning Considerations

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

- Principle of development
- Impact on character and visual amenity; and
- Impact on neighbouring amenity;

Planning Assessment

Principle of Development

The proposal seeks permission to provide a larger amenity block on the basis that the occupiers of the site have a particularly high number of children and the block approved would be an insufficient size to provide appropriate facilities. The proposal includes provision of a bathroom, separate toilet, utility room and larger living / dining area. The previous approval proposed a bathroom, shower room and amenity/day room. Whilst the site is located in the open countryside the development is clearly to serve the existing occupiers of the plot and on that basis needs to be in that location. The size and facilities within the block are considered to be proportionate to the occupiers and as such are considered acceptable. The principle of an amenity block on this plot was established through the original appeal decision and through the grant of planning permission in 2014. Whilst this proposal would increase the size still further the resulting building is still considered to be acceptable relative to the needs of the residents. As such, in principle, the proposal is considered to be acceptable.

Impact on character and visual amenity

Local policies and national guidance seek to ensure that development should respond to local character and reflect the identity of local surroundings; create safe and accessible environments where crime and disorder, and the fear of crime; would not undermine quality of life or community cohesion and be visually attractive. Local

Plan policy H22 requires the development to be acceptable in environmental terms and capable of sympathetic assimilation into its surroundings. The existing site is now established and its intrusion into the open landscape would not be unduly exacerbated by this proposal. Whilst the proposed amenity block would be substantial the facilities contained therein are considered to be proportionate to the proposals. Whilst there would be views of the site from Sutton Road they would be some distance and the proposed building would be set within the context of the existing site. The amenity building would be approximately 10m from the Sutton Road boundary and the existing static caravan would partially screen the building from the main entrance. Existing hedging bounds the land to the north-west and south-west and landscaping to the north-east. Existing screening is therefore considered appropriate mitigation. Hence the degree of harm arising is moderated by the nature of the site and existing screening.

Impact on neighbouring amenity

Whilst Mount Pleasant and some residents are close by the provision of a larger amenity building would not in itself lead to an increase in the number of travellers as it is for use by an existing family on site. The position of the amenity building would be such that the impact resulting from noise disturbance and so forth would not be readily apparent.

Balancing of planning considerations

Considerable weight is afforded to the fact that the building would be within an existing site that is adequately screened from the surrounding countryside and it is thus not considered to cause undue impact on neighbouring or visual amenity, nor cause pollution to the natural environment. Hence whilst there would be an increase in the building size it would not intrude further into the countryside, would be viewed in the context of the existing site and any modest harm would not be likely to significantly and demonstrably outweigh the benefits of the proposal.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the drawing labelled as 'Proposed Site Plan' at a scale of 1:200 and drawing No. AMJC02 submitted on the 2nd March 2016, 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.

3. The development shall be built using Hanson Wentworth facing bricks and Marley Rivendale roof tiles, unless prior to their incorporation into the development hereby approved, alternative details have been first submitted to and approved in writing by the Local Planning Authority.

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

Informatives:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions and meetings. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

Item **1.2**

Reg. No. **9/2016/0470/NU**

Applicant:
Mr John Casey
Plot 2
Broughton Caravan Park
Sutton Road
Church Broughton
Derby
DE65 5DB

Agent:
Mr John Casey
Plot 2
Broughton Caravan Park
Sutton Road
Church Broughton
Derby
DE65 5DB

Proposal: **THE SUB-DIVISION INTO 2 GYPSY PITCHES AND THE
ERECTION OF AMENITY BUILDINGS ON PLOT 2
BROUGHTON CARAVAN PARK SUTTON ROAD
CHURCH BROUGHTON DERBY**

Ward: **HILTON**

Valid Date: **08/06/2016**

Members will recall this application was deferred from the 6th September 2016 Committee in order for a Member site visit to take place. The report remains as it appeared on the agenda for that committee although minor corrections to the planning history section have been made.

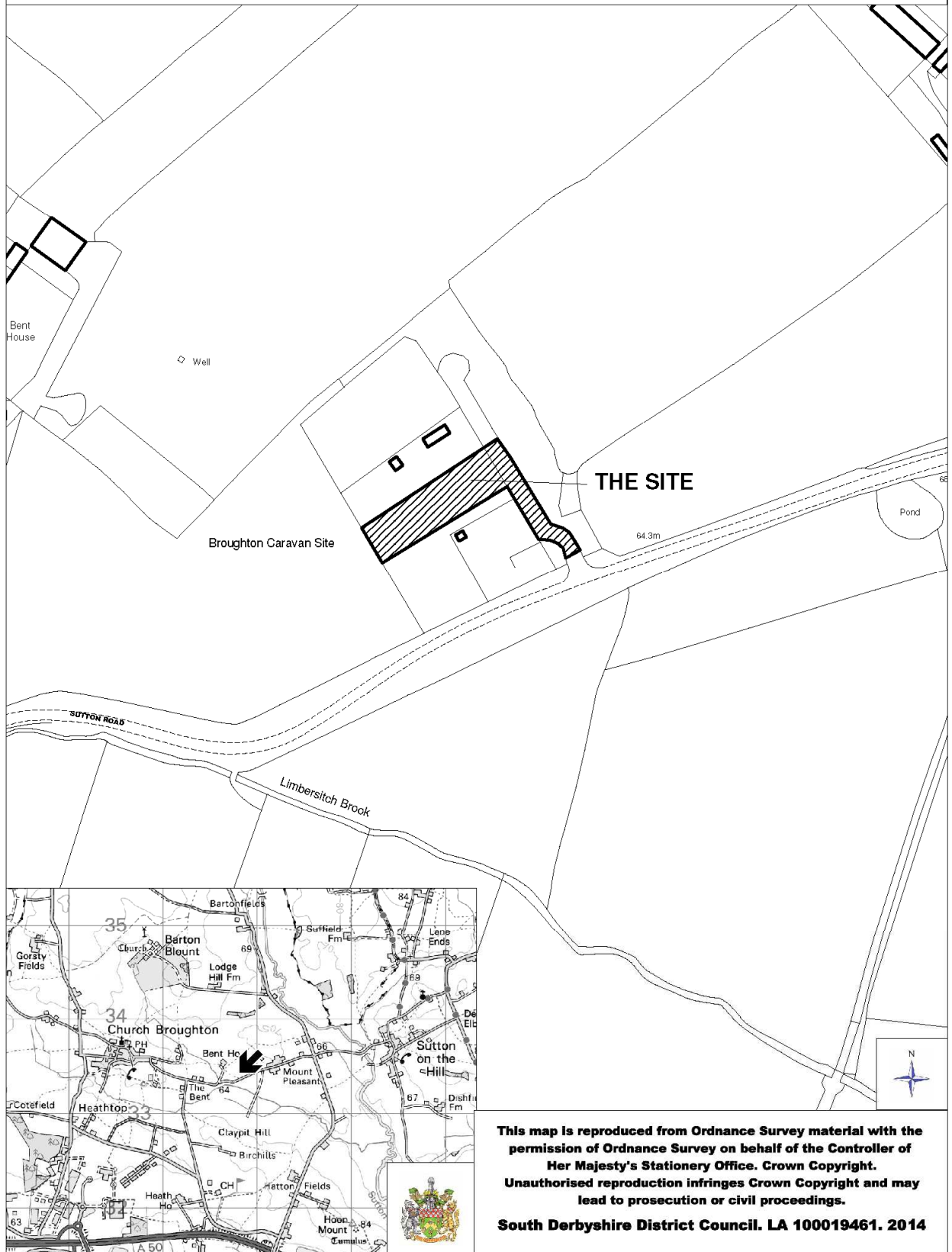
Reason for committee determination

The item is presented to Committee at the request of Councillor Plenderleith as local concern has been expressed about a particular issue.

Site Description

The site lies to the north of Sutton Road approximately 600m west of the hamlet of Mount Pleasant and just over 1km east of the village of Church Broughton. The site area is 0.11Ha and forms part of the larger Broughton Caravan site accessed from Sutton Road. Church Broughton Footpath 8 runs to the west and Footpath 6 runs to the north of the site. The Sutton Road boundary has 2m high hedging and entrance gates. The site is hard surfaced and enclosed by 1.8m fencing with hedging behind. Plot 2 is 33m from the Sutton Road boundary to the south east and the internal access road runs to the east.

9/2016/0470 - Plot 2 Broughton Caravan Park, Sutton Road, Church Broughton, Derby DE65 5DB



Proposal

Planning permission is sought to split plot 2 into two plots with a static caravan, touring caravan and amenity block on each plot. The proposed amenity blocks would each measure 11m x 8m with an eaves height of 2.7m and a ridge height of 5.5m. This is the same size building as proposed for Plot 1A the subject of a separate application. The additional plot is required to accommodate the applicant's sons who have young families of their own.

Applicant's supporting information

None

Planning History

9/2015/0943 - The creation of 3 additional pitches and the erection of an amenity building on plot 4, Granted 13/5/16

9/2014/0974 - The erection of an amenity block on plot 1A, Granted 23/12/2014

9/2012/0424 - Retrospective application for the retention of decking to plot one. application for proposed decking to plots 1a, 2, 3 & 4 and a timber shed to plots 1, 1a, 2, 3 & 4, Granted 18/7/12

9/2010/1085 - A retrospective application for the change of use of land to use as a residential caravan site for five gypsy families, each with two caravans, including laying of hardstandings, improvement of access and erection of amenity blocks, Refused 18/1/2011 – Allowed at appeal 7/9/2011

(Site approved at appeal under 9/2010/1085 which also included an amenity block measuring approximately 6m x 4m).

Responses to Consultations

The County Highways Authority has no objections subject to a condition requiring 2 spaces per plot to be provided prior to occupation.

Church Broughton Parish Council has grave concerns over the site of the site becoming too big within their community. Increasing the number of travellers would move against the dominance planning policy for Travellers sites of August 2015, which states within rural or semi-rural settings these sites should not dominate the local community of Mount Pleasant.

Responses to Publicity

Heather Wheeler MP considers the increase in the number of caravans on site by two and a further amenity block would exacerbate the domination on the nearby of hamlet of Mount Pleasant and may outnumber the permanent dwellings in the hamlet. The increase and enlargement of the amenity blocks would increase the permanent built environment in this rural setting and it would be detrimental to the countryside.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), H22 (Sites for Gypsies and Travellers and for Travelling Showpeople), SD1 (Amenity and Environmental Quality), SD3 (Delivering Sustainable Water Supply, Drainage and Sewerage), BNE1 (Design Excellence), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport)
- 1998 Local Plan (saved policies): Environment Policy 1

Emerging Development Plan Policies

The relevant policies are:

- Draft Local Plan Part 2: BNE5

National Guidance

- National Planning Policy Framework (NPPF) 7, 14, 17, 32, 103, 109, 196, 197
- National Planning Policy Guidance (NPPG)
- Planning Policy for Traveller Sites (PPTS) August 2015
- Noise Policy Statement for England (NPSE) 2010

Planning Considerations

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

- The weight to be given to national and local planning policy;
- The need for gypsy pitch provision;
- Access to services and impact on local infrastructure;
- Highway safety;
- Impact on neighbouring amenity;
- Impact on character and visual amenity; and
- Drainage matters.

Planning Assessment

Weight given to national and local planning policy

The Development Plan forms the primary policy consideration for this application, although the NPPF, Planning Policy for Travellers Site (PPTS) are material planning considerations carrying varying degrees of weight. 2016 Local Plan policy H22 relates to sites for Gypsies and Travellers requires a target to be set for new pitches and/or plots and the criteria based assessment on the impact on the local environment, including biodiversity, heritage assets or conservation, the surrounding landscape and land uses. It requires that sites should have: safe and convenient vehicular and pedestrian access without any adverse impacts on the highway network, movements of vehicles that would not cause undue disturbance, adequate space for parking and turning, reasonable accessibility to local services, no undue risk of flooding, suitable landscaping and boundary enclosures and a safe and

acceptable living environment with sufficient site services. Policy H22 is not sensitive to settlement confines, recognising that such proposals often sit outside of settlements and/or adjoining them. On this established site the above criteria are met and the additional of a further plot is considered acceptable in principle. Notwithstanding the above, consideration against EV1 is necessary given its intention to protect and enhance the character of the countryside, and this is discussed below.

The need for gypsy pitch provision

An updated Gypsy and Travellers Accommodation Assessment (GTAA), published in June 2015, sets out a need for 14 pitches over 5 years from 1 April 2014, and subsequent need for 7, 8 and 9 pitches for each 5-year period thereafter respectively. Prior to the adoption of a Gypsy and Traveller Site Allocations DPD, this need must be met by individual applications in the interim, such as this one, at a rate of 2 to 3 pitches per annum. Since April 2014 permission has been granted for 7 pitches.

The Council met and exceeded its identified needs under the 2008 GTAA, however at present there is an undersupply of pitches compared with the need identified in the updated GTAA. Furthermore, the 5-year supply as required by the PPTS has not yet been met and as such significant weight must be afforded to the proposal.

Access to services and impact on local infrastructure

The PPTS advocates very strictly limiting new traveller sites in open countryside that is away from existing settlements. This site is somewhat away from existing settlements and not within identified settlement confines but is an established site and the proposals seek to consolidate their provision in this established location. The availability of transport modes, promotion of community cohesion, and ease of access to health services, shops and schools are all important in assessing the sustainability of a site. Development Plan policies reflect this point. In this case services and facilities are available within reasonable distance in Church Broughton and therefore the site is considered to be suitably located with respect to services and facilities for occupants of the site.

As to the impact on existing education, healthcare provision and community facilities; the development is not of a scale where contributions would normally be sought particularly given that the occupants are transient in nature such that existing provision is considered to suitably absorb any varying pressures arising. In any event, policy would not normally require contributions for such a small number of additional residences.

Highway and pedestrian safety

In terms of highway safety it is noted that Sutton Road is a rural lane but notwithstanding this the proposal still needs to be appropriate to this location. The scheme would not result in an overall increase in the comings and goings as the additional plot is for an existing family member. In order to come to a view on highway safety the opinion of the County Highway Authority has been sought. In its reply it has stated that no objection is raised subject to the provision of parking for 2 spaces per plot. In policy terms it is noted that Local Plan INF2 states that planning

permission will be granted for development where appropriate provision is made for safe and convenient access to and within the development for pedestrians, cyclists, public transport users and the private car. NPPF paragraph 32 states, amongst other things, that safe and suitable access to the site shall be achieved for all people; and development should only be prevented or refused on transport grounds where the impacts of development are severe. Examining the proposal it is clear that whilst the proposal would increase comings and goings in this location, it is considered that the proposal would not be contrary to the advice contained on Local Transport Policy INF2 as well as paragraph 32 of the NPPF and therefore the proposal is considered to be acceptable in terms of highway safety.

Impact on neighbouring amenity

The PPTS notes that sites in rural areas should not dominate the nearest settled community. Whilst Mount Pleasant is close by and is a relatively modest hamlet, the provision of one additional pitch, even taking into account the additional pitches recently granted on the wider site, would not lead to such an intensification in the number of pitches that the overall site would dominate the existing hamlet. Whilst there may come a point where an increase in the number of pitches proposed on the site in the future which could lead to a different conclusion on this matter, that would have to be determined on the basis of the facts at that time. It is considered therefore that this development would respect the scale of, and would not dominate, the hamlet of Mount Pleasant. Whilst the proposal would extend the gypsy community in this location, amenity concerns must be substantiated if they are to form a reason for refusal. The position of the additional caravans and amenity buildings would be such that the impact resulting from noise disturbance and so forth would not be readily apparent.

Impact on character and visual amenity

Local policies and national guidance seek to ensure that development should respond to local character and reflect the identity of local surroundings; create safe and accessible environments where crime and disorder, and the fear of crime; would not undermine quality of life or community cohesion and be visually attractive. Local Plan policy requires the development to be acceptable in environmental terms and capable of sympathetic assimilation into its surroundings. Specifically 2016 Local Plan Policy BNE1 requires development to, amongst other things, be visually attractive and respect important landscapes and Saved Environmental Policy EV1 of the 1998 Local Plan requires development to be unavoidable in the countryside and if permitted it should create as little impact as practicable on the countryside. The existing site is now established and its intrusion into the open landscape would not be increased by this proposal. Whilst the amenity blocks are substantial the facilities contained therein are considered to be proportionate to the proposals. Whilst there would be views of the site from Sutton Road Plot 2 is some 33m distance from this boundary and set within the context of the existing site. However, as an amenity building is proposed adjacent to the south western boundary adjacent to an open field where only 1.8m high screening exists then further mitigation is required. The provision of additional screening on the south western boundary can be secured by further planting which can be controlled by condition. Hence the degree of harm arising is moderated by the nature of the site and proposed mitigation.

Drainage matters

The applicant proposes to direct foul water to an existing septic tank but the detail of that installation has not been submitted at this stage as part of this application, therefore it is unclear whether it has sufficient capacity. As such it is considered that conditions should be imposed to appropriately address this matter.

As for surface water no information has been submitted, but again conditions could alleviate these concerns to allow determination of the proposal at this time.

Balancing of planning considerations

As outlined, the proposal attracts significant weight in favour by way of the lack of a 5-year supply of gypsy and traveller pitches – a supply which would be boosted under these proposals. Added to this is further weight afforded by the ability for the site to be developed, with conditions where necessary, without causing undue impact on neighbouring or visual amenity, nor cause pollution to the natural environment. Hence whilst there would be an increase in the number of plots in this particular location, and the caravans and amenity building would intrude further into the countryside, these would be in the context of the existing site and any modest harm would not be likely to significantly and demonstrably outweigh the benefits of the proposal.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with drawing numbers: NSC1122 and NSJ1123, 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.
3. This permission does not authorise the use of the land as a caravan site by any persons other than Gypsies and Travellers as defined in Annex 1: Glossary of the Government's Planning Policy for Traveller Sites (August 2015), or any subsequent policy or guidance which replaces that definition.
Reason: To safeguard the site for occupation by Gypsies and Travellers.
4. No commercial activity or outside storage related to any trade or business shall take place on the site.

Reason: To protect the visual and rural amenities of the locality.

5. No more than one commercial vehicle per plot shall be kept on the land for use by the occupiers of the caravans hereby permitted, and they shall not exceed 3.5 tonnes in unladen weight.

Reason: To protect the visual and rural amenities of the locality.

6. There shall be no more than 2 pitches on the site and on each of the 2 pitches hereby approved no more than 2 caravans shall be stationed at any time, of which only 1 caravan shall be a static caravan.

Reason: For the avoidance of doubt and to ensure occupiers of the site are afforded sufficient room for amenity space.

7. The only caravans permitted to be stationed on the site shall be those which comply with the definition as set out in the Caravan Sites Act 1960 (as amended).

Reason: To safeguard the visual amenity of the countryside.

8. The hardsurfacing to the site shall be constructed using porous materials.

Reason: In the interests of flood prevent and pollution control.

9. Notwithstanding the approved plans, no development shall take place until further details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. This scheme shall include evidence of infiltration testing and details that proposed surface and foul water drainage means are of suitable capacity to accommodate flows, as well as demonstrating the site levels do not compromise the efficient operation of drainage runs. The scheme shall also provide a maintenance plan for the foul water infrastructure to guarantee it is in good working order throughout the period of use. The scheme shall be carried out in strict conformity with the approved details before the development is first occupied and the foul water infrastructure shall be managed in accordance with the approved maintenance plan thereafter.

Reason: In the interests of flood protecting and pollution control.

10. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 2015, prior to the installation of any walls, fences or gates plans indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

11. Notwithstanding the approved plans, prior to first occupation details of tree planting adjacent to the south east boundary shall be submitted to and approved in writing by the Local Planning Authority. Such details shall also include measures for the protection of existing trees (both their roots and canopies) during the course of development. All planting comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the site or the completion of the development, whichever is the sooner; and any trees which within a period of five years from the completion of the development die, are removed or

become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of visual amenity.

12. Prior to the first occupation of any of the plots space shall be provided within the site curtilage for the parking and turning of two vehicles per plot, laid out and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

13. The construction of the amenity building hereby permitted shall not commence until samples of the proposed materials to be used in its external construction have been submitted to, and approved in writing by, the Local Planning Authority and the development shall only be undertaken in accordance with the materials so approved and shall be retained as such thereafter.

Reason: To ensure a satisfactory standard of external appearance

Informatives:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions and meetings. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

Having regard to the provisions set out under the Caravan Sites and Control of Development Act 1960, an amendment to the existing Caravan Site Licence and supporting licence Conditions will be required. Please contact Environmental Services, South Derbyshire District Council, Civic Offices, Swadlincote, Derbyshire - tele: 01283 595950.

The amenity buildings hereby permitted are consented to serve the plots 2 and 2A. It is anticipated that no other amenity block will be necessary.

