

REPORT OF THE HEAD OF PLANNING SERVICES

SECTION 1: Planning Applications

SECTION 2: Appeals

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

1. PLANNING APPLICATIONS

This section 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 1995 (as amended) and responses to County Matters.

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

Item 1.1

Reg. No. 9/2010/1032/U

Applicant:

South Derbyshire District Council
Leisure & Community Department
Civic Offices
Civic Way
Swadlincote

Agent:

Mr Malcolm Roseborough
Leisure And Community Development

Proposal: **THE CHANGE OF USE OF THE PEDESTRIANISED
AREAS INTO A VENUE FOR THE MARKET AND
ASSOCIATED STREET TRADING AT MARKET STREET,
WEST STREET, THE DELPH MIDLAND ROAD,
BELMONT STREET AND HIGH STREET SWADLINCOTE**

Ward: **Swadlincote**

Valid Date: **10/11/2010**

Reason for committee determination

The Council is the applicant.

Site Description

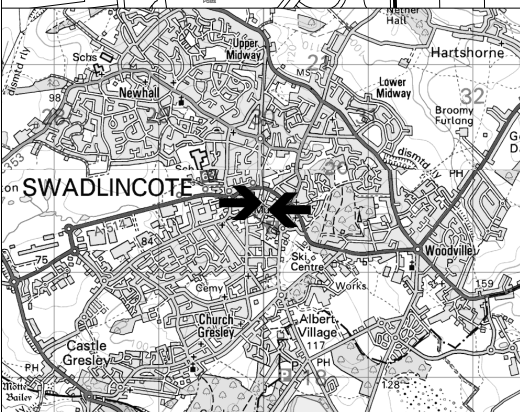
The application relates to the full length of the pedestrian area of High Street, The Delph, Midland Road, Belmont Street, Market Street and West Street. The red line area is set 1m back from the frontage of the buildings to maintain access to the existing retail premises.

Proposal

Planning permission is sought to relocate the market stalls permanently within this zone of the town centre. Permission was granted for relocation of the market from The Delph for a temporary period whilst the Town Centre Masterplan works to create a new square were under construction and this application expires at the end of December 2010.