Item **1.3**

Reg. No. **9/2016/0380/FX**

Applicant:
Mr Andrew Turner
Castle Farm
Castle Street
Melbourne
Derby
DE73 8DY

Agent:
Mr David Swann
Montague Architects
9 Vernon Street
Derby
DE1 1FR

Proposal: **CONVERSION OF PUBLIC HOUSE AND RESTAURANT
INTO TWO DWELLINGS AND THE ERECTION OF FIVE
DWELLINGS ON ASSOCIATED LAND AT THE
MELBOURNE ARMS 92 ASHBY ROAD MELBOURNE
DERBY**

Ward: **MELBOURNE**

Valid Date: **12/05/2016**

This application is to be considered jointly with application 9/2016/0397 below.

Reason for committee determination

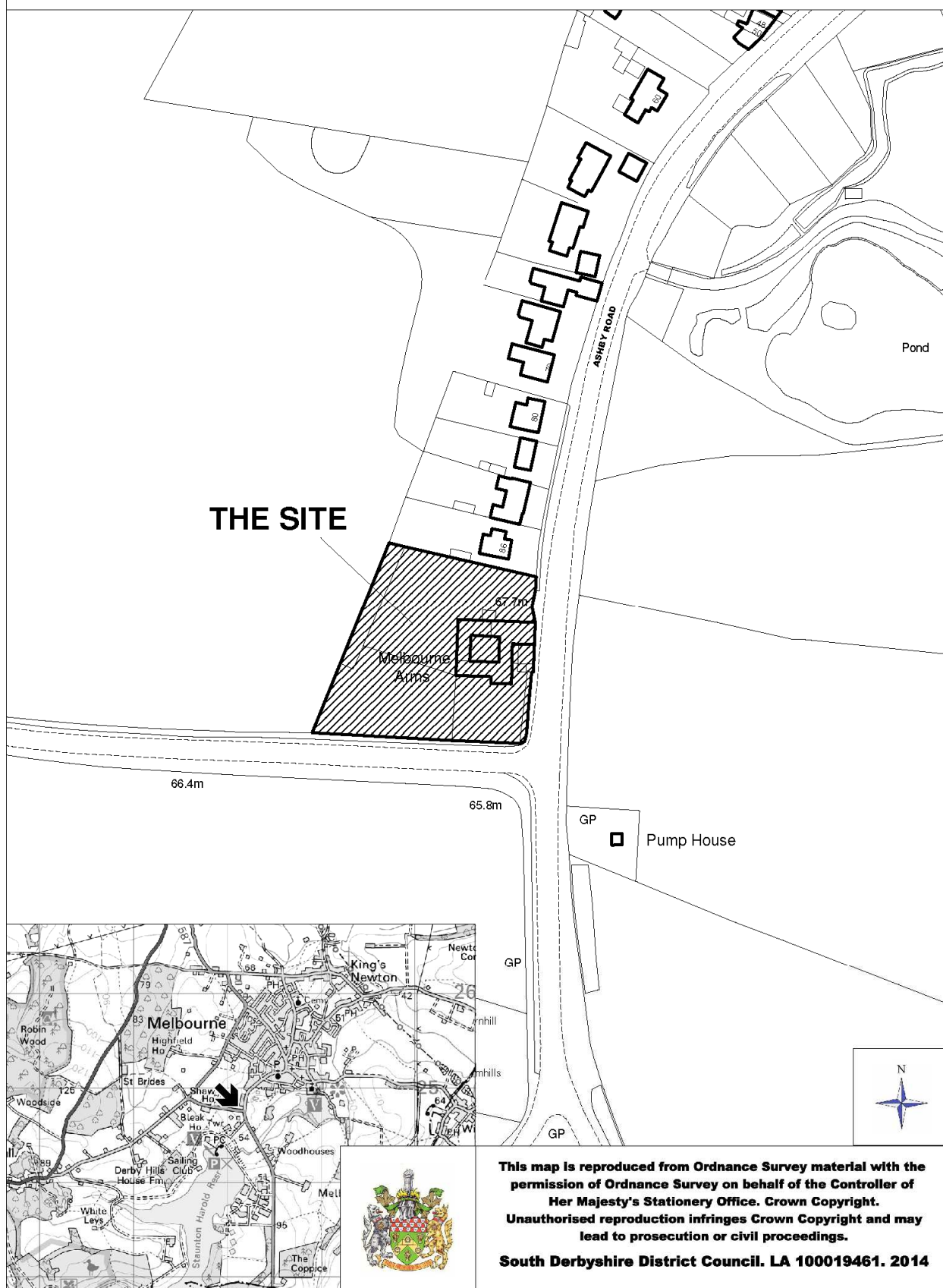
The item is presented to Committee as part of the site lies outside the Melbourne settlement confine as defined in the 1998 Local Plan and the previous application for the redevelopment of the site was determined by this Committee.

Site Description

The application site extends to 0.38 ha, and is currently occupied by the vacant and derelict Melbourne Arms Public House. The main pub building remains on the site, with the more contemporary restaurant and other extensions now partly demolished. The Melbourne Arms itself was previously a Grade II listed building until its delisting in 2013, at the same time the Melbourne Conservation Area was extended to include the building, acknowledging its importance on the approach to Melbourne along Ashby Road.

The site is located to the south of the historic core and centre of Melbourne, at the junction of Ashby Road and Robinsons Hill. The eastern and southern boundaries of the site are characterised by an existing hedgerow which follows the boundary of the site from the west until it meets the pub buildings which front Ashby Road. The northern boundary if the site is shared with No 86 Ashby Road, which is currently

**9/2016/0380 & 0397 - The Melbourne Arms, 92 Ashby Road, Melbourne, Derby
DE73 8ES**



undergoing an extension along this boundary. A wooded area forms the western boundary of the site with open fields beyond.

The northern part of the site includes a tarmac surfaced car park, on the same level as the existing building on the site, with a small drop in levels to the south of the site to the former beer garden.

The buildings on the site and tarmac car park are located within the Melbourne settlement boundary, whilst the grassed former beer garden is located outside the settlement boundary as identified within the 1998 Local Plan. The emerging Local Plan Part 2 includes the whole of the application site within the settlement boundary for Melbourne. The site also lies wholly within the Melbourne Conservation Area, and the National Forest.

Proposal

The application proposes the redevelopment of the site and conversion of the existing 18th Century Melbourne Arms to provide a total of 7 new dwellings. The proposals include the demolition of the modern extensions to the main building, and their replacement with new extensions of a reduced footprint to facilitate the conversion of the building into two dwellings.

Three detached dwellings are proposed to the west of the site, behind the existing buildings on the former tarmac car park. With two more dwellings proposed along the southern part of the site to Robinsons Hill.

Vehicular access to the site is retained in its original position close to the boundary with 86 Ashby Road. The access then extends to an internal private drive from which each of the dwellings are accessed. Parking is provided for within and to the fore of the proposed garaging, with 24 spaces provided across the site.

The scheme of conversion proposes relatively modest extensions to the main buildings of a more traditional style and form than the part demolished additions which take the form of a two storey rear extension, and part two storey part single storey side extension which includes garaging for one of the units.

The three detached dwellings are proposed in a traditional style, with small variations to the design of each of the dwellings. These have the appearance of two storey dwellings from the front with rooms in the roof and rear dormer windows. The two dwellings proposed along Robinsons Hill are proposed in the form of a traditional farmhouse and attached ancillary barn complex.

Throughout the site the scheme has been developed taking into account the importance of the main Melbourne Arms building, and the importance of its prominence in the street scene and the Conservation Area. This has included the provision of lower scale buildings close to the south eastern corner of the site and the maintenance of an area of open space to this corner with all areas of domestic curtilage screened by walling and located centrally to the site which will aid in maintaining the character of the site and the character of the Conservation Area.

Applicant's supporting information

The Design and Access Statement sets out the background to the proposals, a description of the site context, an assessment of the relevant planning policy for the development, an assessment is undertaken of the proposed massing, scale, layout and design of the proposed development. The statement highlights the importance of the former Grade II listed Melbourne Arms, and its position within the extended conservation area.

A Bat and Bird Survey has been undertaken of the existing buildings within the site and included a daytime survey and evening emergence survey. The surveys concluded that no birds or bats were present within the buildings and no evidence of bats using the buildings were recorded during the emergence surveys. Two 'bat passes' were recorded during the surveys and these were associated with the existing hedge to the west of the site.

Planning History

9/1993/0004 (0005) Planning permission and listed building consent for the erection of single storey extensions to provide a restaurant and porch on the southern flank and a reception area and cloakroom on the northern flank of the Public House.

9/2001/0040 (1119) Planning permission and listed building consent for the installation of a pitched roof and alterations.

9/2003/1509 (1497) Planning permission and listed building consent for the erection of a two storey extension to provide 11 bedrooms- two storey 11 bedroom block extension.

9/2007/1138 (1139) Planning permission and listed building consent for the erection of an extension.

9/2009/0083 The renewal of 9/2003/1509 for the erection of a two storey 11 bedroom block extension

9/2014/0061 The conversion of former public house and restaurant to a single dwelling and the erection of four dwellings.

It is noteworthy that the Melbourne Arms was de-listed by English Heritage in 2013, as previous alterations to the interior of the building had removed nearly all of the historic interest of the building. Concurrently this area of Ashby Road was included within an extended Melbourne Conservation Area.

Responses to Consultations

Derbyshire County Council (Archaeology) comments that the historic significance of the building lies principally in its external elevations and the contribution that they make to the significance of the Melbourne Conservation Area. Due to the age of the site being of late 18th Century origin there is little potential for archaeological remains pre-dating the buildings original construction.

The County Highways Authority originally commented on the need for additional car parking within the site. The layout of the site has been amended to provide a total of 26 spaces within the site, which is considered to be an appropriate level of car parking for this scheme of 7 dwellings.

The Contaminated Land Officer has no objections to the proposal.

The Pollution Control Officer has no objections to the proposals in principle subject to conditions relating to controlling noise and air quality during the construction phase and a noise mitigation scheme for the proposed dwellings.

Derbyshire County Council Flood Risk has no formal comments on the proposals but provide details of their standing advice.

Derbyshire Wildlife Trust welcomes the intention to retain the existing hedgerows and trees and the proposals for native hedgerows and tree planting within the site. The assessment undertaken is considered to be appropriate in order to confirm that the development would not impact on nesting birds or roosting bats. However, due to the use of the adjacent hedgerow by foraging bats a condition relating to the provision of a sensitive lighting scheme is recommended, in addition to a condition restricting any works that may impact on nesting birds to be undertaken outside the bird nesting season in considered appropriate.

Derbyshire County Council Planning Policy having noted the written ministerial statement of 28 November 2014 (upheld by the Court of Appeal on 13 May 2016) that contributions should not be sought from developments of 10 units or less, and as such will only seek contributions from developments of 11 dwellings or more. Therefore the County Council has no comments to make on this application with regards to strategic infrastructure and services.

Severn Trent Water has no objection to the proposed development subject to the imposition of a suitably worded drainage condition.

Responses to Publicity

Melbourne Civic Society opposed the application as originally submitted, and have asked that their original comments remain in force:

1. The layout result in two houses facing Robinsons Hill which will the residential paraphernalia will impact on the important entrance to Melbourne.
2. The block of buildings fronting Robinsons Hill are too tall, with too many rooflights.
3. The revised simplified designs of the windows in the converted building will detract from the appearance of the building.
4. A condition should be imposed relating to boundary walls.
5. The addition of double garages to the north and south of the building are not sympathetic and reduce open views through the site.
6. The variation in design of the new builds is encouraging but they appear to have been 'scaled up' (higher and wider than before). This reduces the status of the main building.

7. The loss of stonework on the new builds is a backwards step as this supports local distinctiveness as is evident on recent new houses and the existing main building

The amendments to the scheme are considered to make slight improvements, the Civic Society request that the area of open space to the corner of the site is designated as Local Green Space. The concern is that the proposal is for an overdevelopment of the site, with no support for more than 5 houses on the site. The current proposals do not respect the setting and architecture of the former Georgian Public House which has been mistreated by the developer in the recent demolition process. The Civic Society consider that the application should be refused and that the site should be developed in accordance with the 2014 scheme.

Melbourne Parish Council has no objections to the proposals.

Councillor Harrison has commented that Schools, GP's Surgery and Outdoor recreation, sports projects and MARS are in need of Section 106 funding.

Two objection letters were received responding to the original scheme, the following concerns/points were raised:

- a) The current scheme seeks to undo many of the positive aspects of the previously application;
- b) To Robinsons Hill the character was domestic and single storey;
- c) Removal of rooflights to the Robinsons Hill elevation;
- d) Excluding land on the corner from any domestic curtilage;
- e) Retention of the design of external windows;
- f) Reinstatement of chimneystack to the rear wing now not included, and the replacement is too elaborate;
- g) Complete change to the fenestration detailing;
- h) The addition of flat roof dormers and elaborate eaves and verge detail are 'out of tune' with the simple local vernacular;
- i) The brick wall detail will be very important;
- j) The whole of the retained masonry is to be rendered, which is inappropriate and needs further investigation.
- k) The house facing Robinsons Hill has a catslide roof as the back so the front roof appears less high and of less traditional proportions. The proposal now appears enormous.
- l) The new houses are considered to have excessive gable spans.
- m) Concern at the increase in the number of dwellings, from 5 to 7 and the reduction in dedicated parking areas. The site is located on a busy corner where overflow parking on to neighbouring roads could affect safety at the junction of Ashby Road and Robinsons Hill. If permission is granted Highways are urged to consider parking restrictions on these sections of highway.

At the time of writing this report a revised response had been received from the Melbourne Civic Society which is reported above. No additional responses have been received.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), 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), INF6 (Community Facilities), INF8 (The National Forest) and INF9 (Open Space, Sport and Recreation).
- 1998 Local Plan (saved policies): H5 (Village Development), EV1 (Development in the Countryside), EV8 (Open Spaces in Villages and Settlements), EV9 (Protection of Trees and Woodland), EV11 (Sites and Features of Natural History Interest), EV12 (Conservation Areas), EV13 (Listed or Other Buildings of architectural or Historic Importance), EV14 (Archaeological and Heritage Features), EV15 (Historic Parks and Gardens).

Emerging Development Plan Policies

- Draft Local Plan Part 2: SDT1 (Settlement Boundaries and Development), and BNE11 (Heritage)

National Guidance

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

Local Guidance

- Melbourne Conservation Area Character Statement 2011
- Housing Design & Layout SPG 2004
- Better Design for South Derbyshire 2010

Planning Considerations

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

- The principle of the development;
- Heritage and design considerations; and
- Highway safety and transport.

Planning Assessment

The principle of the development

As members will be aware planning applications must be determined in accordance with the development plan unless there are material considerations that indicate otherwise.

The application site lies partly within and partly outside the boundary for Melbourne as defined within the 1998 Local Plan which runs along the southern elevation of the existing pub building. However, the site is proposed for inclusion within the revised settlement boundary proposed within the Local Plan Part 2. The site is proposed for inclusion within the settlement boundary following the granting of planning permission for the redevelopment of the site in 2014 (9/2014/0061) for the conversion of the Melbourne Arms in to one dwelling and the erection of 4 dwellings within the remainder of the site. This permission is a significant material consideration as this approved scheme could be implemented until October 2017.

Policy H1 of the Local Plan Part 1(LP1) identifies Melbourne as a 'Key Service Village' and as such within the settlement boundaries new housing development is supported in principle. In granting the previous scheme for the site it was considered that as the site is enclosed by classified roads on two sides, is previously developed land, and has been progressively built up with paraphernalia to the extent that it would difficult to argue that the site was integral to the outlying countryside beyond.

In principle therefore following the previous permission for the redevelopment of the site and the proposed inclusion of the whole site within the settlement boundary for Melbourne within the Local Plan Part 2, the conversion of the former pub building in to residential units and the redevelopment of the car park and garden for residential purposes is considered to be acceptable.

Heritage and design considerations

The application site is located within and at the southern extent of the Melbourne Conservation Area, which extends from the site to the north along Ashby Road and to the east across field towards Melbourne Hall. The Council has a duty under the Act to have special regard to this, and carefully consider any new development that could affect or harm the setting and significance of the area.

In addition to the requirements under the Act, Policy EV12 does not permit development which would have an adverse effect on the character of conservation areas. Policy BNE2 of the LP1 expects new developments to protect, conserve and enhance heritage assets' settings. These policies coupled with Section 12 of the NPPF form the policy basis for this heritage assessment.

The former Melbourne Arms building is a prominent landmark within this approach to Melbourne from Ashby and was a purpose built pub constructed in 1791. As noted above the building was delisted in 2013 following its re-assessment, which determined that very little of the historic core of the building had survived the 20th century remodelling to create an open plan layout for the pub. It is therefore considered that the historic significance of the building lies principally in its external elevations and the contribution that the building makes to the significance of the Melbourne Conservation Area. Therefore the demolition of the modern additions to the building, already partly demolished, is considered to be acceptable and would not harm the setting of the conservation area and would even enhance it.

The granting of the 2014 planning permission for the redevelopment of the site set a certain precedent for the development of the site insofar as the approved scheme was deemed to be an appropriate form of development for the site. So whilst the impact of the current scheme on the character and appearance of the Melbourne

Conservation Area needs to be assessed on its merits, the fact that there is an extant permission for the site must be given very significant weight. Taking this into account and from an understanding of the need to ensure that the setting and prominence of the principal building on the site needs to be protected and enhanced, the current scheme has been amended to reflect this.

In acknowledging the importance of the approach along Ashby Road, the extensions proposed to the rear and side of the former Melbourne Arms have been simplified in their form and now appear as subservient additions to the building and allow the dominance and prominence of the main building to remain, which ensures that the building retains its importance within the conservation area.

In addition, the area previously occupied by the pub garden particularly the south eastern corner of the site remains undeveloped and unallocated to a specific domestic property as part of this application i.e. not part of any domestic curtilage, in order that this area remains clear from domestic paraphernalia and preserves the openness of the approach to the Melbourne Arms and the conservation area. The existing hedgerows are to be retained as the boundary of the site with Ashby Road and Robinsons Hill. The boundaries to this open undeveloped area are proposed to be bound by brick/stone walling to define the domestic boundaries and screen any domestic activity so as to reduce the impact of the conversion on the setting of the conservation area.

The previous approval established the acceptability of providing built development along the Robinsons Hill site frontage, and the current proposals follow the design ethos of the approved scheme insofar as a farmhouse style dwelling is proposed with an attached subservient building with the appearance of a barn when viewed from Robinsons Hill. The scheme in this area has been altered since its first submission in order to remove the domestic curtilage to one of the dwellings from the prominent corner of the site, and the Robinsons Hill elevation, and reduce the number of openings to the Robinsons Hill elevation. The domestic curtilage is proposed within the courtyard which allows it to be screened from the prominent positions and views of the site. The development of this area and the scale, and style of the proposed built form along Robinsons Hill and the stepping down in scale of the buildings towards the currently open corner results in a form of development which preserves the character of the conservation area

The three dwellings proposed to the western part of the site are sited in a similar layout and location to the previously approved scheme would provide three individually designed dwellings which would avoid the currently approved uncharacteristic repetition of dwelling style within the approved scheme. The details of these dwellings including the materials, and the detailed design features such as the entrance porches and the eaves and verge details would require careful consideration to ensure the scheme succeeds and so conditions to cover these matters are recommended.

In terms of the scheme for conversion the windows to the frontage of the Melbourne Arms are to be repaired if possible, or replaced on a like-for-like basis which will aid in ensuring the works to the building would preserve the character or appearance of the conservation area. Following an inspection of the removed render from the gable wall of the Melbourne Arms, it appears that the stonework exposed was not dressed or coursed, as it would have been if it been intended to be a facing element of the

building and as such the re-rendering in a smooth lime-based render (as existing) is considered to be acceptable.

Overall the development would bring about an enhancement to the character and appearance of this prominent part of the conservation area,

Highway safety and transport

Vehicular access to the site remains in the same position as the existing access to the public house car park, and taking into account the lawful use of the site as a public house, and the fact that a single point of access is proposed. There are not considered to be any significant matters of highway capacity or safety arising as a result of the proposed development.

Generally by virtue of the site location close to the services within Melbourne the site is considered to be a sustainable and accessible location, with services, public transport and education facilities mostly within walking distance. In terms of parking provision, with the exception of two dwellings which are proposed with two car parking spaces each of the dwellings are proposed with a minimum of 4 parking spaces, which will reduce the likelihood of vehicles parking on along Ashby Road or Robinsons Hill. Given the above, and lack of objection from the County Highway Authority, the proposal is considered to accord with policy INF2 and provisions of the NPPF.

Other matters;

Residential amenity: The only adjoining neighbouring property is No 86 Ashby Road, which is currently undergoing substantial alterations following the approval extensions to the dwelling. The extensions form a boundary with the site, which includes a 1.8m high brick wall, and single and one and a half storey buildings. As such the proposed development of the site would not be likely to significantly impact on the amenity of this dwelling.

In terms of the levels of amenity space for each of the individual dwellings, a mixture of garden sizes are proposed which vary between 90 sq.m and 180 sq.m for the dwellings. Overall the levels proposed are considered to provide sufficient private space to allow for a reasonable level of private outdoor amenity.