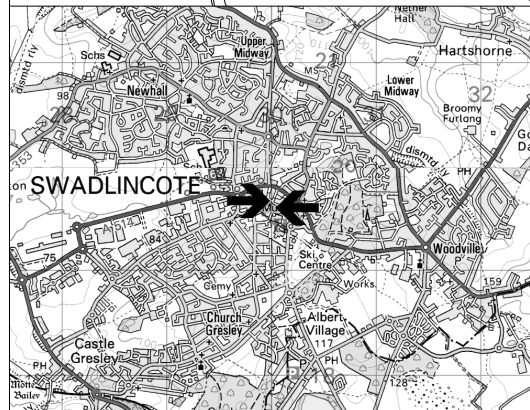
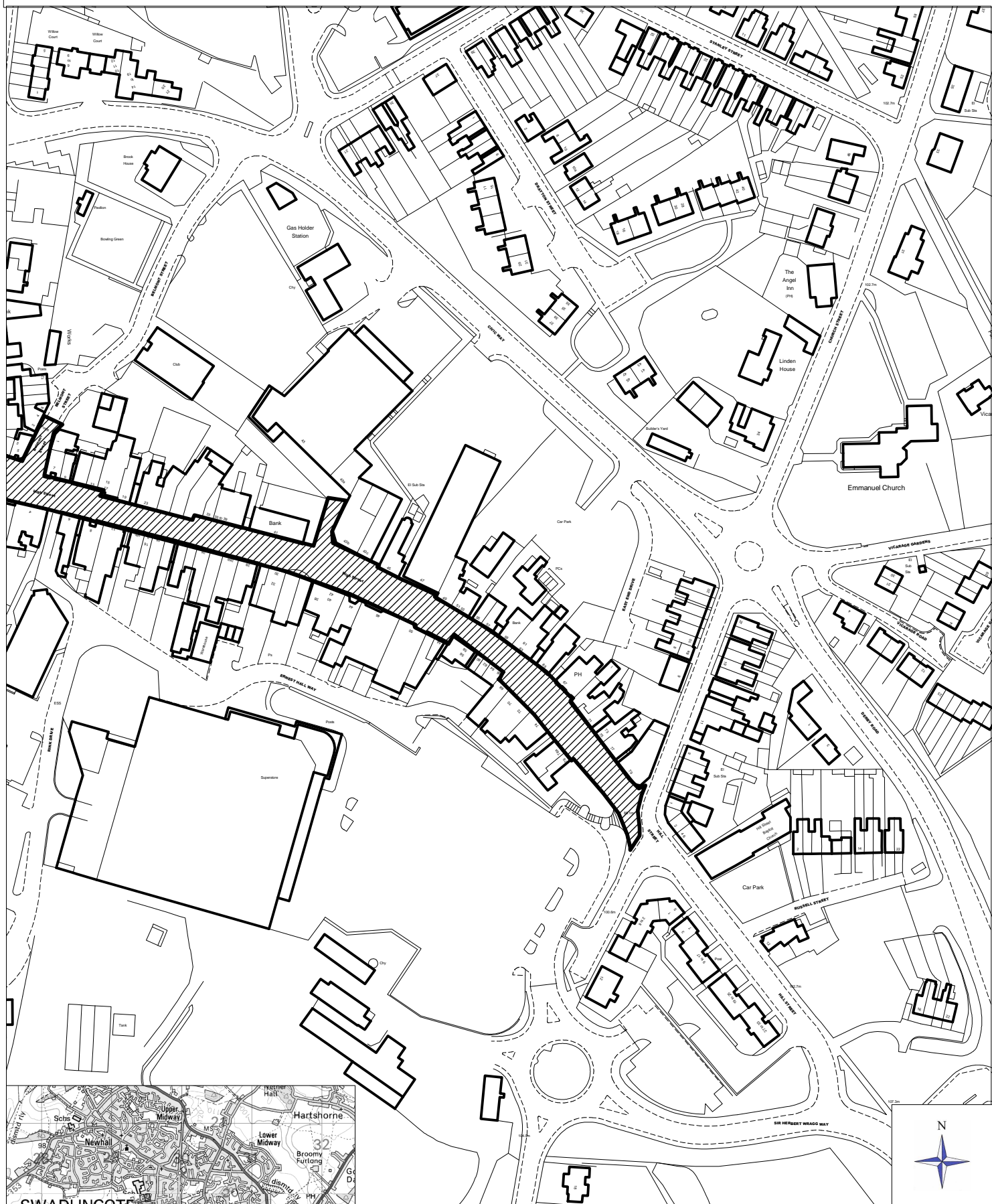
The 'zone' outlined on the red line plan of the application is proposed, as specific stall locations would be subject to change as stallholders and business owners adapt to the new arrangement and there are likely to be changes to traffic arrangements.

The market stalls measure 3m x 3m of a height of 3.3m and are open on all sides with a white canopy for the roof. Smaller 2m x 3 m stalls are also used.



South Derbyshire District Council. LA 100019461. 2010

9/2010/1032 - Market St, West St, The Delph, Midland Rd, Belmont St & High St, Swadlincote



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Applicants' supporting information

A supporting statement has been supplied to outline why the 'zone' is proposed and how it would impact on the town. It states:

Major improvement works are being made to Swadlincote Town Centre as part of the Swadlincote Town Centre Masterplan. The works on the current phase, the completion of the new public square in the Delph, are now nearing completion. Whilst this work is taking place the market has been temporarily re-located from the Delph into parts of the High Street.

In tandem with this application the Council will be undertaking a comprehensive consultation survey with traders, shop keepers and other interested parties. The re-location of the market to the High Street has been beneficial to Swadlincote town centre as stalls have increased from 12 to 17 with a number of casual stallholders increasing numbers to 20 at peak times. Many of the retailers in the High Street have reported a sharp up-turn in footfall and custom on market days.