Archaeology: As the Melbourne Arms is a purpose-built late 18th century inn with significant late 20th century alterations and does not lie within the historic core of Melbourne there is considered to be little potential for archaeological remains pre-dating the inn itself and as such the proposal is unlikely to have any archaeological implications.

Biodiversity and protected species: As confirmed by Derbyshire Wildlife Trust the site has a low potential for protected species and this was confirmed through the surveys undertaken of the existing buildings on the site. Subject to the protection and retention of the hedges surrounding the site, the submission of a lighting scheme to ensure bats are not affected, and the restriction of working during the bird nesting season where appropriate the proposal would not impact on any protected species.

Planning Contributions: Local Plan Policies INF1, INF6, and H21 expect new residential developments to be adequately supported by infrastructure and where necessary the impacts of additional impacts mitigated, in the interests of sustainability. The previous approval for the site secured contributions towards education, healthcare, and open space.

However, following the ministerial statement of 28 November 2014 (upheld by the Court of Appeal on 13 May 2016), national policy guidance (PPG Paragraph: 031 Reference ID: 23b-031-20160519) is clear that residential developments under 10 dwellings should not be subject to the burdens of affordable housing provision of tariff style financial contributions. So whilst the previous scheme for the site secured the above financial contributions the most up to date policy guidance restricts contributions to those development of 10 dwellings or more without any alternative thresholds in up to date plans (there are none within the adopted local plan) and as such no financial contributions are considered to be compliant with the up to date guidance on planning obligations.

Conclusion

The application proposes the re-development of a currently vacant area of land, and constitutes the redevelopment of a brownfield site in a sustainable location. The siting and design of the proposed development sits comfortably within its conservation area setting. The development provides suitable access and parking, and would provide a suitable living environment for the proposed residents. The site has been the subject of a detailed bat and bird survey which consider the development of the site to be acceptable (subject to conditions) so as to comply with the relevant habits and protected species legislation, and subject to conditions will ensure that suitable drainage of the site can be provided. The development is therefore considered to comply with the provisions of the National Planning Policy Framework, and Policies S2, S6, H1, SD1, BNE1, BNE2, BNE3, and INF2 of the 2016 South Derbyshire Local Plan Part 1, Policy ENV13 of the 1998 South Derbyshire Local Plan.

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

Recommendation

GRANT permission subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with drawing nos. 2134-10B, 11A, 13, 14A and 17A; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

3. The existing building/structure shall be retained in so far as shown on the approved plans, with no other existing walls or roofs (or parts thereof) removed and/or replaced without the prior written consent of the Local Planning Authority.

Reason: The erection of a new dwelling in this location would be contrary to the development plan and the objectives of sustainable development.

4. The land to the east of Plot 1 and the south of Plot 7 identified on drawing no 2134-10B as open space protected area shall not form part of the domestic curtilage of any of the dwellings hereby approved and shall remain as open space for the life of the development.

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

6. During the period of construction of any phase of the development, there shall be no burning on site, no generators or pumps shall be used on the site without the prior written permission from the Local Planning Authority, and no work including deliveries shall take place outside the following times: 0800 - 1800 hours Monday to Friday and 0800 - 1300 hours on Saturdays and any time on Sundays, Bank and Public holidays (other than emergency works).

Reason: In the interests of amenity of the nearby residents during the construction phase of the development.

7. No development shall take place 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, pedestrian and cyclist protection and any proposed temporary traffic restrictions.

Reason: In the interests of highway safety, recognising that initial works to clear and prepare the site could give rise to unacceptable impacts.

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

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

9. No works shall take place until a scheme of noise mitigation measures has been submitted to and approved in writing by the Local Planning Authority. The scheme shall take into account noise from the surrounding road network. The scheme shall thereafter be implemented in accordance with the approved scheme.

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

10. No work shall take place on the site until details of a scheme for the disposal of surface water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: To ensure that it is possible to incorporate important flood avoidance features including construction levels before the development begins in the interests of flood protection.

11. No work shall take place on the site until details of a scheme for the disposal of foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: In the interests of pollution control.

12. No development shall take place until a detailed lighting strategy has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include precise details of the location, intensity, angling and shielding, and the area of spread of the lights. The lights shall be installed in accordance with these details and thereafter retained in conformity with them.

Reason: To preserve amenity and in the interests of protected species.

13. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

14. Large scale drawings to a minimum Scale of 1:10 of external joinery and garden gates, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The external joinery shall be constructed in accordance with the approved drawings.

Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.

15. Notwithstanding any details submitted, precise details of the type, size and position of the proposed rooflights shall be submitted to and approved in writing by the Local Planning Authority. The approved rooflights shall be fitted such that their outer faces are flush with the plane of the roof, unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of the appearance of the building(s) and the character of the area.

16. Pointing of the existing/ proposed buildings shall be carried out using a lime mortar no stronger than 1:1:6 (cement:lime:yellow sand). The finished joint shall be slightly recessed with a brushed finish.

Reason: In the interests of the appearance of the building(s).

17. Separate sample panels of pointed brickwork and stonework 1 metre square or such other area as may be agreed by the Local Planning Authority shall be prepared for inspection and approval in writing by the Local Planning Authority before the work is generally executed.

Reason: In the interests of the appearance of the buildings and the locality generally.

18. External joinery shall be in timber and painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority. The joinery shall be painted in accordance with the agreed details within three months of the date of completion of the development unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of the appearance of the building(s) and the character of the area.

19. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the building unless specifically agreed in writing by the Local Planning Authority. The type, number, position and finish of heating and ventilation flue outlets shall be agreed in writing with the Local Planning Authority before development is commenced.

Reason: In the interests of the appearance of the building(s) and the character of the area.

20. Gutters shall be cast metal (with cast metal fall pipes) and shall be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.

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

21. No part of the development shall be carried out until precise details including paving patterns, specifications and samples of the materials to be used in the hard landscaping works have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed with the Local Planning Authority.

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

22. Notwithstanding any details submitted or 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; no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatments shall be completed in accordance with the approved details before the respective dwelling(s)/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 appearance of the area.

23. All boundary walls shall have a traditional style of shaped clay or stone coping the details of which, including samples, shall have been previously agreed in writing by the Local Planning Authority prior to implementation.

Reason: In the interests of the appearance of the area and the setting of the listed building.

24. Prior to the first occupation of any of the dwellings on site the areas shown on the approved drawing number 2134-10B for the parking and manoeuvring of vehicles shall be laid out, hard surfaced in a solid bound material. Thereafter those areas shall remain unobstructed for their designated use.

Reason: To ensure that adequate parking/garaging provision is available.

25. Prior to the first occupation of any dwelling, the access shall be modified in accordance with the application drawing no 2134-10B. The access shall be constructed as a splayed vehicular crossover and the redundant crossover area reinstated as footway, all in accordance with a scheme first submitted to and approved in writing by the local Planning Authority.

Reason: In the interests of highway safety.

26. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on or adjacent to the site (including those which would have their root or canopy structure affected), and details of any to be retained, together with measures for their protection in the course of development.

Reason: In the interests of the appearance of the area, recognising that initial clearance and groundworks could compromise the long term health of the trees/hedgerows affected.

27. A landscape management plan which shall include long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved by the Local Planning Authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.

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

28. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

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

29. Following removal of the render from the existing building, a specification for making good the underlying brick and stonework shall be agreed with the Local Planning Authority before any of the work so specified is carried out. If partial or complete re-rendering is agreed to be an appropriate means of making good, a specification for the re-rendering, including the extent of re-rendering, shall be agreed in writing with the Local Planning Authority before the work is carried out.

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

30. No gates shall be erected within 5m. of the highway boundary and any gates elsewhere shall open inwards only.

Reason: In the interests of highway safety.

31. 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(s) hereby permitted shall not be altered, enlarged or extended, no satellite dishes shall be affixed to the dwelling(s) 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.

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

Informatives:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through suggesting amendments to improve the quality of the proposal and quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact English Nature, Peak District and Derbyshire Team, Manor Barn, Over Haddon, Bakewell, Derbyshire, DE4 1JE.

In order to ensure compliance with relevant wildlife legislation no removal of buildings, hedgerows, shrubs or scrub should take place between 1st March and 31st August inclusive, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period; and details of measures to protect the nesting bird interest on the site implemented accordingly.

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. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained by contacting the County Council via email - es.devconprocess@derbyshire.gov.uk. The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.

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

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. Applicants should consult Table 3.3 of the CIRIA SuDS Manual (C697) to confirm the appropriate number of treatment stages, or contact the EA or the DCC Flood Risk Management Team directly. 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 **1.4**

Reg. No. **9/2016/0397/CC**

Applicant:
Mr Andrew Turner
Castle Farm
Castle Street
Melbourne
DE73 8DY

Agent:
Mr David Swann
Montague Architects
9 Vernon Street
Derby
DE1 1FR

Proposal: **RELEVANT DEMOLITION CONSENT (RETROSPECTIVE)**
FOR PARTIAL DEMOLITION OF PUBLIC HOUSE AND
RESTAURANT AT THE MELBOURNE ARMS 92 ASHBY
ROAD MELBOURNE DERBY

Ward: **MELBOURNE**

Valid Date: **19/04/2016**

This case is submitted in pursuit of the demolition of the modern extensions to the former Melbourne Arms. The merits of the case are examined in the companion application for the redevelopment of the site under 9/2016/0380 above.

Recommendation

GRANT relevant permission for demolition subject to the following conditions:

1. The works to which this consent relates shall be begun before the expiration of three years from the date of this consent.

Reason: To conform with Section 18(1) of the Planning and Listed Buildings and Conservation Area Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. No further demolition of the buildings attached to the former Melbourne Arms shall occur until a contract for the implementation and construction of the development approved under planning permission ref: 9/2016/0380 has been secured. If for any reason that development does not commence within 6 months of the demolition of the existing buildings, within 1 month of that date a scheme for the restoration of this building shall be submitted to and approved in writing by the Local Planning Authority. The building shall then be restored in accordance with the approved scheme within 6 months of the date of its approval or in accordance with an approved timetable of restoration.

Reason: To ensure all reasonable steps have been taken to ensure the new development will proceed after the loss of a heritage asset has occurred, in line with paragraph 136 of the NPPF.

Informatives:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions and quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

Item **1.5**

Reg. No. **9/2016/0660/NO**

Applicant:
Mr Michael Stanton
Ingelby Lane

Agent:
Mr Simon Chiou
Lathams
St Mary's Gate
Derby
DE1 3SU

Proposal: **THE REMOVAL OF APPROXIMATELY 22M (LENGTH)**
OF TOPSOIL FROM SECTION OF EXISTING FLOOD
DEFENCE EMBANKMENT AND RAISING OF
EMBANKMENT TO REQUISITE LEVELS USING THE
EXCAVATED AND ADDITIONAL IMPORTED TOPSOIL
ON LAND AT SK4330 8021 LONDON ROAD
SHARDLOW DERBY

Ward: **ASTON**

Valid Date: **05/07/2016**

Reason for committee determination

The item is presented to Committee because the applicant is Councillor Michael Stanton.

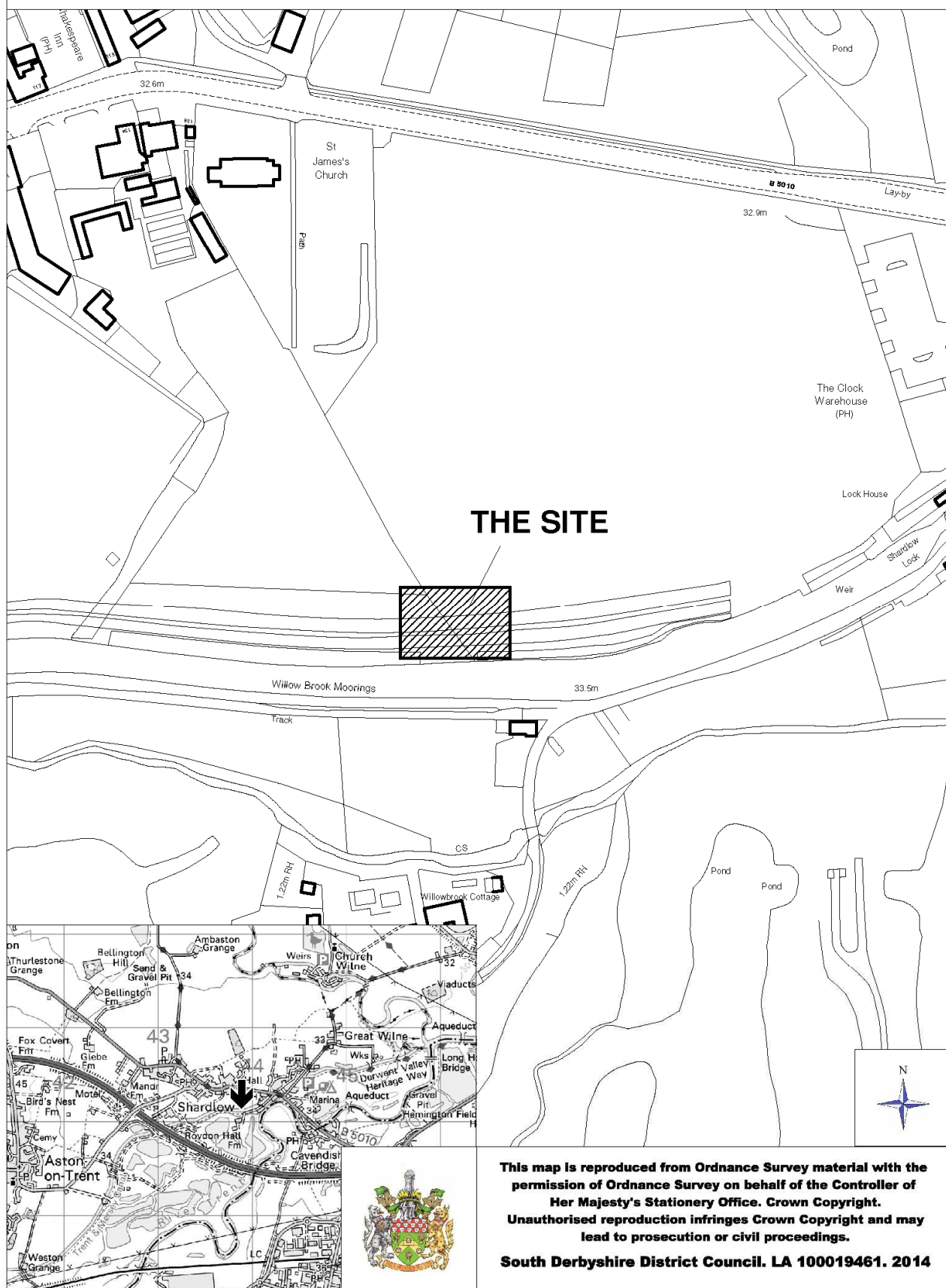
Site Description

The site comprises a short section of the existing flood defence embankment adjacent to the Trent and Mersey Canal. The land is put to pasture with a post and rail fence forming a field boundary. The northern boundary of the wider field adjacent to London Road is made up of a native hedgerow with an existing gateway. The site falls within the Shardlow Conservation Area and adjacent to the Trent and Mersey Conservation Area.

Proposal

It is intended to 'make good' a section of the flood bank which has been worn by cattle over time. This has the effect of allowing overtopping of the bank in certain flood conditions – at least based on modelling. This would be achieved by way of stripping topsoil and using this alongside a small amount of imported topsoil material to raise levels by a few centimetres.

**9/2016/0660 - Land at SK4330 8021 London Road, Shardlow, Derby
(DE72 2GL)**



Applicant's supporting information

A Hydraulic Assessment models the extent of the 100-year, 100-year with climate change and 1,000-year floodplains. A review of the existing conditions confirms the site is currently protected against the 100-year flood event by a flood defence running adjacent to the canal. The site floods in the 100-year with climate change event as a result of river flows overtopping the flood defence at two locations. The site is therefore considered to be located within the 100-year with climate change defended floodplain and peak modelled levels should be used to set the minimum finished floor levels (commonly 600mm above the 100-year with climate change level) in order to mitigate the potential impact of a breach.

A Method Statement is provided so to ensure the implementation of a safe system of work to control the movement of labour and plant, to provide suitable environmental protection in respect of the nearby Trent and Mersey Canal, and to provide suitable protection to archaeological interests.

A copy of the Environmental Permit application made to the Environment Agency, in order for consent to carry out the works, is provided.

Planning History

This application arises as a result of flood modelling work under pending application 9/2014/1216, a short distance away; seeking to address an identified shortcoming in the existing flood defences.

Responses to Consultations

The Development Control Archaeologist notes the site contains part of an area of well-preserved medieval ridge and furrow earthworks lying in the field to the north of the existing flood embankment. Whilst the proposed groundworks to the flood bank need not impact the ridge and furrow earthworks; there is potential for impacts to the earthworks if a working easement is required alongside the bank or if plant access to the site is routed across the earthworks. An amended method statement includes details of easement and access, and measures to be put in place to avoid or minimise impact. There is no objection subject to a condition.

The Environment Agency has no objection.

The Canal & River Trust notes the area of works is approximately 10 metres from the offside bank of the Trent & Mersey Canal and as such is unlikely to adversely affect the canal structure itself, and note that the earthmoving operations would only be from the north side of the existing flood bank. The Trust considers that this approach is appropriate, as it should reduce the risk that the operation of plant and machinery would create land instability at or close to the canal edge which might adversely affect the canal structure. It would also minimise the risk of any fuel spills, etc. entering the canal and adversely affecting water quality. The Trust seeks a condition to secure the proposed methodology.

The Pollution Control Officer has no comments to make.

Responses to Publicity

Shardlow & Great Wilne Parish Council has no objection.

A single representation notes the flood bank has never been breached, with the water rising up from the ground and not over the bank, such that making the bank higher will not address the issue.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD4 (Contaminated Land and Mining Legacy Issues), BNE2 (Heritage Assets), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport)
- 1998 Local Plan (saved policies): EV1 (Development in the Countryside), EV12 (Conservation Areas) and EV14 (Archaeological and Heritage Features)

Emerging Development Plan Policies

The relevant policies are:

- Draft Local Plan Part 2: BNE5 (Development in the Countryside) and BNE11 (Heritage)

National Guidance

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)

Local Guidance

- Shardlow Conservation Area Character Statement 2014

Planning Assessment

The proposal would effectively ensure the continued protection of Shardlow from flood events and provide wider social, environmental and economic benefits in this respect. The works would have no discernible impact on the landscape once complete. There would be no harm to the appearance and character of the conservation area and archaeological interest can be protected by way of condition. Similarly the integrity of the waterway can be protected by condition.

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

Recommendation

GRANT permission subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with plan/drawing JU093-DRG-C03-001 Rev A and the recommendations in the Method Statement and Risk Assessments, revised July 2016 and received 1 August 2016; 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 protecting archaeological features of interest and the integrity of the waterway.

3. All seeding comprised in the approved details of landscaping shall be carried out in the first seeding season following the completion of the works.

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

Informatives:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and issues and quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

The applicant/developer is advised to contact the Canal & River Trust Works Engineers Team at the Fazeley office on 01827 252000 in order to ensure that any necessary consents are obtained and that the works comply with the Canal & River Trust 'Code of Practice for Works affecting the Canal & River Trust'.