The careful siting of stalls within the High Street, the purchase of smaller 3m x 2m stalls and liaison with the County Highways Authority has ensured that any access and traffic management issues have been overcome. The regenerated Delph is going to be a larger area for an events arena with a power supply. This application provides the opportunity to be flexible by having all of the main town centre streets within the zone for the market and growth in the number of stalls and footfall created is a highly desirable outcome. This application would allow other opportunities for new events, extended street trading and entertainment activities to take place throughout the town. It is also considered beneficial to have a permission to operate other types of market on non-traditional market days in order to maximise opportunities for speciality markets and themed events.

Planning History

9/2010/0332 - Temporary permission for relocation of market stalls from May to December 2010 from The Delph to the High Street, Granted 11/05/2010
9/1999/1031 – The establishment of a 20 stall outdoor market at The Delph, granted 26/5/99

Responses to Consultations

The County Highways Authority note that detailed arrangements for the market within the overall application area will be the subject of subsequent discussion and agreement, and thus has no objections to the principle of the scheme. A temporary permission (expiring 31 December 2010) for relocation of the market stalls to part of High Street presently exists. No highway objection was raised to the granting of planning permission but the following advice was provided, and needs to be generally replicated in respect of the current proposal:

"Areas of highway within the application site are subject to restrictions prohibiting the parking of vehicles between the hours of 10.00 am and 4.00 pm, and at other times access is restricted for the purposes of loading and unloading. The applicant should ensure that, where applicable, stall holders and traders are aware that loading and

unloading can only take place before 10.00 am and after 4.00 pm, and that vehicles will need to be removed from the site between these times to avoid enforcement of Orders.”

An informative in relation to Street Trading Licences should be attached to any permission.

Responses to Publicity

One letter of objection has been received from the Dental Practice on Market Street and is summarised below:

- a) They would object to the loss of the disabled parking spaces on Market Street as they are a considerable benefit to many of their disabled patients.
- b) Any Market Stalls placed in front of their premises would obscure their frontage and make access for wheelchairs and pushchairs more difficult.
- c) They have deliveries to the practice on a daily basis and it is much easier for these deliveries to be made on Market Street.

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan: 12

Local Plan: Environment Policies 10 and 12 and Shopping Policy 1

National Guidance

PPS1, PPS4

Planning Considerations

The main issue central to the determination of this application is the impact on High Street business in terms of access and visibility.

Planning Assessment

The proposed zone for the market stalls within all streets of the main town centre would not have a significant impact on the existing businesses as the market is only open Tuesdays, Fridays and Saturdays between 9am to 3.30pm. The established market is essential to the viability and vitality of the town centre and trade is increased to existing business on the days when it is open. The ‘zone’ proposed would also allow for occasional specialist markets and events in certain areas on Mondays / Wednesdays / Thursdays / Sundays and Bank Holidays between 9am to 3:30pm which would be extremely beneficial to the town and its existing businesses.

The concern regarding the location of stalls is noted and clear access and sufficient spacing between the stalls and the existing shopfronts would be required for the safety of pedestrians. The appearance of the stalls are temporary in nature and would thus not have a significant impact on the character and appearance of the Conservation Area. The Town Centre Masterplan works currently completed on West Street are high quality and the works to the Delph will have large benefits to the town in terms of increasing visitor numbers and greatly improving the appearance and feel of the area. The temporary permission for the relocation of the market to the High Street has been successful in increasing stall numbers and footfall / trade within the town. Consultation

with local businesses will be undertaken when decisions on locations on stalls are taken to avoid any conflict or concern over access.

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).

Informatives:

Areas of highway within the application site are subject to restrictions prohibiting the parking of vehicles between the hours of 10.00 am and 4.00 pm, and at other times access is restricted for the purposes of loading and unloading. The applicant should ensure that, where applicable, stall holders and traders are aware that loading and unloading can only take place before 10.00 am and after 4.00 pm, and that vehicles will need to be removed from the site between these times to avoid enforcement of Orders. The County Highway Authority advises that the issue of Street Trading Licences needs to be addressed by the applicant. It is considered that if the market does not have a fixed area of operation then it can be relocated without the need for further licensing. If it does have a fixed area of operation, then it is possible that street trading licences will be required under the Local Government (Miscellaneous Provisions) Act 1982, and this will depend on whether the District Council has adopted the Act, and what, if any, designation has been given to the streets in question. The County Council would require costs in respect of liabilities in association with the consultation process.