Item **1.6**

Reg. No. **9/2016/0695/F**

Applicant:
Mr & Mrs W. I. Brown
The Old Rectory,
Church Road
Egginton
Derby
DE65 6HP

Agent:
Mr Eric Lee
Eric Lee Architectural Services
The Stables
Robinsons Hill
Melbourne
Derby
DE73 8DJ

Proposal: **CHANGE OF USE OF THE DWELLING TO A MIXED USE**
COMPRISING A DWELLING AND BED AND
BREAKFAST ACCOMMODATION (USE CLASS C1 -
HOTELS), THE VARIATION OF CONDITION 2 OF
PLANNING PERMISSION 9/2011/0769 TO ALLOW THE
GRANNY ANNEXE TO BE USED AS EITHER
ACCOMMODATION FOR EITHER MEMBERS OF THE
HOUSEHOLD OF THE OLD RECTORY OR BY
DOMESTIC STAFF OR SELF-CONTAINED HOLIDAY
ACCOMMODATION AND THE VARIATION OF
CONDITION 4 OF PLANNING PERMISSION 9/2014/0238
TO ALLOW THE CARERS ACCOMMODATION TO BE
USED AS ACCOMMODATION FOR EITHER MEMBERS
OF THE HOUSEHOLD OF THE OLD RECTORY OR BY
DOMESTIC STAFF OR SELF-CONTAINED HOLIDAY
ACCOMMODATION AT THE OLD RECTORY CHURCH
ROAD EGGINTON DERBY

Ward: **ETWALL**

Valid Date: **28/07/2016**

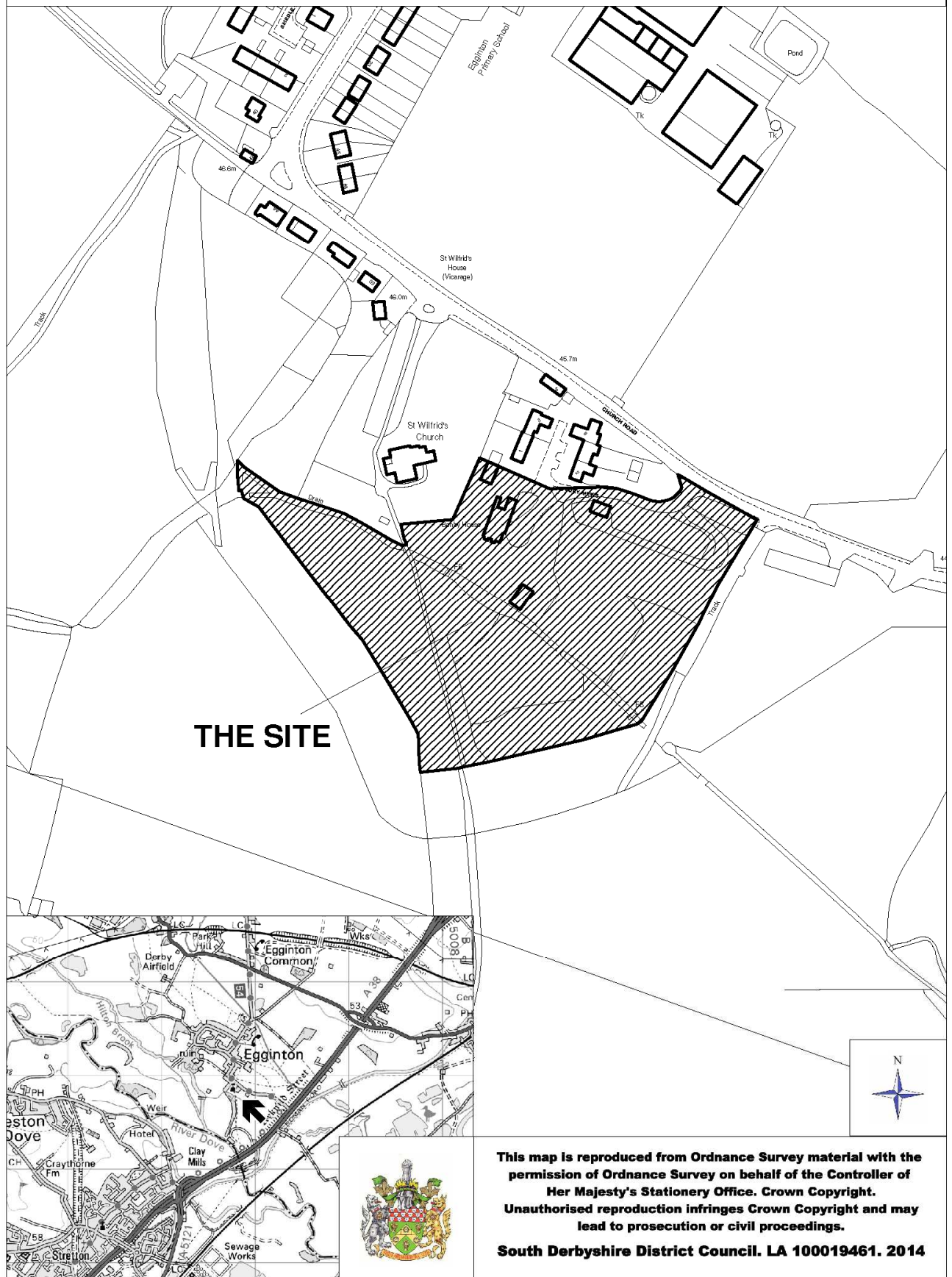
Reason for committee determination

The application is reported to Committee as the applicant is Councillor Brown.

Site Description

The application site is substantial; six bedroomed detached property with range of converted outbuildings and detached buildings. The main property is also referred to as Benby House Farmhouse, a Grade II listed building located to the south of the church in the open countryside and to the south of a group of modern dwellings erected adjacent. The site lies within an area of flood risk and whilst the site is within

9/2016/0695 - The Old Rectory, Church Road, Egginton, Derby DE65 6HP



Flood Zone 3 as identified on the Environment Agency Flood Maps, the site, as well as the surrounding properties, benefit from recently constructed flood defence improvements.

Proposal

The proposal seeks permission to allow the introduction of holiday accommodation within the overall site. This would be achieved, firstly, by allowing the main house to be used as a mixed use consisting of a dwelling as well as bed and breakfast accommodation, and secondly, by allowing the granny annexe and recently constructed carer's accommodation building to be used as holiday lets. The granny annexe and carer's accommodation are restricted by conditions so that they can only be occupied for those purposes therefore this proposal seeks to amend the appropriate conditions imposed on those permissions. The proposal seeks permission to allow them both to be occupied by either members of the household of The Old Rectory, domestic staff or as self-contained holiday accommodation. To achieve this condition 2 of planning 9/2011/0769 (granny annexe approval) would be changed to refer to those occupiers, as would condition 4 of planning permission 9/2014/0238 (carer's accommodation approval).

Applicant's supporting information

The application is accompanied by a Planning Statement which describes the site and advises that one of the applicants has recently been seriously ill and whilst recovered this has led to a re-evaluation of their future. As a consequence the applicants would like to be able to use the site flexibly and wish to offer bed and breakfast facilities within the main house, the granny annexe and carer's accommodation, though the applicants would continue to reside in the main house. They envisage the use to be low key and no more than two sets of visitors. The Statement also sets out national and local planning policies they feel support the proposals and state that they would assist the rural economy allowing visitors to stay in the area. Visitors would be able to enjoy the extensive grounds and the annexe or carer's building would be able to provide more private accommodation for guests preferring that to a room in the main house.

Planning History

The relevant planning permissions for this development are 9/2011/0769 which approved the granny annexe and it's occupancy as an annexe is controlled by virtue of condition 2 as well as 9/2014/0238 which approved the carer's accommodation and it's occupancy as carer's accommodation is controlled by condition 4.

Responses to Consultations

The County Highway Authority has no objection subject to the retention of 10 car parking spaces within the site.

Responses to Publicity

No representations received

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), BNE2 (Heritage Assets), INF2 (Sustainable Transport), INF10 (Tourism Development).
- 1998 Local Plan (saved policies): EV1 (Development in the Countryside), EV13 (Listed or Other Buildings of Architectural or Historic Importance), EV14 (Archaeological and Heritage Features).

Emerging Development Plan Policies

The relevant policies are:

- Draft Local Plan Part 2: BNE5 (Development in the Countryside)

National Guidance

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)

Planning Considerations

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

- The principle of tourist accommodation,
- Flood risk,
- Impact on the amenity of residents, and
- Highway safety

Planning Assessment

The principle of tourist accommodation

The application site is a period property which is a visually attractive period property, set within large, attractive grounds in the open countryside and as such is the type of property that would appear to be appropriate for use as accommodation for visitors to the area. Whilst the use of the annexe and carer's accommodation was established based on the needs of the applicant at those times there have been significant changes to their personal circumstances since they were developed which has resulted in them needed to re-evaluate their way of life and look for appropriate alternatives. The NPPF seeks to support sustainable tourism whilst Policy INF10 of the 2016 Local Plan supports overnight accommodation in appropriate locations and will expect it to be provided, amongst other things, through conversion or re-use of existing buildings. It also states that new tourist development likely to give rise to landscape, natural environment or cultural heritage assets will be refused. The proposals accord with these planning policies and as no physical alterations are

needed and the nature of the use as tourist accommodation rather than the existing uses would not affect the nature of the special character of this listed building. As such the principle of the proposal is considered to be acceptable.

Flood risk

The application site lies in an area that is designated as Flood Zone 3 as shown on the Environment Agency flood maps, but benefits from the recently improved flood defences. The change of use does not lead to a more vulnerable use as it remains occupied by people, albeit on a more transient rather than permanent basis. With this in mind it is considered that the proposals are appropriate and would not lead to any greater flood risk for occupiers.

Impact on the amenity of residents

The proposals would not lead to any significant increase in the number of people at the site over and above the amount that could reasonably be expected to occupy the existing dwelling, annexe and carer's accommodation. The NPPF seeks to secure a good standard of amenity for all existing and future occupants of land and buildings and whilst the proposed development may lead to more activity than at present, that would only be as a result of the modest number of people currently living at the property. It is considered that the proposal would not have any undue adverse impact on the occupiers of and of the other properties nearby.

Impact on the character and appearance of the area and setting of the listed building.

The relevant adopted and emerging development plan policy and statutory tests require development within the curtilage of a listed building to be measured in terms of the impact it would be likely to have. As such, where determined harmful to the character and appearance of the heritage asset permission would not normally be allowed. In this case it is noted that there would be no physical alterations necessary to facilitate the development and the nature of the use remains residential in character. It is not considered that the proposals would have any adverse impact and as a consequence they are therefore considered acceptable in those terms and compliant with national and local planning policies.

Highway safety

Vehicular access to the property is from Church Road, a classified road connecting Egginton and beyond with the northbound carriageway of the A38 trunk road which lies to the east. The proposals would not lead to any significant increase in the number of people at the site over and above the amount that could reasonably be expected to occupy the existing dwelling, annexe and carer's accommodation. It is not considered that the development would have any impact on the trunk road network and the County Highway Authority are content that the existing access can accommodate the development and traffic generated, noting that the conditions were not imposed for highway safety reasons. Subject to the provision of 10 off-street car parking spaces being provided they raise no objection. This conclusion is considered to be appropriate and as such the proposal is considered to accord with policy INF2 and provisions of the NPPF.

Conclusion

The proposal represents an appropriate way for the site to diversify and enables the applicants to fulfil their personal objectives without unduly affecting neighbours or 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.

Recommendation

GRANT permission subject to the following conditions:

1. The change of use to a mixed use comprising a dwelling and bed and breakfast accommodation (Use Class C1 - Hotels) of The Old Rectory hereby permitted shall be begun before the expiration of three years from the date of this permission.

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

2. This permission relates to the plans validated by the Local Planning Authority on 1st April 2014, as amended by the revised drawings received on 7th July 2014 in regards to the accommodation originally permitted under planning permission 9/2014/0238 (carer's accommodation), and any variation to the approved drawings may need the approval of the Local Planning Authority.

Reason: For the avoidance of doubt as to what is approved.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the accommodation originally permitted under planning permission 9/2014/0238 (carer's accommodation) and 9/2011/00769 (granny annexe), shall not be extended or altered externally, nor shall they be provided with new windows or doors, have their roofs enlarged or altered, be provided with any porches, incidental buildings, structures or enclosures, additional hard surfaces, or be painted externally.

Reason: To protect the historic environment and the visual amenity of the area.

4. The accommodation originally permitted under planning permission 9/2014/0238 (carer's accommodation) and 9/2011/00769 (granny annexe), shall only be occupied by either members of the household of The Old Rectory or by domestic staff or used as self-contained holiday accommodation and shall not be severed from the main house as a separate and unconnected dwelling.

Reason: The use of the development for as a separate dwelling could constitute unsustainable development.

5. Notwithstanding the provisions of Part C, Class 3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended, (or any Order revoking or re-enacting that Order), other than when they are occupied by either members of the household of The Old Rectory or by domestic staff, the

accommodation originally permitted under planning permission 9/2014/0238 (carer's accommodation) and 9/2011/00769 (granny annexe) shall be used for the purpose of holiday accommodation only and for no other purpose, including any other purpose within Class C3 of the Order without the prior grant of planning permission by the Local Planning Authority, and:

- i. their use as holiday accommodation shall only lead to them being occupied as holiday accommodation for 11 months in any calendar year and in particular they shall not be occupied between 10 January and 10 February (or other such period as may be agreed in writing with the Local Planning Authority) in any calendar year;
- ii. their use as holiday accommodation shall be for holiday purposes only;
- iii. their use as holiday accommodation shall not lead to them be occupied as a person's sole, or main place of residence; and
- iv. the site operators shall maintain an up-to-date register of the names of all occupiers of the accommodation originally permitted under planning permission 9/2014/0238 (carer's accommodation) and 9/2011/00769 (granny annexe) when they are used as holiday accommodation, and of their main home addresses, and shall make that information available at all reasonable times to the Local Planning Authority.

Reason: The use of the development for as a separate dwelling could constitute unsustainable development.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, as amended, (or any Order revoking or re-enacting that Order), ten off-street parking spaces shall be provided within the application site for such use and shall be maintained throughout the lifetime of the development.

Reason: In the interests of highway safety.

Informatives:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions and quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

The applicant is advised that following consultation with the Environment Agency they have advised that the occupants of the accommodation originally permitted under planning permission 9/2014/0238 (carer's accommodation), should register with their free Flood Warning Service by contacting Floodline on 0845 9881188. The advance warning of a flood provides valuable time to take action and be prepared. Further information on preparing a Flood Plan and ways to limit the damage caused by flooding is available by referring to the Flood Warning and Evacuation Plan in Appendix D of the submitted Flood Risk Assessment or on their website at:

<https://www.gov.uk/government/organisations/environment-agency>

Item **2.1**

Reg. No. **9/2016/0170/OS**

Applicant:
Mrs & Mrs M & J Hawksworth & Maison
Investin Properties (Jersey) Ltd
C/o Fisher German

Agent:
Miss Liberty Stones
Fisher German
St Helens Court
North Street
Ashby de la Zouch
LE65 1HS

Proposal: **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR**
ACCESS TO BE RESERVED) FOR THE RESIDENTIAL
DEVELOPMENT OF UP TO 34 DWELLINGS ON LAND
AT SK3825 9087 JAWBONE LANE KINGS NEWTON
DERBY

Ward: **MELBOURNE**

Valid Date: **31/03/2016**

Reason for committee determination

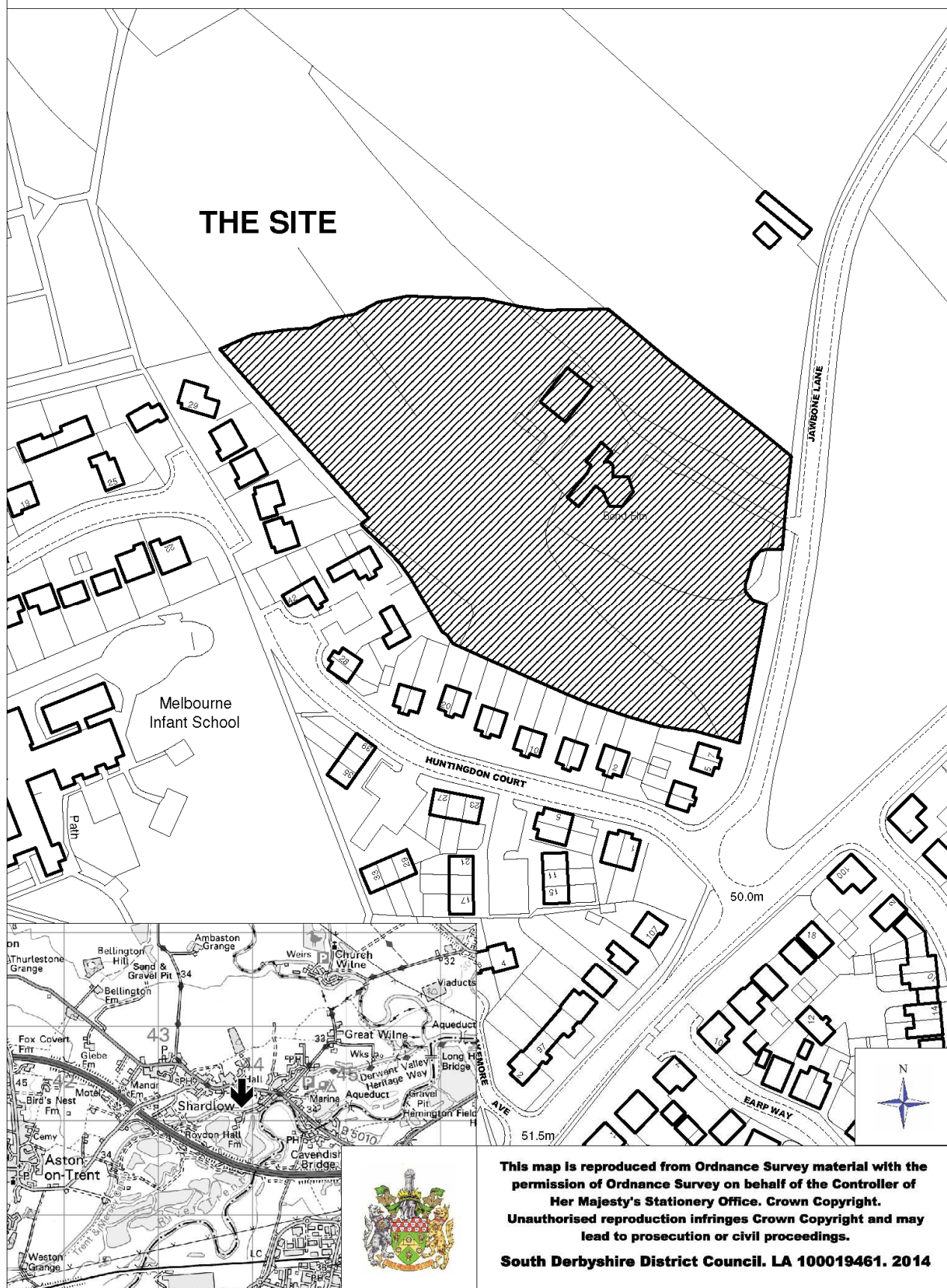
The item is presented to Committee at the discretion of the Planning Services Manager, noting that the previous scheme was determined by the Committee.

Site Description

The site extends to 1.49 hectares and is located to the north-east of Melbourne, beyond but adjoining the settlement confines of the village. Kings Newton lies a short distance to the north. The wider ownership comprises a long, broadly rectangular tranche of market garden/agricultural land, which also contains a single dwelling – formerly an agricultural workers dwelling. A number of native and ornamental trees pepper the site and its boundaries, along with native and coniferous hedgerow in parts. The site is bounded to the south-west by existing residential development at Huntingdon Court and Oaklands Way. The site stops short of Melbourne Cemetery which abuts the northern-western edge of the wider ownership. The south-eastern boundary meets Jawbone Lane with further agricultural land beyond. Agricultural land abuts the north-eastern boundary. The remaining land in the ownership of the applicant is adjoined by a public right of way (PRoW) – Melbourne Footpath 15 – along its northern edge, running between Melbourne and Kings Newton and providing views across the site.

The site currently has a mixed use comprising a large residential property and associated curtilage and some agricultural land currently used for crop trials. The

9/2016/0170 - Land at SK3825 9087 Jawbone Lane, Kings Newton, Derby
DE73 8BW



wider ownership slopes gently from north-west to south-east providing a fall of approximately 10m. Access to the site is currently gained from Jawbone Lane via the existing driveway to the residential property. A pavement runs along the north western side of Jawbone Lane.

Proposal

Outline planning permission is sought for residential development of up to 34 dwellings in the form of a cross-subsidy site. The scheme would be affordable led with the majority of housing (18 units) for rent (60%) and intermediate purposes (40%) as a mix of two and three-bedroomed houses, coach houses and bungalows. The balance of 16 units would be offered for sale on the open market and are a mix of two-bed bungalows and four & five-bed houses. Public open space (POS) with sustainable drainage (SuDS) would be secured on site along with landscaping. Detailed means of access to Jawbone Lane, along with widening of the Lane up to this junction, form part of the submission; whilst all other matters including appearance, layout, scale and landscaping are reserved for future approval.

The development was originally submitted as a scheme for up to 44 dwellings with 30% of these for affordable housing purposes.

Applicant's supporting information

The Planning Statement was written prior to the adoption of the Part 1 Plan and when a 5 year housing land supply could not be demonstrated. It was considered that the Development Plan was out of date and little weight could be attached to housing policies. It was also argued that the (then) emerging Plan could only be afforded little weight. It was advanced that the application needs to be considered in the context of the presumption in favour of sustainable development, as detailed within the NPPF, and that the proposal fulfils the three dimensions of sustainable development, delivering positive social, economic and environmental benefits. It is considered there are no adverse impacts which would significantly or demonstrably outweigh these benefits.

A Design and Access Statement details key principles to ensure a high quality scheme can be delivered, with the indicative masterplan demonstrating a sensitive development of up to 34 dwellings. The masterplan has been prepared within a comprehensive policy guidance framework provided at National and Local Authority level, and informed by discussions with the Council's Planning Officers and Conservation Officer. The masterplan provides a firm basis for detailed consideration at Reserved Matters stage where design, detailing and materials appropriate and in keeping with the character of Melbourne would be agreed.