Item **1.2**

Reg. No. **9/2010/1037/FM**

Applicant:
MR N JORDAN
INGLEWOOD
THE GREEN
DALBURY LEES
ASHBOURNE

Agent:
MR JUSTIN SMITH
JUSTIN SMITH ARCHITECTS
FRIAR GATE STUDIOS
FORD STREET
DERBY

Proposal: **THE DEMOLITION OF EXISTING BUNGALOW AND THE
ERECTION OF A DETACHED DWELLING AT
INGLEWOOD DALBURY LEES ASHBOURNE**

Ward: **North West**

Valid Date: **16/11/2010**

Reason for committee determination

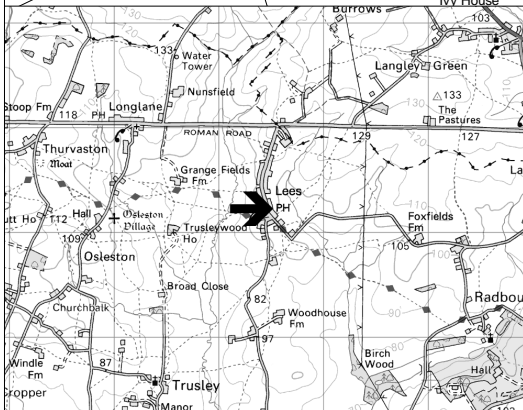
The application is brought to Committee at the request of Councillor Bale (ward member) as local concern has been expressed about a particular issue.

Site Description

A bungalow (circa 1960s) currently occupies the site. It has a roadside hedge typical of many frontages in Lees and a hedge occupies the gap between the site and Rose Cottage, the closest neighbouring dwelling. Fences enclose the remaining boundaries with some hedge planting to the rear of the applicant's garage. Opposite the site is the Black Cow public house where another bungalow lies to the north. Fold Farm lies north of the application site the flank wall of the house is some 30 metres from the proposed dwelling. Fold Farm is about 2.0m lower than the application site level.

Proposal

This proposal differs from a previous dwelling that was refused in that the sunroom and balcony on the south-west corner of the building have been omitted from this scheme. The proposed house would replace the existing bungalow but is still a contemporary modern design. The application proposes that the roof space be used as guest accommodation and to this end a large dormer is proposed in the west elevation with a window in the north gable that extends to the apex of the roof. The application proposes the use of render to most of the wall surfaces with feature stone panels in each gable end and to the front and rear elevations and in the dormer window. The roof would be clad in slate. A first floor balcony area is proposed on top of proposed sunroom on the north elevation, as was the case with the previous application.



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South Derbyshire District Council. LA 100019461. 2010

Provision is proposed within the house for ancillary living facilities with a bedroom at ground floor level but with links to the kitchen in the main house and a ground floor bathroom.

The existing double garage would be retained on the site and no changes are proposed to the vehicular access.

Applicants' supporting information

The application is submitted with a design and access statement. It notes that the village is characterised by a variety of house types dating back to the 19th century with some original farm buildings having been converted to residential use. There are also numerous houses that were constructed in the late 20th century. Photographs included in the statement illustrate these. Attention is drawn to Planning Policy Statements 1 & 3.

In drawing up the design, reference is made to a building system that would allow the dwelling to achieve 'Level 4' of the Code for Sustainable Homes. The Statement acknowledges that it is intended to replace the existing dwelling by resiting it more centrally within the plot noting that the immediately adjoining dwellings are located centrally in their plots. The scale of the building has been designed to ensure that the ridge of the proposed dwelling is no higher than Rose Cottage. It would have a rectangular plan form that reflects many other houses in the village.

The statement concludes that the proposed dwelling is a bold statement, which is modern in design, of its time to reflect the next step in the development of the village.