A Cultural Heritage Assessment notes the groundworks involved in the development would impact on any archaeological remains present within the site. However, a geophysical survey has not identified any anomalies of archaeological potential and the likelihood of any harm to currently unknown heritage assets is considered to be negligible. It is advanced that the proposed development would not harm the significance of heritage assets within the wider area. The extension of Melbourne to the north would slightly reduce the separation and distinctiveness of Kings Newton Conservation Area, although the retention of agricultural land between the two settlements would minimise this impact. The character of the approaches to Kings

Newton (via Jawbone Lane and via the footpaths from Melbourne) would not be altered and no harm to the conservation area is predicted. The layout of the proposals would retain open space to the east of the Melbourne cemetery, retaining the existing views from the cemetery chapels. It is therefore considered that the proposed development would not have any noticeable effects on the significance of heritage assets.

The Agricultural Land Classification (ALC) survey notes the national mapping suggests the site is grade 3 land. More detailed analysis determines that 0.54 hectares (36%) is grade 3a, with the balance grade 3b (64%).

A Landscape and Visual Impact Assessment considers the effect of the proposals upon the character of this area, finding the effect of the proposals upon the visual environment would be limited. It is considered that the proposals can be integrated without detriment to the localised and wider character and the layout has responded to the topography of the site, with both its scale and location a sensible, coherent and logical extension of the village, away from the heritage dominated western realms. The development can be accommodated within the receiving visual environment and does not affect the current separation between the settlement and Kings Newton. Furthermore it is considered to be in accordance with the relevant saved policies of the Local Plan 1998 and within the overall context of the NPPF and the requirement to accommodate sustainable development.

A Flood Risk Assessment (FRA) finds the risk of flooding to the proposed development from all sources is low; and as the proposed development would not displace floodwater, no floodwater storage mitigation measures are proposed. The implementation of an attenuation based sustainable surface water drainage strategy would ensure that there is no increase in flood risk to surrounding areas resulting from the disposal of surface water run-off in the post development scenario during lower order rainfall events and a reduction in flood risk in more extreme events. A safe dry route of access/egress would be available from the proposed development.

A Tree Survey finds there are no major tree constraints at present and in arboricultural terms the site is deemed suitable for development providing the better trees within the site are retained and protected during development, as well as the established hedgerows along field boundaries. It is also essential that any trees and hedgerows beyond site boundaries are not compromised too any great degree by site activity.

The Ecological and Reptile Assessments note that the site is not designated for its nature conservation interest. There are several Local Wildlife Sites within 2km of the boundary, the closest being a section of Melbourne Railway designated for its unimproved neutral grassland. These are not felt to be affected by the works. The site comprises a residential area with well managed gardens and orchards as well as an arable field, all providing some potential for nesting birds and foraging/commuting mammals. Trees should be protected and any new planting schemes should seek to include a high proportion of native species of local provenance, which provide fruit, nectar and/or seed sources. General good working practices should be adhered to in order that mammals do not become trapped within open pipes or excavations whilst no evidence of bats was found, with negligible potential for roosting. No further surveys are recommended. No evidence of reptiles or amphibians was found on site and the habitats are generally considered sub-optimal. Several ponds are located

within 500m of the site and a single great crested newt record was found. However, because of the sub-optimal habitat on site, the presence of significant dispersal barriers between the ponds and the site, and because of the poor connecting habitat, further surveys are not recommended unless there is a delay in construction works commencing.

A Transport Statement notes a statement for a larger scheme of 69 dwellings was previously submitted which did not attract objection from the highway authority. An Access and Movement Strategy has been prepared to manage the number of single occupancy vehicle trips generated in line with current policy and guidance. In considering the potential impact of the proposed development on the local highway network, a high level assessment of the proposals was undertaken, the results of which demonstrate that the impact of future development traffic on the local highway network would be negligible. However, works to widen Jawbone Lane to the south of the proposed site access have been identified as part of the proposals, consistent with where the greatest proportion of development traffic is expected to originate to/from. Overall, the report demonstrates that the proposed development would not have a material adverse impact on the safety or operation of the adjacent highway network. It further concludes that the development is in full accordance with transport policies.

The Noise Assessment confirms long-term noise measurement surveys have been undertaken, representative of day and night time periods to quantify the nature and level of noise. The local noise climate is dominated by overhead aircraft due to the close proximity of East Midlands Airport. Based upon the measured levels, calculations have been undertaken for typical residential dwelling rooms to develop glazing and ventilation specifications and evaluate likely internal noise levels. The results have been used to assess compliance with the guidance contained within WHO Guidelines and British Standards and demonstrate that utilising the window and ventilation specification recommended would provide compliant internal ambient noise levels. From the measured results, it has also been found that the site falls below the upper limit of guidance for external amenity areas.

Planning History

- | | |
|-------------|--|
| 9/2014/1141 | Outline application (all matters reserved except for access) for the erection of up to 44 dwellings – refused October 2015 and subject to appeal (proceeding by an inquiry, opening on 18 October 2016). |
| 9/2013/0563 | Removal of agricultural occupancy restriction under permission ref: 9/0865/0132 – approved October 2013. |
| 9/2002/0762 | Extension to the dwelling – approved September 2002. |
| 9/0865/0132 | Erection of a dwelling subject to an agricultural occupancy condition – approved November 1965. |

Responses to Consultations

The County Planning Policy Officer notes that none of the schools which would serve the development have capacity to accommodate the additional pressure on places it would create. They however seek contributions to mitigate this impact:

- £34,197.03 towards 3 infant places at Melbourne Infant School;
- £45,596.04 towards 4 junior places at Melbourne Junior School;
- £85,880.85 towards 5 secondary places at Chellaston Academy; and
- £37,255.80 towards 2 post-16 places at Chellaston Academy

The NHS Southern Derbyshire CCG notes that the practice affected by the proposals (Melbourne and Chellaston) is operating at capacity and a contribution of £12,934.00 is requested to mitigate the additional pressure of services this development would bring about.

The Strategic Housing Manager comments that Melbourne is located within the Derby Fringe sub-market area of the District, which includes the Wards of Aston, Stenson, Repton, Findern and Willington. The estimated housing need for new affordable housing across these Wards is 89 per year, based on the 2013 Strategic Housing Market Assessment (SHMA) as well as live data contained within the Council's Housing Register. This evidence indicates that 11 dwellings should be for social/affordable rent, and 7 for intermediate (shared ownership) purposes. Within this an appropriate rent split should secure two 1-beds, six 2-beds, two 3-beds and 1 four-bed, whilst a mix of two and three-bed units should be secured as shared ownership. The site is not considered to be a rural exceptions site as policy H1 requires that such sites must be no greater than 25 dwellings.

County Highway Authority notes the previous application for up to 69 dwellings (as originally submitted) did not attract objection. With the current application for a reduced number of units and proposing the same means of access, there are no objections subject to conditions.

Peak & Northern Footpaths comment that a footpath link to the northern edge of the ownership is essential, to link with existing PROWS and that since these footpaths would be used much more intensively by the new residents; the applicant should contribute to improvements to their surfaces.

The Lead Local Flood Authority notes the FRA indicates that the method of surface water disposal will be to a drainage ditch to the east of the proposed site and the rate of disposal is at greenfield runoff rates, achieved by attenuating surface water generated. However the FRA doesn't confirm the connectivity of the drainage ditch, such that it not clear if flows currently soak or flow away from the drainage ditch; nor does it make reference to the treatment stages to improve water quality. Nevertheless it is considered these matters can be addressed through condition.

Severn Trent Water Ltd has no objection subject to a condition for a scheme to address foul water drainage.

The Development Control Archaeologist has considered the Cultural Heritage Assessment. Alongside the accompanying geophysical survey, which demonstrates no potential archaeological anomalies, and in combination with negative evaluation results on neighbouring sites; it is advised that archaeological potential is very low and there is no need to place a further archaeological requirement upon the applicant.

Natural England has no comments to make.

Derbyshire Wildlife Trust (DWT) comments that the supporting ecological information is considered to be adequate and a number of conditions are recommended in order to safeguard wildlife and the ecological interest of the site. It is noted that the reduced number of dwellings provides greater opportunities than the refused scheme to provide ecological enhancement. The creation of the open space as a meadow, alongside the incorporation of the pond and retention of hedgerows, is welcomed.

The Contaminated Land Officer has no particular concerns which would warrant investigation prior to development although an informative in respect of unforeseen issues which may come to light during construction is recommended.

The Pollution Control Officer requests conditions to control noise, dust, air quality and hours of deliveries and works during the construction phase. A scheme of noise mitigation measures to protect the occupants of the proposed development from noise pollution is also requested.

Responses to Publicity

At the time of writing, the application is subject to consultation in respect of the amendments made to the housing mix. Any new points raised from this reconsultation will be reported to Members verbally at the meeting.

Melbourne Parish Council objects on the following grounds:

- i) Jawbone Lane is not suitable for the proposed number of houses;
- ii) Jawbone Lane is officially classified as a Greenway as it links Melbourne to the national cycle network and is a valuable amenity; and
- iii) the application makes reference to the use of bus services but these services are currently under threat with any loss generating additional private vehicle use in an already congested village.

Melbourne Civic Society objects on the following grounds:

- i) the Local Plan makes adequate provision to meet housing needs for the District;
- ii) this site, coupled with others adjacent, would constitute a strategic allocation in the wrong place;
- iii) prejudicial to successful implementation of the Local Plan;
- iv) the proposal is outside of the current and proposed settlement boundaries;
- v) under the Local Plan Part 1, any adjoining development must be less than 25 dwellings;
- vi) development by law has to be 'plan led';
- vii) the NPPF advocates the plan led approach;
- viii) the Parish Council has resolved to prepare a Neighbourhood Plan (NP) and the process is at risk/prejudiced if all the options for new development are pre-empted by permissions for new housing estates;
- ix) further permissions would deprive the community of its opportunity to influence the size and location of new developments, making the application premature;
- x) the site is grade 2 agricultural land;
- xi) this land constitutes part of a green lung which separates the two communities;

- xii) major adverse landscape and visual impacts;
- xiii) the proposal would adversely affect the rural landscape and the setting of the Kings Newton Conservation Area;
- xiv) the importance of the rural setting, comprising market gardens and well-used public footpaths with long views over open countryside, is recognised in the Conservation Area Character Statement;
- xv) no public benefits that outweigh the harm to heritage assets exist in this case;
- xvi) the development would change the character of Jawbone Lane;
- xvii) Jawbone Lane has been designated a 'Greenway' by the County Council and is well used by pedestrians, ramblers, horse riders and cyclists on the Sustrans National Cycleway;
- xviii) the development would adversely affect the tranquillity, amenity and safety of walkers, horse riders and cyclists, with the increased vehicular traffic constituting a potential traffic hazard – particularly at the blind junction with Main Street in Kings Newton;
- xix) the NP working group has resolved that the land either side of Jawbone Lane should be designated as a Local Green Space;
- xx) a dismissal of the Linden Homes appeal should contain strong arguments against development in this green wedge;
- xxi) the new layout has produced a cramped arrangement which is quite out of place;
- xxii) the integrity of the open space at the northern end of the ownership cannot be guaranteed;
- xxiii) adverse noise effects arising from aircraft noise;
- xxiv) impacts on schools, health facilities and other community services which are currently at capacity;
- xxv) the lack of key drainage infrastructure; and
- xxvi) the effect of increased traffic on the town centre

Kings Newton Residents Association objects on the following grounds:

- i) an unacceptable density of houses compared to any other site in the area and especially when considering the rural location;
- ii) the road layout facilitates further extension into the land by the cemetery;
- iii) the County Council has designated Jawbone Lane as a greenway, which is genuinely used by large numbers of leisure users, and it should be retained as a 'reasonably quiet lane';
- iv) for much of its length, Jawbone Lane is a single-track road with insufficient verges and hard boundary walls at the Kings Newton end;
- v) there is a very difficult junction at Main Street and any increase in traffic would be against the principles of the greenway and be highly dangerous.;
- vi) any increase in traffic would mean that cyclists and walkers, particularly families, would be less likely to use this route as the risk of injury would be increased;
- vii) a recent decision in Crewe concluded that growth should not overwhelm the independent character of a community, including the desirability of maintaining a separate identity for satellite villages;
- viii) the Council supported the principle of keeping the villages separate in the previous refusal and these principles should be maintained;
- ix) the site lies on the two key routes between the 2 communities (the public footpath and Jawbone Lane) which create the sense of separateness;

- x) the Conservation Area Character Statement includes this specific site from both Jawbone Lane and the key viewpoint from the public footpath;
- xi) the views from and of Jawbone Lane are key to the physical setting of Kings Newton
- xii) the NPPF promotes conserving and enhancing the historic environment;
- xiii) the NPPF seeks to restrict new housing to the defined village confines – not to merge villages;
- xiv) Historic England confirms that the cumulative effect of a series of discrete developments create a risk to heritage assets, and it must be considered alongside the other developments in the vicinity;
- xv) it is not an allocated site for housing; and
- xvi) the emerging plan can be used as part of the influence on the decision.

Councillor John Harrison comments that, if approved, contributions should be secured towards the new clubhouse at Cockshut Lane, improvements to Kings Newton Bowls club and further works to the Assembly Rooms, alongside contributions towards education and healthcare.

A single representation in support considers permission should be granted as it would look impressive and won't become overgrown.

51 objections have been received raising the following concerns:

Principle

- a) Melbourne & Kings Newton have taken their fair share of housing;
- b) this is not 'plan led' development and would pre-empt the Local Plan;
- c) any development adjoining the settlement boundary should be fewer than 25/15 dwellings (depending on whether it is considered as Melbourne or Kings Newton);
- d) a 5 year supply exists;
- e) houses to be built would not be affordable - 2 & 3 bed social homes are needed;
- f) the site is identified as a green space in the Part 2 Plan and Neighbourhood Plan;
- g) premature to preparation of the Neighbourhood Plan;
- h) the site is greenfield;
- i) loss of grade 2 agricultural land;
- j) previous application was rejected;
- k) appeal on adjoining site was rejected;

Infrastructure

- l) quantum of development is too much;
- m) doctor and dentist surgeries are at capacity;
- n) schools are at capacity and need extending to accommodate existing pupils, although building more classrooms does not increase the size of associated facilities at the school (e.g. the hall)
- o) the large population increase would compromise the quality of services for existing residents;
- p) Jawbone Lane is a greenway and should be retained as a quiet, rural route;
- q) current bus services are already inadequate;

- r) parking within the shopping core is already limited and frequently unavailable;

Landscape and character

- s) this site is part of the green separation between Melbourne & Kings Newton;
- t) the villages need to keep their separate identities;
- u) loss of views across the countryside, including to Breedon church;
- v) any gaps for views through the layout would be lost through boundary treatments and tree planting;
- w) results in a 'crowded' development, too dense and out of keeping for its setting;
- x) cumulative visual impact with other developments in the vicinity;

Highways

- y) junction of Jawbone Lane and Main Street is unsafe due to poor visibility;
- z) traffic would be a hazard to users of the greenway;
- aa) single track nature of the Lane and its blind corners are a hazard;
- bb) Jawbone Lane should be one-way;
- cc) inadequate capacity of Swarkestone Causeway;
- dd) the Transport Statement is inadequate;

Drainage

- ee) still no solution for the flooding issues on the Sweet Leys development;
- ff) existing sewerage system inadequate;
- gg) no confirmation from Severn Trent Water that capacity exists;
- hh) surface water flooding from Bond Elm not accommodated;
- ii) the Drainage Statement is inadequate;

Heritage

- jj) impact on the setting of the Kings Newton Conservation Area;
- kk) erosion on the experience of the Conservation Area when approaching along Jawbone Lane;
- ll) impact on views from the cemetery;
- mm) fundamental change of relationship of the Conservation Area with the adjoining countryside;
- nn) the villages are historically separate entities;
- oo) NPPF advises that 'clear and convincing' justification is necessary;

Biodiversity

- pp) impact on birds using adjacent hedgerow;
- qq) loss of habitat for bats and woodpeckers;
- rr) badgers have been using the field;

Amenity

- ss) noise from increased traffic on Jawbone Lane;

- tt) the Noise Assessment for aircraft did not account for easterly winds where levels are increased;
- uu) privacy/overlooking impacts to occupants on Huntingdon Court and Jawbone Lane;

Other

- vv) economic benefits from 34 dwellings are likely to be marginal, and principally related to the construction phase;
- ww) approval would lead to further applications in this separation between the villages; and
- xx) access into the vacant land has been left, potentially for a future phase or an extension to the cemetery.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), H21 (Affordable Housing), 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), INF6 (Community Facilities) and INF9 (Open Space, Sport and Recreation).
- 1998 Local Plan (saved policies): H5 (Village Development), H8 (Housing Development in the Countryside), EV1 (Development in the Countryside), EV9 (Protection of Trees and Woodland), EV11 (Sites and Features of Natural History Interest), EV12 (Conservation Areas), EV13 (Listed or Other Buildings of Architectural or Historic Importance) and EV14 (Archaeological and Heritage Features)

Emerging Development Plan Policies

The relevant policies are:

- Draft Local Plan Part 2: SDT1 (Settlement Boundaries and Development); H23 (Non-Strategic Housing Allocations); BNE5 (Development in the Countryside); BNE8 (Trees, Woodland and Hedgerows) and BNE11 (Heritage).

National Guidance

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

Local Guidance

- Housing Design and Layout Supplementary Planning Guidance (SPG)
- Section 106 Agreements – A Guide for Developers
- Kings Newton Conservation Area Character Statement (KNCACS)
- Melbourne Conservation Area Character Statement (MCACS)
- Conservation Area Histories for Melbourne and Kings Newton

Planning Considerations

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

- The planning policy context;
- The principle of development;
- Compliance as an exception to normal housing policy;
- Impact on heritage assets;
- Loss of agricultural land;
- Visual and landscape impacts;
- Connectivity and highway safety impacts;
- Biodiversity;
- Noise and amenity;
- Infrastructure impacts and mitigation; and
- Material considerations.

Planning Assessment

The planning policy context

Section 38(6) of the 2004 Act gives primacy to the Development Plan, commanding that all applications must be considered against its provisions unless material considerations indicate otherwise. The NPPF reasserts this primacy multiple times, acknowledging that it is a 'secondary' consideration to the Plan, albeit a particularly important one. Both the Plan and NPPF seek to achieve sustainable development, where sustainability is measured against the Plan or the Framework as a whole. It is of particular note that the NPPF concedes within the core principles that development "should be genuinely plan-led" and this plan-led approach should provide "a high degree of predictability and efficiency" for assessment of applications. A departure from the Plan thus requires the material considerations to be of substantial weight.

The Local Plan Part 1 (LPP1) was adopted just 3 months ago following an extended forensic analysis by the EiP Inspector of the housing needs for the wider Housing Market Area (HMA). There can thus be no doubt that the Objectively Assessed Need (OAN) arrived at is wholly robust and is appropriate in determining housing needs for the District; and in turn the housing distribution and settlement hierarchy policies, as well as the site allocations in the LPP1, can all be afforded full weight. In this same vein, the social, environmental and economic objectives of the LPP1, such as employment need, infrastructure requirements and protection of the historic and natural environment; must be also be respected.

It is of significance that the Inspectors in the appeals for the adjacent site and for the recent Linton Inquiry both concluded that the LPP1 housing policies and those saved from the 1998 Plan (LP98) were up to date. In reaching this conclusion regard was had to the status of the 5 year supply. Both Inspectors found that the Council's

published trajectory could be relied upon and neither chose to re-open proceedings to hear evidence on assumptions informing the deliverability of individual sites.

In the above context, it is advanced that the Development Plan can be relied on as the sustainable development strategy for the District. Once again, a departure from the Plan thus requires the material considerations to be of substantial weight, and the appeal decision on the adjacent site demonstrates that the benefits of the development must be particularly 'grand' and not already facilitated by the Plan itself.

The knock-on effect of this is that the presumption in favour of development under paragraph 14 of the NPPF is not engaged. The Secretary of State himself has recently consented to judgement on an High Court challenge stating "paragraph 14 is clear that the presumption "means" something in particular for both plan-making and decision-taking, and what it means in the context of decision-taking is set out exhaustively.... If... none of [the] limbs [are] engaged, the presumption has no further meaning beyond paragraph 14" [emphasis added]. It is thus incorrect to apply the presumption after it has been concluded the proposal is not in accordance with an up-to-date Development Plan.

The principle of development

The site fails to provide housing within the settlement confines for Melbourne, thus not adhering with saved policy H5. However consideration against the settlement hierarchy (policy H1) is necessary. The applicant has recognised the conflict the original scheme presented in that it did not benefit from an allocation – adopted or emerging, nor was it in the settlement confines – as existing or proposed. Neither of these points is addressed in the amended proposal, but it is of significance that the housing is now an affordable-led scheme. Policy H1 allows for an exception to the normal rule that all housing needs will be met through allocations or through windfall within settlement confines. This exception provides a 'built in' allowance for boosting affordable housing where it is most needed, but this exception is very precise so to ensure it is not abused. The policy states:

"The distribution of new development outside of allocations over the period of this Plan will be in accordance with the Settlement Hierarchy below:

1. Urban Areas...

2. Key Service Villages...

For the above two tiers, development of all sizes within the settlement boundaries will be considered appropriate and sites adjacent to settlement boundaries as an exceptions or cross subsidy site as long as not greater than 25 dwellings" [emphasis added].

The settlement hierarchy is based on the range of services and facilities that are offered by each settlement, and consequently the level of development allowed for each is of a scale appropriate to the size and role of that settlement. The Local Plan Inspector ratified the figure of 25 for key service villages, such as Melbourne, as wholly appropriate.

Cross reference to policy H21 is also necessary. This states:

"Rural exception sites that are kept in perpetuity (subject to the affordable product being considered) as affordable housing for local people, will be

permitted adjoining existing Key Service Villages..., the number of dwellings to be in accordance with Policy H1 as an exceptional circumstance to normal policy where:

- i) The homes meet a clearly identified local need;
- ii) the development provides a majority of affordable homes;
- iii) the need cannot reasonably be met within the development limits of the village concerned or the submarket area the site falls within as detailed in the SHMA; and
- iv) the development is in a scale relative to the settlement size and facilities available particularly public transport and does not have any unacceptable adverse impacts on the natural and built environment” [emphasis added].

The amended scheme must therefore satisfy all the above criteria in order to accord with the Development Plan. To not do so means it does not benefit from the strict exception to the usual approach to housing distribution. In turn, assessment of whether the scheme is ‘unavoidable’ under saved policy EV1 or ‘appropriate’ under emerging policy BNE5 rests on the outcome of this assessment.

Compliance as an exception to normal housing policy

Policy H1 carries a series of tests in its own right. It must be adjacent to a settlement boundary, which this site is; and it must be affordable-led with a quantum of no more than 25 dwellings. This is where the conflict originates. Clearly the proposal is some 9 dwellings too ‘heavy’ to fit this exception. In looking to the provisions of policy H21, it is clear that the exception route must be in accordance with policy H1 to qualify as an exceptional circumstance to normal policy. The proposal is thus not an exceptional circumstance, having already fallen at an early hurdle.

Moving to consider the criteria under H21, the homes must meet a clearly identified local need. The Strategic Housing Market Assessment (SHMA) is clear in that there is an identified need for affordable housing across the District. Feedback from the Strategic Housing Officer is that there is a demand for affordable homes in Melbourne, but this does not necessarily equate to a need as normally set established under a Local Housing Needs Study – of which there is not a current study for Melbourne. The detail from the Strategic Housing Officer can therefore only provide an indication of need, meaning there is some uncertainty as to whether the proposal would satisfy a purpose of the exceptions policy. A majority of affordable homes is provided (53%) but the supporting text to the policy is suggestive of a cross-subsidy site is where a small proportion of the site is allowed for market housing so to help deliver, or fund, the affordable element. Whether the proposal provides a ‘majority’, as intended by the policy, is somewhat debatable; but as it is not determinative in ascertaining compliance with the policy, it is not necessary to analyse this further.

The next test requires that the need cannot reasonably be met within the development limits of the village concerned or the sub-market area the site falls within, as detailed in the SHMA. There are no reasonable alternatives within the settlement confines of Melbourne to deliver the ‘need’ (noting a need for Melbourne is not quantified in the absence of a Local Needs Study), but Melbourne falls in the Derby Fringe sub-market area where the key service villages of Aston-upon-Trent, Shardlow, Repton and Willington provide opportunity to accommodate housing of

such scale. In the absence of evidence of consideration of alternative sites in these locations, it is not possible to confirm compliance with this test of H21 and in turn conclude it is in accordance with H1. The final test is also not satisfied given it is not a scheme of 25 dwellings or less – that which is deemed to be of a scale relative to the settlement size by way of it being stated as a sustainable quantum in terms of housing distribution (the settlement hierarchy).

The checks as to whether any unacceptable adverse impacts on the natural and built environment arise are best considered under the following headings, but it is clear from the assessment so far that the proposal does not benefit from the clearly defined rules for an exception to normal housing policy. This shortcoming cannot be made good without further reduction in the quantum of development proposed and the applicant has already indicated that the proposal is only just viable in its existing form. The application is therefore contrary to the Development Plan, and not ‘unavoidable’ or ‘appropriate’ in the countryside.

Impact on heritage assets

As clarified in recent case law, the setting of a designated heritage asset is a material consideration which has great weight when considering any application for development. The statutory duty under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to “have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses” cannot be ignored. With respect to any buildings or other land in a conservation area, section 72 requires the planning authority to pay special attention to the desirability of preserving or enhancing its character or appearance. Although this statutory duty does not explicitly extend to the setting of a conservation area; development within its setting can affect the character or appearance on which it derives its significance. This is reflected in the NPPF which makes no distinction between listed buildings and conservation areas in paragraph 132:

“when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting”.

The policy context is informed by policy BNE2, saved policies EV12 and EV13, emerging policy BNE5 and national guidance in the Framework and the PPG. The previous refusal considered a scheme which extended built development all the way to the northern end of the site – across the back of the cemetery and closer to Kings Newton. This scheme is materially different in excluding land north of the southern boundary to the cemetery and curving the extent of built form away from Kings Newton back towards Jawbone Lane and the existing built form of Station Road beyond. In basic terms, the built pattern would act as a ‘bulge’ the rear of Oaklands Way and Huntingdon Court. In this respect, Members cannot rely on the previously stated heritage reasons for refusal. It does however remain that the listed cemetery chapel (grade II), the cemetery itself as a non-designated asset, and the Kings Newton Conservation Area are the heritage assets affected by the proposal.

The appeal decision on the adjacent site must also be considered as a material consideration in determining the level of harm arising to the setting of heritage

assets. However it is clear from the above assessment that the impacts arising from the two sites are materially different. The Linden Homes site was revised substantially to draw it completely away from Kings Newton so that concurrent appreciation of the village and Melbourne in the same vistas was not so apparent to undermine the significance of the conservation area. The topography of the site along with the majority of built form being 'read' against the Station Road backdrop also assisted to a considerable degree. The setting of the listed building and views out from the cemetery would not have been harmed given the northern extent of the site. In light of these differences, it is not considered the appeal decision constrains the impacts here to within certain 'limits', but it is a very useful indication of how far the applicants would need to go in order to overcome the previous concerns.

a) Impact on the Kings Newton Conservation Area

From the detailed analysis of the conservation area and its history we know that this settlement was deliberately set apart from Melbourne, as a 12th century planned settlement. The Kings Newton Conservation Area History notes its separate identity and its rather elite group of buildings ranged along the length of Main Street are part of its special interest and character. Its separate identity from Melbourne is not only part of its special character, it is what fundamentally defines its special historic and architectural character and what influenced the development, expansion and enhancement of the high status houses and their garden and parkland settings. The Conservation Area also gains significance from being, to a large degree, historically, physically and perceptually separate from Melbourne. The disposition of surrounding countryside in relation to existing built areas within the Conservation Area plays a role in this aspect of its significance. The historic, open, agricultural aspect of the setting of Kings Newton makes an important contribution to the significance of Kings Newton, to its appearance and to its character; and the Inspector on the adjacent appeal site confirmed "this extensive countryside setting makes a positive contribution to the asset's significance primarily through providing an open countryside landscape which the Conservation Area is set within and can be experienced from". The panoramic view from the south side of Kings Newton along footpath 15 is one of the best places to appreciate the importance of the agricultural setting of the settlement and the contrast between its linear planned form and its open setting and historic context and relationship with Melbourne. Further views from Jawbone Lane also facilitate this understanding.

The diminution of a meaningful gap between the settlements through the development of the wider ownership was previously found to have an unacceptable degree of harm to the special architectural and historic interest of the Kings Newton Conservation Area, determined by its rural and agricultural setting. Views from footpath 15 and from locations along Jawbone Lane would alter such that one would not be able to appreciate the open space between the villages any longer. The revised application however removes a key offending component of this harm – that is the area of housing which extended north across the rear of the cemetery. From Jawbone Lane it would be more evident that a separation between the settlements exists, although not entirely eradicating the harm which arises – especially given the elevated density of the development. From footpath 15 there is a similar improvement over the previous scheme, although the viewpoints provided with the application demonstrate it would still

give a clear perception that the gap is eroded – more so the closer the viewer gets to the site when walking south along this route.

The appeal Inspector found that “in terms of views from Kings Newton, as a result of its distance from the village and how it would sit within the topography of the area..., the development of the appeal site would not significantly encroach into the open character which lies to the south of the village or the views afforded from it”. This is a broadly comparable situation to the application site as now presented, such that the degree of harm arising is now considered to sit towards the lower end of the scale. Notwithstanding this now reduced nature of harm, it is a matter which must be given considerable importance and weight, and the NPPF requires less than substantial harm to be weighed against the public benefits of the proposal.

b) Impact on the grade II listed cemetery chapel

The chapel has been deliberately designed to channel views towards it and its archway. Views from the west through the archway are channelled towards formal planting within the cemetery beyond. Similarly so, views from the east are focussed towards the listed gates and walls beyond. With this deliberate design to frame the informal vista beyond, it is important that use of the northern part of the land ownership respects this significance. Retaining a less formal, rural landscape beyond the cemetery is particularly important and the applicant now recognises this in drawing all the built form away from the cemetery – in fact to a degree where one would need to have the chapel behind you before you could appreciate the built form proposed.

Regard must also be had to long distance views towards the chapel, which appears as a local landmark given its tower and hence was deliberately designed to command attention from views in the surrounding landscape. Whilst these views are now fettered by the mature tree planting along the eastern boundary of the cemetery; this planting will come and go with time whereas built form will not. The permeability of it also alters with the season. Again it was the housing towards the northern of the ownership which was found to cause the unacceptable harm to its setting previously, and as such the proposal significantly reduces this impact through drawing the built form and enclosure of the cemetery away. The result is that views from the adjacent PRow and further aspects from the north-east would remain largely unchanged, with the chapel once again able to dominate as an historic ceremonial landmark within a green setting. The only exception would be views from Jawbone Lane in the vicinity of the site frontage where the ‘bulge’ of development would provide a sense of enclosure – albeit limited. Once again the harm is very much reduced such that it must be weighed against the public benefits of the proposal.

c) Impact on the cemetery

The cemetery itself, forming part of the setting to the listed chapel, gates and walls, is a non-designated heritage asset which under policy BNE2 and the NPPF requires appropriate consideration. The layout and landscaped design was intentional, providing a separate, secure and protected place for the dead whilst providing a contemplative and dignified space as advocated by influential cemetery designer Loudon. Melbourne cemetery is a very good example of this

Loudon style with the conformist and non-conformist chapels linked by an arch with a tower surrounded by a grid layout. As noted above the archway helps to frame a view and draw the eye beyond to the panoramic view of the countryside. Indeed the tranquillity and open nature of the landscape beyond provides an important character and sense of place for visitors to the cemetery. As such the intervisibility between the two landscapes is important.

As previously identified, developing housing beyond the eastern boundary would not contribute positively to the setting, providing a sense of enclosure and urban influence where at present the formal landscape follows into the rural landscape beyond, and causing harm to the significance of the heritage asset. The Cultural Heritage Assessment recognised this in stating “these glimpsed views of countryside contribute to the peaceful nature of the experience within the cemetery”. This revised application, through omitting housing in this location which would otherwise obstruct this intervisibility, now addresses these concerns such that the degree of harm is at the low end of the spectrum. The NPPF requires a balanced judgement having regard to this scale of harm and the significance of the heritage asset.

In light of the foregoing the impact on designated and non-designated heritage assets has been considerably reduced from the previous refusal with the harm arising to each asset requiring a balancing exercise against the public benefits of the proposal. The PPG analyses what is meant by the term ‘public benefits’ and considers that these could be anything that delivers economic, social or environmental progress, but that they should flow from the proposed development. The key aspects are that the benefits should be of a nature or scale to be of benefit to the public at large and should not just be a private benefit, although they do not always have to be visible or accessible to the public in order to be genuine public benefits.

Visual and landscape impacts

The loss of open countryside would not go unnoticed by way of this development, and in light of the above consideration of principle it is not an unavoidable or appropriate impact. The rural nature of Jawbone Lane would also be altered to some respect, across the site access by way of widening works and the creation of a contemporary bellmouth. Notwithstanding this it is acknowledged that the previous concerns in respect of visual impact, predominantly linked the setting of heritage assets as discussed above, are largely overcome. By drawing the development away from the northern limits of the ownership the dominant, overbearing effect on users of the PRoWs and their enjoyment of these routes would be reduced. In addition, due to the fall across the site, views from footpath 15 south-east across the site towards the Priory Church of Saint Mary and Saint Hardulph at Breedon-on-the-Hill would not be obstructed by the rooftops to the proposed houses. It must be recognised that the Inspector did not consider the adjacent site a valued landscape in NPPF terms, such that this site is equally not considered to be one; but there would still be a limited adverse effect on the character and appearance of the landscape.

Loss of agricultural land

It was identified through the publicity process that the site might constitute Best and Most Versatile (BMV) agricultural land (grade 3a or above), resulting in the ALC report outlined above. The Council's agricultural consultant expresses some concern as to the distribution of sample points around the site, meaning the precise dividing lines between the soil types is a fairly subjective and arbitrary affair. However it is also noted that the site is part garden, part uncut grass and part agricultural plots. The footprint of the existing house, farm building, yard and driveway should normally be excluded from such analysis, and this would plainly assist the applicant's case; so it is odd this has not been done. Whilst further clarification might ordinarily be sought, or an independent verification of soil quality undertaken; given the site is relatively small and it is in part previously developed, the loss of BMV land is not considered significant in terms of paragraph 112 of the NPPF, although it does weigh against the proposal to a degree given the wording of policy BNE4.

Connectivity and highway safety impacts

The loss of a pedestrian link onto the public footpaths to the north is regrettable, but this is not considered to compromise the ability for occupants to reach services and facilities through sustainable modes of transport. A lack of connectivity does however limit the ability for the POS to be readily accessible to existing residents in the locality. The Highway Authority is satisfied that access arrangements would be acceptable with appropriate visibility and suitable alterations to the lane across the site frontage to accommodate the additional movements. Use of the greenway is not considered to be compromised by the alterations and the number of vehicle movements the proposal would create across the day.

Biodiversity

The habitat comprises of a fields of improved grassland and arable crop production bordered by hedgerows and trees, along with small groups of trees within the site although a former orchard along the eastern boundary has been removed in recent years. Whilst the fruit trees are unlikely to meet the definition of Traditional Orchard UK BAP habitat, semi-mature to mature fruit trees provide an important resource for invertebrates and a variety of bird species. DWT advises that the landscaping scheme submitted as part of any reserved matters application should include the planting of a community orchard/fruit trees to compensate for the loss. The submitted reports are considered to be adequate in terms of assessing the impact on biodiversity, including protected species, with conditions possible to mitigate residual impacts and provide biodiversity compensation and enhancement.

Noise and amenity

The occupants of the development would be affected by noise from aircraft over-flights as the site lies on the approach to East Midlands Airport. The applicant's assessment concludes however that with suitable design, such as roof insulation, appropriate roof tiles, thick insulated ceilings and specified double glazing; internal noise levels would be suitable. The Pollution Control Officer agrees with these findings and recommends a scheme of sound attenuation is secured by condition.

As to effects on adjoining occupiers, short term effects from construction can be controlled by condition. As the application is made in outline with layout, scale and appearance reserved; a detailed assessment of shading and overlooking cannot be

undertaken. The indicative layout does suggest however that the minimum standards can be respected in a reserved matters application.

Infrastructure impacts and mitigation

Affordable housing provision is discussed above. The proposal would have impacts on existing services and facilities, of which some would be beneficial through additional inward investment in the local economy. Whilst additional strain on existing roads and sewers is inevitable with any growth around Melbourne, there is no substantive evidence to withhold permission on these grounds. However education and healthcare capacity is of concern and for this reason contributions to mitigate the impact are sought by the County and the CCG. In summary, the contributions (based on the indicative housing mix provided) would be:

▪ Education (infant):	£34,197.03
▪ Education (junior):	£45,596.04
▪ Education (secondary):	£85,880.85
▪ Education (post-16):	£37,255.80
▪ Healthcare:	£12,994.00
▪ Outdoor sports facilities:	£22,440.00
▪ Built facilities:	£12,525.60

Benefits

It is recognised that the housing needs for the District are a minimum. The provision of 34 dwellings towards the rolling supply carries weight, especially given the affordable proportion on offer; but this is considerably tempered by the fact that this quantum is not required to sustain the supply figure and it could be provided under the LPP2 (i.e. through the plan-led system). The peripheral economic and social benefits which arise from the construction and use phases are also of merit, but carry little weight.

The provision of 6 bungalows across the tenures is however a considerable benefit. Policy H20 seeks a mix of dwelling types, tenure, size and density, accounting for evidence in the SHMA and Local Housing Needs Studies. The SHMA is the only available source at the present time, and this does not provide a specific requirement for bungalows – only accommodation which can facilitate adaption for the aging population (e.g. provision of bathrooms and bedrooms at ground floor). Compared to other local authority areas however, a large increase in the older person population in the District is anticipated over the next 20 year – and this cannot be ignored. Whilst bungalows would thus represent an attractive option to those who wish to down-size, their allocation across the tenure mix proposed may not result in the envisaged end-user securing them (i.e. 4 of the 6 bungalows would be transferred to a registered provider who may not have qualifying persons waiting to fill this type of property in this area). This is why a Local Housing Needs Study is necessary to properly inform the mix and tenure split for affordable-led sites, and in the absence of the necessary data it is difficult to properly apportion weight to this benefit.

Conclusion

The Development Plan is the primary consideration in this application. It is up-to-date and its policies can be afforded full weight given a 5 year housing supply exists.

There is no reason to doubt this supply given the proximity of this recommendation to the adoption of the LPP1 and the examination before that, as well as the figure being ratified on subsequent appeal decisions. There is also no reason to doubt this supply will dwindle given the surplus factored into the supply and the progression towards adoption of the LPP2. Indeed further windfall sites are being added on an ongoing basis, as Members will recall from previous committees. The presumption under the NPPF is therefore not engaged and it is thus necessary to determine whether there are any other material considerations which outweigh the Plan.

The provision of affordable housing to a proportion not normally seen on major housing developments is of merit, but it falls short of qualifying as an exception to the policies which facilitate this 'stepping outside' of the usual approach. The provision of bungalows is also another tangible benefit, recognising the desire to boost such accommodation in the District – and Members may wish to consider how much weight they afford to this benefit for themselves. However as noted, it is uncertain that their allocation across the tenures would achieve that envisaged. The peripheral economic and social benefits from housing provision are also noted. However many of these benefits are requirements which are enshrined in the overall sustainable development approach which is the Local Plan. They are thus already expected from each housing allocation across the District, or expected from an affordable-led scheme in qualifying as such. With the scope to deliver the benefits on sites elsewhere in the vicinity and/or District, and the exceptions policy so specific in its requirements such that the proposal does not qualify as an exception site; it is considered that the material considerations here are insufficient to justify a departure from the plan-led system – a departure which would undermine the predictability in decision making the Plan is designed to promote.

The environmental harms which arise to the setting of heritage assets, visual/landscape impacts and loss of some BMV agricultural land are reduced when compared to the previous refusal. However there remains some harm to heritage, landscape and soilscape interests, and in the context of the fundamental harm to the plan-led approach and the inability for the scheme to qualify as an exception; these harms are considered to outweigh the benefits arising from the proposal - conflicting with the provisions of policies BNE1, BNE2 and BNE4 and saved policies EV1, EV12 and EV13.

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

Recommendation

REFUSE permission for the following reasons:

1. The Development Plan is up-to-date and policies relevant to the supply of housing can be afforded full weight given a 5 year housing supply exists. The presumption in favour of sustainable development under paragraph 14 of the NPPF is therefore not engaged and it is necessary to determine whether there are any other material considerations which indicate a decision should be made contrary to the provisions of the Plan. The proposed development, whilst seeking to provide an affordable-led scheme, would not qualify as an exception to the normal strategic approach to the distribution of housing

across the District, it falling outside of the settlement confines and not constituting a cross-subsidy or exceptions site of not greater than 25 dwellings. There is also uncertainty, in the absence of adequate evidence, that the homes meet a clearly identified local need and that the need cannot reasonably be met within the housing submarket area. The benefits arising from the proposal do not justify a further departure from the strategic approach to housing delivery. The proposal is therefore contrary to policies H1 and H21 of the Local Plan Part 1, saved policies H5 and EV1 of the Local Plan 1998, emerging policies SDT1 and BNE5 of the Local Plan Part 2; as well as not respecting the core principles of the NPPF and the balanced approach to sustainable development enshrined therein.

2. The proposal creates harm to the setting of designated heritage assets, namely the listed chapel at Melbourne Cemetery and the Kings Newton Conservation Area, as well as the setting to the cemetery itself - a non-designated heritage asset. The development would also bring about some harm to the landscape and views across the site, as well as lead to the loss of best and most versatile agricultural land. The benefits arising from the proposal are not considered to outweigh these harms, conflicting with the provisions of policies BNE1, BNE2 and BNE4 of the Local Plan Part 1, saved policies EV1, EV12 and EV13 of the Local Plan 1998, emerging policies BNE5 and BNE11 of the Local Plan Part 2, and paragraphs 17, 134 and 135 of the NPPF.