Planning History

A planning application for a replacement dwelling of a more radical design was withdrawn earlier this year - 9/2010/0083. A subsequent application 9/2010/0292 that reduced the radical appearance of the previous application was refused planning permission by the Committee (contrary to recommendation) for the following reason:

'The prevailing character of the immediate location of the site is that of traditional dwellings of modest scale. The site occupies a prominent and sensitive location close to the village green. The dwelling proposed would appear as a hybrid modern design out of keeping with its immediate surroundings and due to its unconventional design with the inclusion of flat roofed extensions and roof dormer would appear as an incongruous feature in this part of the village. In addition the proposed balcony on the south side of the rear elevation would appear as an overbearing feature when viewed at close-quarters from the adjoining property to the south. As such the proposed development would be contrary to the scale and character of the settlement contrary to Housing Policy 5 of the Local Plan.'

Responses to Consultations

The County Highway Authority has no objection and comments that the improvements to the access and parking would be beneficial given current limitations.

Severn Trent Water has no objection.

Responses to Publicity

Three letters have been received objecting to the development for the following reasons (any further representations will be reported at the meeting):

- a) The proposed building with its modern features would be totally out of character with the cottages in the vicinity and the rest of the village, buildings in the past 6/7 years have been in character; whereas the proposed dwelling would not be in keeping with its immediate surroundings. The house is 3-storey not 2 as stated in the design and access statement that illustrates a 3-storey dwelling. Additionally, stone chimneys are not a feature in the village. The dwelling would thus be contrary to the scale and character of the village not in conformity to Housing Policy 5 of the Local Plan.
- b) The proposed house is too large for the plot with insufficient parking facilities and limited visibility.
- c) Windows and balconies overlook adjoining properties and are very close to the site boundaries, one window is 7.2 metres above ground level. Privacy would be lost.
- d) The settlement is unsustainable and therefore cannot accept a larger dwelling.
- e) Lees is not a sustainable location for new housing development the only local amenity is the Black Cow public house.
- f) The sewerage system is already overloaded and the applicant states he does not know how foul sewerage would be disposed of.
- g) A 5-bedroom house replacing a 2-bedroom bungalow would remove a more affordable dwelling from the village.
- h) There may be hazardous materials in the existing bungalow due to its age needing suitable control measures.
- i) The proposal would not contribute to the local economy but for short term construction jobs.
- j) The proposal would not improve the neighbours' quality of life as required by 2.4 of PPS1.

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan: Policies 1, 2, 3, & 12

Local Plan: Housing Policies 5 & 11

National Guidance

PPS1 & PPS3

Planning Considerations

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

- Differences from the previous scheme.
- The Development Plan.
- Design.

- Impact on neighbours.
- Access and Parking.

Planning Assessment

Differences from the previous Scheme

The differences to the previously refused application are set out above and below in the 'Planning Assessment', but essentially amount to the removal of the sunroom and balcony from the south west corner of the proposed dwelling and the proposal and confirmation of the use of render and stone for the external walls of the house.

The Development Plan

The site lies within the defined village confine for Lees that is acknowledged to be a remote village without many of the facilities that would make the village sustainable. In terms of the development plan it is considered that the development would make no direct impact of the policy of locating new housing development in sustainable locations, as it is a replacement of one dwelling with another. In principle the proposal is therefore considered to accord with the requirements of Housing Policy 5.

Design

Housing Policy 5 also requires that development is in keeping with the scale and character of the settlement. The new dwelling sits within a village that has a number of architectural styles that reflect its development over the years. The proposed dwelling should be seen in the context of that architectural development and would sit well within the village without dominating its surroundings given that the ridge height would match that of Rose Cottage with a more traditional brick finish to the dwelling.

Generally, the design relies on the use of modern materials and features. The house proposed would be two-storey with the roof space being used to create the additional guest accommodation. The north elevation would be visible from the road and as such the balcony would be visible. This feature is not found on most of the houses in Lees nor are some of the design features typical. However, the shape of the house, its massing and footprint are similar to others in the village and it is these essential features which should ensure that the house would not appear incongruous in its location.