Informatives:

Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and issues, suggesting amendments to the proposal, and meetings and negotiations. However despite such efforts, the planning objections and issues have not been satisfactorily addressed. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

Item **2.2**

Reg. No. **9/2016/0447/MR**

Applicant:
C/O Agent
Metacre Ltd

Agent:
Mr Jonathan Vose
Walsingham Planning
Brandon House
King Street
Knutsford
WA16 6DX

Proposal: **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR THE RESIDENTIAL DEVELOPMENT OF 95 DWELLINGS TOGETHER WITH HIGHWAYS INFRASTRUCTURE, LANDSCAPING, PUBLIC SPACE AND DEMOLITION OF EXISTING DWELLING ON LAND AT SK3021 4304 BURTON ROAD MIDWAY SWADLINCOTE**

Ward: **MIDWAY**

Valid Date: **10/05/2016**

Reason for committee determination

The item is presented to Committee at the request of Councillor Pearson as local concern has been expressed about a particular issue.

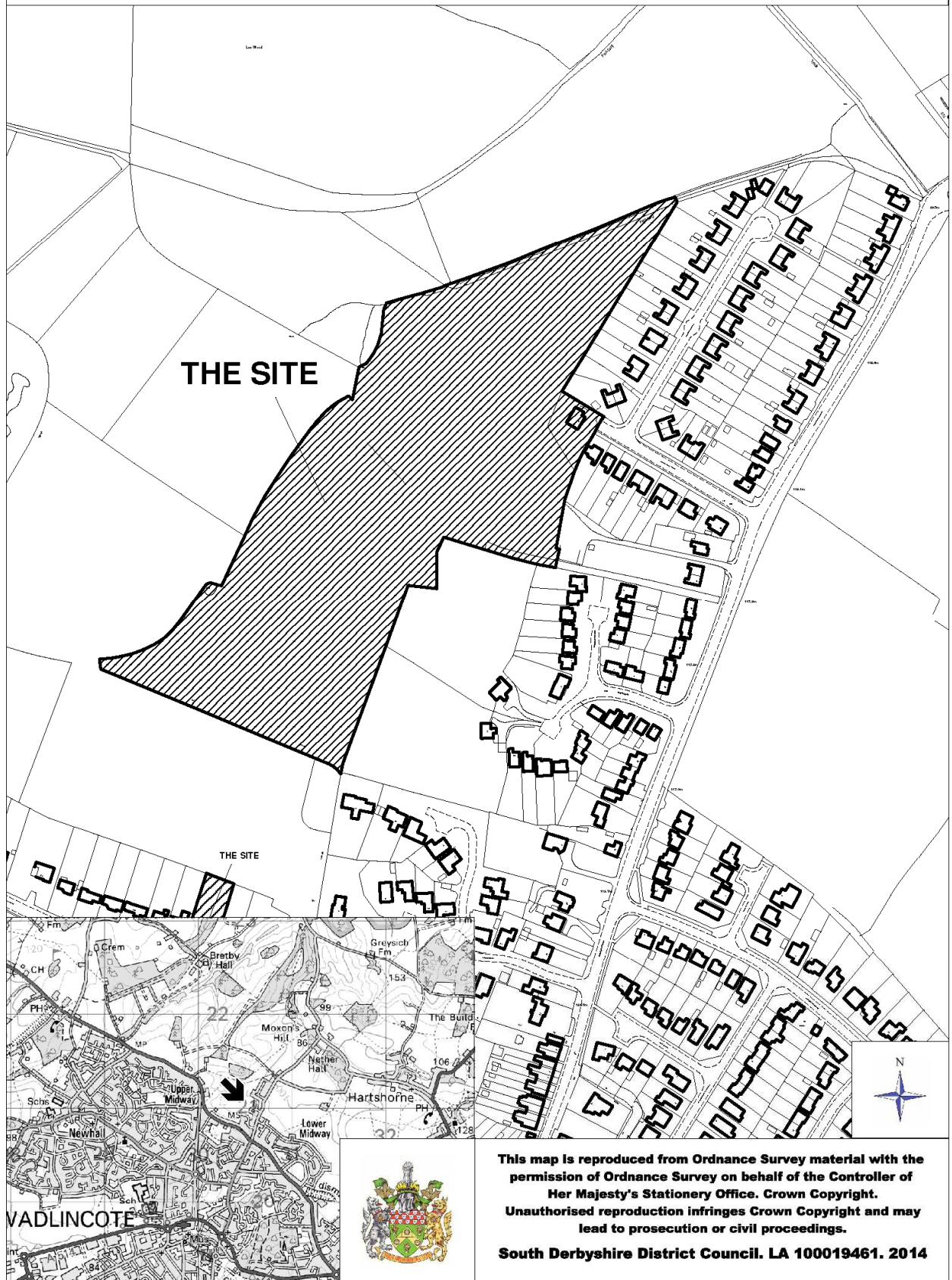
Site Description

This 4.75 hectare site is located to the west of Sandcliffe Road, Midway. Properties on The Sandlands, Sandcliffe Park, Longlands Road and Leawood Road bound the site to the east. Hartshorne Bridleway 55 runs along the northern boundary of the site with Hartshorne FP 47 running to the north and Swadlincote FP 62 to the west. Agricultural grazing land adjoins the site to the north, south and west.

Proposal

Outline permission is sought with access to be agreed for 95 dwellings. The access is proposed via Longlands Road and involves the demolition of a detached property adjacent to the turning head. The illustrative masterplan shows the housing immediately adjacent to the existing properties to the east, continuing Longlands Road to the east which would link to cull-de-sacs. A mix of terraced, semi-detached and detached dwellings are indicated with parking to the front or side. Open space is proposed adjacent to the western boundary with a large area proposed in the south

9/2016/0447 - Land at SK3021 4304 Burton Road, Midway, Swadlincote (DE11 7PL)



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western part. A triangular piece of land in the northern part of the site would be retained for a SUDS basin.

Applicant's supporting information

A Planning, Affordable Housing and Community Involvement Statement describes the site's context and 'sustainable' location. It examines the site's economic, social and environmental roles and describes the proposed development. It confirms a willingness by the applicant to provide 30% affordable homes. It outlines the planning policy context; however, this was written prior to the adoption of Local Plan Part 1 and as such is out of date. This document states that the application site was expected to be proposed for residential allocation in the next consultation phase of the Part 2 Plan. Conclusions drawn relate the position prior to adoption of the part 1 and appeal decisions that considered housing policies and policy EV1 out of date. It concludes that as the site sits close to existing facilities and services on the edge of Swadlincote, it would form a natural extension to the existing urban form without overtly infringing into the countryside. The granting of planning permission would assure the Council in the delivery of a non-strategic site capable of accommodating affordable housing and contributing towards achieving the District's most recent objectively assessed needs figures. In addition, the site has limited landscape value and can be delivered without any significant adverse impacts.

Design and Access Statement sets the context and constraints of the site, includes the landscape and visual analysis with photo viewpoints. It includes an assessment of town form and townscape character, identifies access to public transport and facilities and provides diagrams and descriptions to indicate the evolution of the layout with artistic impressions of how the development would be viewed.

An Arboricultural Assessment concludes that although a considerable amount of tree cover will be removed, the majority of it was considered of being of limited material value due to its self-set and un-managed nature. It would be possible to retain much of G4 along the western boundary of the site due to the lack of development in this area. This would allow for a buffer of tree cover to aid in shielding the proposals from the surrounding open landscape to the west. Much of the tree cover to the south along with larger groups and individuals along the western boundary of the site could be retained and aid in the site's incorporation into the local landscape.

A Landscape and Visual Impact Appraisal concludes that for the proposal site itself there will be a high change as the development of the site will change the character of the site from a rough grassland and scrub field to a residential development on the northern edge of Midway. The proposal site forms part of the 'Edge of Settlement Farmland' local character area located on the periphery of the settlement. Whilst there would be minimal loss to existing landscape elements, there will be an inevitable loss of semi-rural character in this location. The local landscape is assessed as having a Low to Moderate Value in the vicinity of the site, with a network of public footpaths and Bridleways providing access to the wider countryside. The wider landscape of the rural Farmland is assessed as having Medium Sensitivity, being of Ordinary quality and Moderate Value due to it being an area, which although is not designated, has good access through a network of public footpaths and bridleways and a more tranquil and remote character further away from urbanising elements.

An Ecological Appraisal concludes that the most extensive habitats within the site boundary were tall herbs, notably rosebay willow herb and scrub, comprised of a mixture of broad-leaved species. Two distinct types of grassland were recorded and were identified as species-poor semi improved grassland and semi-improved acid grassland. A main badger sett was identified on a boundary but was located at a distance of at least 30m from the built development and is therefore not considered to present a constraint to development. However a precautionary approach of site works. Breeding bird surveys identified a number of species within the site boundary typical of the habitats present, including five notable species. The likely impacts of the proposed development upon local bird populations were assessed as being negligible. No evidence of reptiles were identified during reptile surveys. No evidence of dingy skipper was recorded during surveys for this species and therefore it is considered that this species does not pose a constraint to development. The design of the proposed layout has been informed by an understanding of the sites characteristics and by a range of protected species surveys. As such it aims to retain and enhance, via sympathetic conservation management, a significant proportion of what are considered to be the most valuable habitat components present, together with a mix of habitats that reflects broader character of the site.

The Bat Survey found that single building present within the site boundary was assessed as having negligible potential to support bat roosts. A single mature tree T1 was considered to have some potential to support bat roosts but no evidence of roosting bats was recorded over the course of two dusk (emergence) surveys and one dawn (re-entry) survey. On this basis it is considered unlikely that there are any bat roosts present within the development boundary. Evidence from the emergence/re-entry surveys did however indicate the presence of a roost or roosts in the wider landscape to the south, and that woodland and scrub along the western site boundary are used by small numbers of commuting bats. Mitigation recommended is a lighting strategy and bat roosting features within buildings and retention of trees.

A Contaminated Land Assessment concludes that no significant contaminant linkage has been identified and soil and ground water liabilities are unlikely to occur.

Transport Assessment includes a Sandcliffe Road speed survey and accidents in the vicinity of the Sandcliffe Road and Burton Road junction. Mean speeds are 32mph and 85th percentile speeds are 36mph. Seven accidents have been recorded within 5 years with only one classed as serious. Current achievable emerging visibility splays of 2.4m x 59.0m at the Longlands Road/ Sandcliffe Road junction are illustrated in Drawing TPMA1439_100. It is considered the site is accessible by sustainable modes of transport. The surrounding area exhibits good levels of pedestrian infrastructure, and there are a number of public transport opportunities within acceptable walking distance of the site. The survey was carried out between peak times in the morning and early evening. Higher trips rates were used to inform the assessment together with recognised traffic modelling. The results indicate the proposed development traffic would have a negligible impact on the surrounding highway network. On the above basis it is considered that the impact of the development traffic would be imperceptible to existing road users, and would not result in a 'severe' impact in reference to the National Planning Policy Framework (NPPF).

Flood Risk Assessment and Outline Drainage Strategy states that the EA flood map (rivers and sea flooding) shows the development site in Flood Zone 1, where the risk of flooding from rivers and seas is considered low. No record of any historical flooding or potential flooding recorded at the site. No historical groundwater flooding recorded. Recommendations are that groundwater levels are monitored during any ground investigation works to determine site specific groundwater levels. Fluctuations in ground levels must be assessed and floor levels set above the maximum level recorded. Floor levels should be no lower than existing ground levels. The existing public sewers have capacity and surface water run-off can be adequately controlled through a suitably designed surface water drainage system that would use an existing watercourse.

Planning History

None

Responses to Consultations

The Highways Authority states that access to the site is taken from the western end of Longlands Road, a residential cul-de-sac off the classified Sandcliffe Road. Longlands Road also serves as access to a second cul-de-sac, Leawood Road, which extends from its junction with Longlands Road in a north easterly direction. The visibility at, and the geometry of, the Longlands Road/Sandcliffe Road junction and the roads themselves are considered adequate to accommodate the increase in traffic which would result from the proposed development. It is also considered that the junction of Leawood Road and Longlands Road complies with current standards such that the safety of its users would not be compromised by the introduction of additional traffic movements. However, the cul-de-sac shown immediately adjacent to No.17 and a further link between No's 63 and 77 are not acceptable. Therefore, there are no objections to the proposal subject to conditions relating to the access, improvements to the junction of Longlands Road, submission of a construction management plan, temporary access, internal layout at reserved matters, the gradient of estate road accesses, laying out of the estate streets, and parking and swept path analysis.

The Environment Agency has no comment as the site falls within Flood Zone 1.

The Housing Strategy Manager states the requirement is 30% affordable housing which equates to 29 dwellings with a split of 68% rent and 32% intermediate. A breakdown of the tenure of properties required is detailed and maximum clusters should comprise of no more than 10 dwellings.

The Southern Derbyshire CCG states that the proposal would generate 238 additional patients and the 6 surgeries in the vicinity of the application site do not have space capacity. A contribution of £36,214 is therefore required.

The County Education Authority requires a S106 contribution of £159,586:14 towards the provision of 14 primary places at Eureka Primary School. There is considered sufficient capacity at secondary level at Granville Sports College.

The County Minerals Authority confirms that the proposal would not adversely impact the minerals safeguarding interest.

The Environmental Health Officer has no objection subject to restrictions during construction by conditions in relation to dust, hours of working, air quality and noise.

The National Forest Company requests 20% woodland planting which would equate to 0.95 Ha. The illustrative masterplan shows 46% of the site (2.17 Ha) consists of various forms of green infrastructure which is considered appropriate. Conditions in relation to protections of trees and retained habitats during construction, landscaping plans management regimes are recommended. Comments on the internal layout are that the dwellings should be set back and related better with the public right of way and improved footpath linkages should be considered.

Peak and Northern Footpaths state that Bridleway 55 Hartshorne surface should be enhanced as its use would greatly be increased by the development. The proposed footpaths within the public open space are welcomed and should be dedicated as public rights of way and pedestrian links to Sandfields, Ladyfields and Burton Road should be provided.

The County Archaeologist considers the site to have a low potential for archaeology and advises that the development would have no archaeological impact.

The County Flood team states that there are no details requiring the condition of the existing culvert where surface water is proposed to discharge into. A SUDS condition is recommended.

Derbyshire Wildlife Trust states that the originally submitted survey work was undertaken in a sub-optimal time of year. They consider that the grassland should be classified as unimproved acid grassland at the southern end of the site. There are no waterbodies within the site but further survey work for Great Crested Newts is required at a pond nearby. Further survey work submitted for Great Crested Newts, reptiles and bats is acceptable and has not identified significant constraints. Badgers do not represent a constraint to development. Surveys for the Dingy skipper butterfly which is a UK BAP priority species have been undertaken and no butterfly were recorded. The proposed development would result in the loss of a woodland, scrub, tall herb and species rich grassland reducing the overall extent of semi-natural habitat by 2.5Ha (54%). 55% of the acid grassland would be lost and the area would meet the Local Wildlife Site Selection guidelines. The proposed mitigation of habitat creation would result in loss of trees and habitat in order to achieve it and does not provide sufficient mitigation to compensate for the loss. They consider the proposal would result in adverse ecological impacts on a variety of semi-natural habitats including one area of acid grassland of high nature conservation interest and sufficient mitigation has not been identified.

Severn Trent Water has no objection subject to a drainage condition and informative regarding the public sewer on site.

The Council's Contaminated Land Officer has no objection subject to a condition requiring a scheme for the prevention of ground gas.

Responses to Publicity

Hartshorne Parish Council objects to the application on the following grounds:

- a) Access to the site is via a narrow residential street and it has poor visibility.
- b) Sandcliffe Road is already a very busy main route.
- c) The Consultation document was not included in the application.
- d) Loss of wildlife and the land should be considered as an allocation for green space in Part 2 of the Local Plan.
- e) There are no links to Burton Road and public transport links off Sandcliffe Road.
- f) The schools, doctors and dentists are at capacity.
- g) No recreations facilities are provided and the proposed footpath would only benefit future residents.

155 objections have been received, together with a petition of 88 signatures, raising the following concerns/points:

Traffic concerns

- a) There would be a significant increase in traffic on an already busy road.
- b) Traffic speeds within the Traffic Report are not representative and 30mph is often exceeded.
- c) Traffic waiting at the traffic lights on Sandcliffe Road is often queued past the Longlands Road junction at peak periods.
- d) The conclusions of the traffic report that there will be little impact is ridiculous.
- e) Access out of Ladyfields at peak times is already difficult, exacerbated by parked cars by the junction.
- f) A further 200 plus cars would increase accidents and would make pedestrians more vulnerable, especially on the narrow pavements adjacent to the traffic light junction.
- g) The access is too narrow for the heavy machinery to use.
- h) Sandcliffe Road is designated as a type 4 carriageway only designed to handle 0.5 msa, this is currently exceeded without the addition of more properties.
- i) Sandcliffe Road is a main route to Swadlincote and vehicle speeds increase when travelling down the hill.
- j) There is a hidden dip by the 30mph sign on Sandcliffe Road which makes access difficult.
- k) The visibility at the Longlands junction is poor.
- l) The Traffic report states that the Sandcliffe Road junction operates within its practical reserve capacity without any queuing, which is totally contrary to what residents witness daily at peak times.
- m) The timing of the traffic surveys and equipment used is called in question.
- n) The Sainsbury's has increased the number of pedestrians crossing the road junction where pavements are narrow and an accident is likely.
- o) The bus information within the Transport Assessment is incorrect in relation to the services and location of bus stops. Guidelines state the nearest bus stop should be 400m but it is 750-800m away.
- p) The temporary advisory speed sign has been removed from Sandcliffe Road as it had little impact on reducing speeds.
- q) There would be an increase in noise pollution from the additional traffic.
- r) It would mean the loss of Bridleway 55 Hartshorne Parish

Wildlife Concerns

- s) The methodology of the Ecology Survey is flawed and does not follow Natural England's recommendations.
- t) The Ecology Survey repeatedly refers to broadleaved woodland as 'scrub'.
- u) It would result in another area of green land being eroded in the heart of the National Forest.
- v) It involves the destruction of a naturally created wildlife sanctuary.
- w) The site is a haven for all types of wildlife such as pheasant, partridge, badgers and insects which shall be decimated by the development.
- x) There are three types of Orchid growing on the site which would be lost.
- y) Bats are often seen flying in the area and the woods are home to the cuckoo which are on a 'red list' for conservation of birds.
- z) There was previously a preservation order on the site due to a rare butterfly.
- aa) Muntjac deer have been seen using the site.
- bb) It would result in the felling of a large number of trees.
- cc) The site should receive statutory protection by Natural England as a Site of Special Scientific Interest.
- dd) When was the path behind Leawood Road made a public footpath as it was just a path made and maintained by residents.
- ee) There is an active badger set on site.
- ff) There are a large number of bird and butterfly species on site as well as owls and birds of prey.
- gg) Further ecological surveys are required and the consultation end date should be delayed until the results are fully assessed.
- hh) Eleven statutorily protected or priority species would be adversely affected by the proposal.
- ii) A brook runs down the back of properties on Leawood Road.
- jj) It would cause noise and dust during construction.
- kk) The plans show a pumping station and if this breaks down it could cause flooding.
- ll) We have only 13% of woodland left in the country as opposed to 30% in Europe, further loss should be avoided.
- mm) A TPO be placed on the trees.

Planning policy

- nn) The proposal does not fit with recent planning policy in the area to develop brown field sites and former industrial areas.
- oo) There are plenty of brown field sites shall should be built on before ruining Lea Wood.
- pp) The site is currently used for recreation by walkers and should be left for future generations to enjoy.
- qq) No increase in schooling and health facilities are proposed.
- rr) Many applications at their property (View 7 in the LVIA) have been refused on the basis of a 'significant intrusion into an open space/ gap which makes a valuable contribution to the area'.
- ss) The bottom of Leawood Road floods in bad weather so what impact would the development have on land drainage and services.
- tt) A completion of a *rightmove* search indicates that there is no need for additional dwellings in Midway.
- uu) A 'natural extension' of Midway is not required.
- vv) The site is designated green belt.

- ww) When the Council sold 8 and 10 Sandlands they added a Section 52 order to prevent development on the land and required a wood to be created and maintained. Any building beyond the boundary of their property would not be justified and against the Council's original wishes.
- xx) The site layout would be overdevelopment.
- yy) The nearest schools are a distance away and may not have capacity.
- zz) Loss of privacy of properties on Leawood Road.
- aaa) They made objections to the three SHLAA sites as part of the Part 2 consultation.