Impact on Neighbours

Housing Policy 11 sets requirements for separation distances between existing and proposed dwellings. The SPG sets actual separation distances and adds that screening by fences can mitigate issues of overlooking.

The dwelling at Fold Farm is some 34 metres from the nearest balcony albeit at a lower level than the application site. For this reason separation standards for a 3-storey dwelling have been applied to the potential views between the Fold Farm and the proposed house. The required standard of 25.2 metres separation is more than met by the 34 metres shown.

Rose Cottage is the other property that is directly affected by the development in terms of overlooking. The proposed sunroom and balcony have been omitted from the revised scheme and as such this issue that appeared in the reason for refusal for the last application do not apply to the consideration of this application.

Access and Parking

On the advice of the County Highway Authority the existing access and parking provision is sufficient to serve the dwelling.

Conclusion

The proposed development is in accord with the provisions of the Development Plan; it complies with the requirements of adopted Supplementary Planning Guidance - Housing Layout and Design and the proposal is considered to sit well within the context of the village and reflects its architectural evolution. Clearly the applicant has made some effort to meet the concerns of members to the extent that it is considered that a refusal of permission would not be warranted.

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. Before the development is commenced precise details of the materials of construction shall be submitted to and approved in writing by the Local Planning Authority. The approved materials shall thereafter be used to construct the house.
Reason: In the interests of the appearance of the area.
3. Gutters and downpipes shall have a black finish and be fixed direct to the brickwork on metal brackets.
Reason: In the interests of the appearance of the character of the area.
4. No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.
Reason: In the interests of flood protecting and pollution control.
5. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and

until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.

B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

6. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.

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

7. The land within the curtilage of the building hereby permitted shall not be used for the parking of motor vehicles other than private motor vehicles and the building shall not be used for the purposes of trade or business.

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

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, there shall be no external alterations, including the insertion of new windows, to the buildings other than as approved under this permission.

Reason: In the interests of preserving the setting of the building and the character of the area.

Informatives:

In submitting the details required by Condition 3 above, the Local Planning Authority requires the brick and timber cladding to be the main materials of construction. Where development is proposed, the developer is responsible for ensuring that development is safe and suitable for use for the purpose for which it is intended. The developer is thus responsible for determining whether land is suitable for a particular development or can be made so by remedial action. In particular, the developer should carry out an adequate investigation to inform a risk assessment to determine:

- whether the land in question is already affected by contamination through source - pathway - receptor pollutant linkages and how those linkages are represented in a conceptual model;
- whether the development proposed will create new linkages, e.g. new pathways by which existing contaminants might reach existing or proposed receptors and whether it will introduce new vulnerable receptors; and
- what action is needed to break those linkages and avoid new ones, deal with any unacceptable risks and enable safe development and future occupancy of the site and neighbouring land.

A potential developer will need to satisfy the local authority that unacceptable risk from contamination will be successfully addressed through remediation without undue environmental impact during and following the development. In doing so, a developer should be aware that actions or omissions on his part could lead to liability being incurred under Part IIA, e.g. where development fails to address an existing unacceptable risk or creates such a risk by introducing a new receptor or pathway or, when it is implemented, under the Environmental Liability Directive (2004/35/EC). Where an agreed remediation scheme includes future monitoring and maintenance schemes, arrangements will need to be made to ensure that any subsequent owner is fully aware of these requirements and assumes ongoing responsibilities that run with the land.

The phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance referenced in footnotes 1-4, to the relevant conditions attached to this permission.

For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: pollution.control@south-derbys.gov.uk.

Item 1.3

Reg. No. 9/2010/1047/FM

Applicant:
MR P ROBINSON
THE GEORGE
MAYPOLE HILL
NEWHALL
SWADLINCOTE

Agent:
MR P DIFFEY
PETER DIFFEY AND ASSOCIATES LTD
54 WOODS LANE
STAPENHILL
BURTON UPON TRENT

Proposal: **THE ERECTION OF A DWELLING AND DEMOLITION OF
EXISTING AND UNAUTHORISED OUTBUILDINGS AND
REVOCATION OF PLANNING CONSENT (9/2008/1096)
FOR GYPSY ACCOMMODATION ON LAND ADJACENT
THE BUNGALOW COLLIERY LANE LINTON
SWADLINCOTE**

Ward: LINTON

Valid Date: 15/11/2010

Reason for committee determination

The application is considered contrary to a number of policies within the development plan and therefore requires determination by the Planning Committee.