Heather Wheeler MP states that it is an unnecessary intrusion in the countryside as Local Plan Part 1 and Emerging Part 2 have adequate housing allocations without it.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), H21 (Affordable Housing), 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), INF6 (Community Facilities), INF8 (The National Forest) and INF9 (Open Space, Sport and Recreation).
- 1998 Local Plan (saved policies): H8 (Housing Development in the Countryside), EV1 (Development in the Countryside), EV9 (Protection of Trees and Woodland), EV11 (Sites and Features of Natural History Interest) and EV14 (Archaeological and Heritage Features).

Emerging Development Plan Policies

The relevant policies are:

- Draft Local Plan Part 2: SDT1 (Settlement Boundaries and Development), H23 (Non-Strategic Housing Allocations), BNE5 (Development in the Countryside), BNE8 (Trees, Woodland and Hedgerows) and BNE11 (Heritage)

National Guidance

- National Planning Policy Framework (NPPF) 6, 7, 8, 11, 17, 32, 47, 56, 58, 103, 109, 118, 139
- Planning Practice Guidance (PPG)

Local Guidance

- SPG Housing Design and Layout

- Section 106 Agreements – A Guide for Developers

Planning Considerations

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

- Principle of Development
- Trees and Landscape impacts
- Ecology
- Highways
- Layout and Residential Amenity
- S106 contributions

Planning Assessment

Principle of Development

The application must be determined in accordance with the development plan unless there are material considerations that indicate otherwise (section 38(6) of the Planning and Compulsory Purchase Act 2004). The Local Plan Part 1 was adopted on the 13th June 2016 and as a consequence the Council can now demonstrate a 5 year housing supply. The Draft Local Plan Part 2 includes allocations for further sites to be included in the housing supply. Consideration is still to be given to saved policy H8 which has not been superseded by the recently adopted, Plan and this is relevant to this application. The housing policies can now be considered up to date and therefore NPPF paragraph 49 is not engaged; and an assessment of the relevant development plan policies follows.

Policy H1 relates to Settlement Hierarchy and states that the hierarchy 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. Swadlincote is defined as an urban area which includes Woodville. The proposed settlement boundary within the Draft Local Plan Part 2, currently out to consultation, extends only to the rear gardens of existing properties on Burton Road, The Sandlands, Sandcliffe Park, Longland Road and Leawood Road. Fields separate the southern part of the site from the boundaries of existing properties. The proposal falls outside the settlement boundary of Swadlincote and as such is considered countryside.

Saved Policy H8 states that outside settlements new housing development will be permitted provided that it is necessary to the operation of an established, viable, long term rural based activity; a countryside location is necessary; it is well related to existing farm buildings and the size of the dwellings is commensurate with the functional requirement of the activity. Policy H21 allows for exception sites on the edge of the urban area as long as they are affordable led and no greater than 25 dwellings. The development of 95 dwellings outside the urban area of Swadlincote is contrary to both of these policies as no exceptions apply.

Emerging Policy SDT1 states “that settlement boundaries define the built limits of a settlement and distinguish between the built form of a settlement and the countryside”. It states that within settlement boundaries development will be permitted where it accords with the development plan. The urban area is identified

as Swadlincote and Woodville. This site is not allocated as a housing site within the Emerging Local Plan Part 2.

The principal of residential development on this site is therefore not acceptable as it is not in accordance with the development plan.

Trees and Landscape impacts

The site lies to the west of existing residential properties, in part abutting the rear gardens of residential properties to the east and in part separated by fields. The site is enclosed by mature hedgerows and it has extensive tree coverage. The proposal as submitted would result in the loss of 11 individual category B and C trees and 8 groups of category B and C trees. An area TPO was made on the 17th August 2016 to cover all the trees within the application site and part of the adjoining woodland to the east.

Saved Policy EV9 requires the protection of trees and woodlands and states that development will not be permitted which would lead to the loss of areas of woodland or specimen trees of value to their landscape setting. Policy BNE8 seeks to minimise the loss of trees, woodland and hedgerows and where affected the layout and form of development shall be informed by an arboricultural survey. Section B of this policy states that the felling of protected trees will only be granted in exceptional circumstances. NPPF paragraph 118 states that planning permission should be refused for developments resulting in the loss of aged or veteran trees, unless the need for, and benefits of, clearly outweigh the loss. In order to facilitate the development within the countryside, significant loss of protected trees would be necessary.

Open views of the site can be achieved from the Bridleway that runs along the northern boundary and existing network of footpaths to the north and west. Views of the valley can be obtained when walking along Burton Road to the south. The topography is sloping with land falling northwards from approximately 120m AOD to 110m AOD and the surrounding landscape undulating. The site falls within the northern edge of the Leicestershire and South Derbyshire Coalfields National Character Area which defines the landscape as unenclosed with shallow valleys, subdued sandstone ridges and a gently undulating plateau. The site is also located within the National Forest and has a Coalfield Village Farmland Landscape Character Type. The site specific character type is edge of settlement farmland characterised by a combination of field types, including arable farmland, grazing pastures and rough grassland, with discernible urbanising influences.

Saved Policy EV1 states that outside settlements new development will not be permitted unless it is essential to a rural based activity or unavoidable in the countryside, and the character of the countryside, the landscape quality, wildlife and historic features are safeguarded and protected. The policy goes on to state that where development is permitted it should be designed and located so as to create as little impact as practicable on the countryside. Policy BNE5 relates to development in the countryside and states planning permission will be granted where it is appropriate for its location and if considered inappropriate where it can be demonstrated that would not unduly impact upon landscape character and biodiversity, it would be well related to a settlement, and is not considered a valued landscape. Residential development outside the settlement boundary is avoidable

and inappropriate in the countryside and impacts on the landscape and ecology are assessed further below.

Policy BNE4 requires the character, local distinctiveness and quality of South Derbyshire's landscape to be protected and enhanced. Key valued landscape components such as mature trees and established hedgerow should be retained. It states that "development that will have an unacceptable impact on landscape character, (including historic character), visual amenity and sensitivity and cannot be satisfactorily mitigated will not be permitted. Demonstration that landscape types and landscape character areas have been considered is required". NPPF paragraph 17 states that the intrinsic character and beauty of the countryside should be recognised.

Whilst the submitted Landscape and Visual Impact Assessment (LVIA) methodology is considered to follow best practice, the conclusions drawn in terms of landscape and visual effects are considered to be incorrect. The viewpoints chosen are considered to provide a good representation of the visibility of the proposed development; however, the micro-siting of the viewpoints is considered to have the potential to under-rate the visual effect from a receptor, particularly along the adjacent footpaths. In the review of visual effects in year 1 (pre-mitigation) eight viewpoints are considered to have a higher level of impact than stated by the applicant's LVIA and in year 15 (with mitigation) 10 viewpoints are considered to be higher than stated. It is therefore considered that there would be greater adverse visual effects than the applicant's assessment identifies. In particular, these adverse effects are identified from adjacent footpaths to the west of the proposed development and by residents along Burton Road, Leawood Road and Longlands Road. It is considered that the submitted LVIA downplays the adverse landscape and visual effects of the proposed residential development to this urban fringe countryside. It is anticipated that, even with the inclusion of mitigation planting and the retention of boundary vegetation, there would be adverse effects experienced as a result of the proposed development.

In mitigation terms, the key issue appears to be the location, layout and form of the development itself. The proposed loss of large numbers of trees within the site would inevitably change the character of the site and the immediate area. Although it is noted that the mitigation proposed as part of the submitted application includes for an area of offset landscape to the southwest and proposes the retention of boundary vegetation along with new planting, which would be an appropriate mitigation approach; this does not alleviate the identified landscape and visual effects. It is considered that the density of the layout and the housing types proposed do not reflect the character of the surrounding built form. This, in combination with the proximity of the proposed scheme to numerous well used footpaths and adjacent elevated dwellings, results in a number of adverse landscape and visual effects.

Thus, the proposal is considered to have a significant adverse impact on the landscape character of the site and surrounding area, contrary to saved policy EV1, policy BNE4 and emerging policy BNE5 which all seek to protect and enhance the character of the countryside and the landscape quality. The impact on the visual amenity and sensitivity of the landscape is considered to be significant and cannot be satisfactorily mitigated. The loss of protected trees is considered excessive and would adversely alter the character of the site, contrary to policy BNE4, saved policy EV9 and emerging policy BNE8.

Ecology

Policy BNE3 states that planning proposals that could have a direct or indirect effect on sites with potential or actual ecological or geological importance including sites of County importance (such as Local Wildlife sites), ancient woodlands, veteran trees and hedgerows and priority habitats and species shall be accompanied by appropriate surveys to assess impacts and the mitigation proposed. Where mitigation measures cannot sufficiently offset the significant harm resulting from the development, planning permission will be refused. NPPF paragraph 109 requires impacts on biodiversity to be minimised and net gains provided and paragraph 118 states that Local Planning Authorities should aim to conserve and enhance biodiversity and if significant harm resulting from development cannot be avoided, adequately mitigated or as a last resort, compensated for, then planning permission should be refused. It also states that permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, unless the need for, and benefits of, the development clearly outweigh the loss.

Derbyshire Wildlife Trust has reviewed the Ecological Appraisal which has been updated since the original submission. It is considered that the grassland at the southern end of the site should be classified as unimproved acid grassland rather than semi-improved as stated in the report. The habitats of greatest ecological value in nature conservation terms identified are the areas of more established broad-leaved woodland and the acid grassland. Of these it is the area of acid grassland that is of substantive nature conservation value and meets Local Wildlife Site selection guidelines. The site supports at least 25 plant species from the list in the guidelines, where only 8 are required for the area to qualify. The diversity of this area of grassland is highly unusual for South Derbyshire which only supports an estimated 140 ha of semi-natural grassland of which only an estimated 10 ha could be classified as the UK BAP priority habitat type Lowland dry acid grassland. This site would fall within the Lowland dry acid grassland habitat definition and therefore represents around 7% of the total remaining resource.

The ecological report states that around half of the acid grassland would be lost as a result of the development. It is estimated that a higher figure is correct at around 55% (0.35 to 0.4 ha lost). The proposed development will result in the loss of woodland, scrub, tall herb and species rich acid grassland reducing the overall extent of semi-natural habitat by 2.5 ha which equates to 54% of the site.

The revised ecological report states that the design of the development has taken account of the habitats and species present on the site. However, the proposed layout seems little changed despite that fact that additional survey work has confirmed the value of the acid grassland habitat present on the site. The mitigation proposed is for acid grassland to be created on adjacent land currently dominated by scrub or semi-improved grassland. The exact area in hectares that would be used for this habitat creation and the precise configuration of these areas is not given in the report. In the south, trees, scrub and tall herb would have to be removed and uprooted in order to try and establish/create acid grassland resulting in further loss of habitat (although of lower value). Furthermore the feasibility of this proposal is not supported by any assessment of the soils and no methodology for creation is provided. Whilst some of this detail could be provided as part of a Landscape and

Environmental Management Plan, it is essential that it is clear that loss of the acid grassland can be fully mitigated and compensated prior to determination.

The revised ecological report has included the results of protected species surveys. These are considered to be acceptable and have not identified any significant constraints in relation to great crested newt, reptiles, Badgers and bats. Bird surveys have been undertaken and are considered to provide sufficient information to determine the type, scale and significance of impacts. Surveys have been undertaken for dingy skipper and the butterfly was not recorded at the site and is not considered likely to be affected other than through loss of potentially suitable habitat.

The loss of woodland, scrub, tall herb and acid grassland will have an adverse impact on breeding and wintering bird populations at the site. The breeding bird assemblage is composed of species that are typically fairly widespread, but several have experienced declines in the wider countryside in recent decades including house sparrow, bullfinch, song thrush and dunnock.

The ecological report considers that the retained habitats and proposed green infrastructure would address impacts on breeding birds and that residual impacts would be negligible. This does not fully address the loss of habitat at the site and would only partially mitigate for the loss. The retained green infrastructure would take time to develop and be a more exposed habitat with potentially higher predation from native and domestic animals. Additional consideration should be given to off-site enhancements and habitat creation in order to fully address the impact on birds. In relation to the acid grassland, the loss of an estimated 50 - 55% (0.35 – 0.4ha) of this habitat would require the creation of an area of at least twice that size on a receptor site that does not already have some ecological value. The feasibility of creating acid grassland elsewhere within the remainder of the site has not been supported by any evidence or assessment of the proposed 'receptor' areas within the development site. No methodology has been proposed for how this would be achieved.

The proposal would result in the loss of habitat with substantive nature conservation value that meets Local Wildlife Site selection guidelines. The loss of woodland, scrub, tall herb and acid grassland would have an adverse impact on breeding and wintering bird populations at the site. As the proposal would result in the loss and/or deterioration of an irreplaceable habitat, given the proposed mitigation has not been demonstrated to be feasible and appropriate; the proposal is unlikely to avoid a net loss of biodiversity at the site, contrary to Policy BNE3, saved policy EV11 and NPPF paragraphs 109 and 118.

Highways

This outline application requires determination of the proposed access which is off Longlands Road, at the end of turning area, involving the demolition of an existing detached dwelling. Emerging visibility splays of 2.4m x 59.0m can be achieved at the Longlands Road/ Sandcliffe Road junction.

Policy INF2 states that planning permission will be granted for development where travel generated by development should have no undue detrimental impact upon local amenity, the environment, highway safety and the efficiency of the transport infrastructure and availability of public transport services. It requires that appropriate

provision is made for safe and convenient access to and within the development and car travel generated is minimised. NPPF paragraph 32 requires decisions to take account of whether the opportunities for sustainable transport modes have been taken up to reduce the need for major transport infrastructure; safe and suitable access to the site can be achieved for all people; and improvements can be undertaken within the transport network that effectively limit the significant impacts of the development, and development should only be prevented or refused on transport grounds where the residual cumulative impacts of developments are severe.

The Transport Assessment submitted is considered to have sufficiently demonstrated that the site is accessible by sustainable modes of transport and based on the assessment of speed surveys, accidents and trip generation the proposed development traffic would have a negligible impact on the surrounding highway network.

The Highways Authority considers the visibility at, and the geometry of, the Longlands Road/Sandcliffe Road junction and the roads themselves are considered adequate to accommodate the increase in traffic which would result from the proposed development. It is also considered that the junction of Leawood Road and Longlands Road complies with current standards such that the safety of its users would not be compromised by the introduction of additional traffic movements. The proposal has therefore demonstrated that safe and suitable access can be achieved without an adverse impact on highway safety or the efficiency of transport infrastructure in accordance with Policy INF2 and NPPF paragraph 32.

Layout and Residential Amenity

Policy BNE1 relates to design excellence and outlines specific criteria that are required when designing new developments. Criterion e), f), g) and h) are relevant to this proposal and require developments to: create places with a locally inspired character that respond to their context, reflect the national forest context, be visually attractive and respect important landscape, townscape and historic views and vistas and should not have an undue adverse effect on the privacy and amenity of existing nearby occupiers. NPPF paragraph 58 requires that developments: function well and add to the overall quality of the area over the lifetime of the development, establish a strong sense of place, optimise the potential incorporating green spaces, respond to local character and reflect the identity of local surroundings, create safe and accessible environments and are visually attractive. Policy SD1 supports development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers. NPPF paragraph requires a good standard of amenity for all existing and future occupants.

As the proposal is in outline with matters of layout and scale reserved, only general comments are considered appropriate regarding the illustrative plan. The proposed layout and numbers of dwellings appear dense and out of character with the existing pattern of development to the east. Existing properties are either semi-detached and detached with generous rear garden lengths. Terraced properties with small rear gardens are more in keeping with the urban area. This area is within the countryside and thus semi-rural in nature and located within a prominent valley with open views from the surrounding countryside to the north and west. It is acknowledged that a significant area (2.17Ha which equates to 46% of the site area) would be retained for open space to the west and south. However, the density and layout does not

respond to its context or the character of the area and would create a development which densely extend the urban edge of Midway into land which forms a transition from urban to rural character. An assessment of impacts on the residential amenity of existing neighbouring properties would be undertaken at reserved matters stage.

The indicative proposal is considered to result in a dense pattern of development in places which neither reflect, nor respond to, its context bringing about an adverse impact on the character and visual amenity of the area. Whilst this could be seen as contrary to policy and the NPPF, it must be recognised that the layout and scale are reserved matters and this is a topic for further analysis at a later stage, notwithstanding the quantum of development proposed.

S106 contributions

The proposal for 95 dwellings would generate the need for the following S106 contributions:

- 30% affordable housing which equates to 29 dwellings with a split of 68% rent and 32% intermediate;
- A contribution of £36,214 for increasing capacity at existing doctors surgeries;
- A contribution of £159,586.14 towards the provision of 14 primary places at Eureka Primary School;
- 20% National Forest woodland planting, which has been incorporated within the layout;
- Contributions for public open space would be sought and are calculated per bedroom as follows:
 - Recreation open space - £373
 - Recreation outdoor facilities - £220
 - Recreation built facilities - £122

It is considered that these contributions would mitigate the pressures arising on existing infrastructure as a result of the development, in line with Policies INF1, INF6 and INF9, and could be secured by way of a S106 agreement.

The Planning Balance

This decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (section 38(6) of the Planning and Compulsory Purchase Act 2004). The development plan is the starting point for decision making and a proposed development that conflicts with it should be refused unless other material considerations indicate otherwise. The District Council in adoption of its Local Plan Part 1 has a proven five-year supply of housing and as such the planning balance has changed in that sites outside settlement boundaries no longer simply have to be justified in respect of sustainable development – they also have to comply with the housing policies of the Local Plan. This site is contrary to the development plan.

In consideration of the three dimensions of sustainable development outlined in paragraph 7 of the NPPF, in terms of the economic and social role, the proposal would provide 95 dwellings, 29 of which would be affordable that would contribute to housing supply and provide construction jobs in the area. The site would also generate Council tax and New Homes Bonus. Swadlincote is an urban area with its

resultant services and facilities. The application site is located on a main route into Swadlincote and has good links to the centre of the town and has good accessibility credentials as residents would not be solely reliant on the private car.

The benefits of the scheme set out above, including the provision of housing to boost the supply, must be afforded weight in favour of the proposal. However, the recently adopted Local Plan Part 1 has been found to provide for, and exceed, the District's objectively assessed housing needs, such that the need to boost supply by way of such an application is significantly tempered. It is considered the weight attributed to these benefits would not amount to material considerations which outweigh the simple plan-led approach and the significant environmental harm identified to the ecology of the site, by the extensive loss of protected trees and the adverse impact on the landscape character – including the character and visual amenity of the area. The proposal is thus contrary to policies H1, BNE3 and BNE4; saved policies H8, EV1, EV9 and EV11; emerging policies BNE5 and BNE8; and the related provisions of the NPPF.

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

Recommendation

REFUSE permission for the following reasons:

1. Outside of settlements development is limited to that which is essential to a rural based activity or unavoidable in the countryside. With the housing needs for the District catered for by way of the strategic plan-led approach set out under policies S1 and S4 of the Local Plan Part 1, and the Council able to demonstrate a 5 year supply of housing land; this proposal fails to qualify as unavoidable. In addition it fails to qualify under exceptions for housing in the countryside. The proposal is therefore contrary to saved policies EV1 and H8 of the Local Plan 1998 and emerging policy BNE5 of the Local Plan Part 2, and does not represent sustainable development as advocated by paragraphs 6-8, 11, 12 and 17 of the NPPF.
2. The proposal is considered to introduce a harmful urban influence within the presently rural landscape typical to its character description, having a significant adverse impact on the character of the landscape and surrounding area, and its visual amenity and sensitivity. It is not considered possible to satisfactorily mitigate such impacts and hence the proposal brings about a significant environmental harm which does not represent a balanced approach to sustainable development contrary to policy BNE4 of the Local Plan Part 1, saved policy EV1 of the Local Plan 1998, emerging policy BNE5 of the Local Plan Part 2 and paragraphs 7 and 17 of the NPPF.
3. The proposal would bring about the loss of protected trees, the majority of which are early-mature and mature. Such loss is considered to be excessive and would adversely alter the character of the site and the surrounding environs, contrary to policy BNE4 of the Local Plan Part 1, saved policies EV1 and EV9 of the Local Plan 1998, emerging policy BNE8 of the Local Plan Part 2 and paragraphs 7, 17 and 118 of the NPPF.

4. The proposal would result in the loss of a significant area of habitat with substantive nature conservation value that meets Local Wildlife Site selection guidelines and UK BAP priority habitat classification. It is considered that significant harm would result from the development and it has not been adequately demonstrated that mitigation is feasible and appropriate to address this harm. Furthermore, the loss of woodland, scrub, tall herb and acid grassland would have an adverse impact on breeding and wintering bird populations at the site. Overall the proposed mitigation is insufficient and is unlikely to avoid a net loss of biodiversity at the site, contrary to policy BNE3 of the Local Plan Part 1, saved policy EV11 of the Local Plan 1998 and paragraphs 7, 17, 109 and 118 of the NPPF.

Informatives:

Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to resolve planning objections and providing the opportunity to overcome reasons for refusal. However despite such efforts, one planning objection relates to the principle and other issues have not been satisfactorily addressed. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.