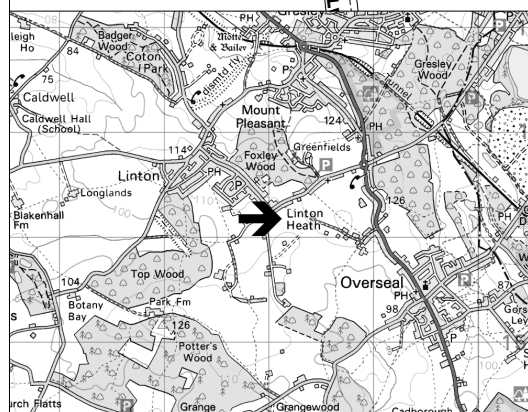
Site Description

The application site is located off Colliery Lane via a private access drive. It is a flat site which has established hedgerows to the south west and north west. It is located outside the village confine of Linton as defined by the Local Plan and has been the subject of several applications in the past which are detailed below. Modern 2 storey terraced dwellings are located on the opposite side of the lane, and adjacent to this site is a residence known as The Bungalow, which is accessed off Colliery Lane and is a single storey detached property; again located outside the village confine. To the front of the proposed site is an area of open space which the Parish Council advise is in their ownership and is a village green.

Proposal

The application submitted is for the erection of a detached two storey, four bedroomed property with an integral garage and parking. Part of the existing stables/outbuildings would be retained. No alterations to the access are required and the application is accompanied by a unilateral undertaking which would give up the planning permission granted under application 9/2008/1096 for the siting of a gypsy caravan on an adjacent

9/2010/1047 - Land adjacent The Bungalow, Colliery Lane, Linton



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site also in the applicant's ownership. Also included in the application is the removal of the unauthorised building (refused permission and an appeal was dismissed (9/2009/0163)) and removal of the unauthorised caravan on the site (refused permission and dismissed on appeal (9/2008/0940)), portacabin and general scaffolding materials and part of an existing barn/stable.

Applicants' supporting information

In support of the application are the following related papers:

- A design, access and sustainability statement
- A draft unilateral undertaking

Planning History

Several planning applications have been submitted on the site, the most relevant to this application being:

9/2006/1247 - the erection of a detached house - refused
9/2007/0286 - the erection of a detached house - refused
9/2007/0773 - change of use from redundant agricultural site to base for storage and habitation of residential touring caravans - refused
9/2008/0940- the retention of a caravan – refused 22 December 2008, appeal dismissed 28 July 2009
9/2008/1096 - change of use for the siting of a gypsy caravan on an adjoining site – approved 26 November 2009
9/2008/1172 - the erection of stabling and an implement shed to replace existing structures - refused 02 February 2009
9/2009/0163 - The reconstruction of implement shed, feed store and stabling - refused 20 April 2009, appeal dismissed 22 January 2010

Responses to Consultations

Severn Trent Water does not raise any objections to the application as submitted. Other responses if received will be reported verbally at committee.

National Guidance

PPS1, PPS3, and PPS7.

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan (2009): Policies 1, 3, 12 and 26.

Local Plan: Environment Policies 1 and 8; Transport Policy 6; Housing Policies 5 and 11.

Planning Considerations

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

- The Development Plan;
- The potential impact on the countryside;

- The design and setting

Planning Assessment

The Development Plan

Saved Housing Policy 5 advises that new housing development will be accommodated within the village confines. This proposal adjoins the village confine. It is a sustainable village, and the proposed site is in close proximity to all services. The application site comprises part of a field being 0.1 hectares in size which is currently the subject of enforcement action regarding the running of a scaffolding business, change of use to residential occupation (siting of an unauthorised caravan) a partially built store, importing of materials and engineering operations on the site and the general untidy state of the land. Enforcement action has been temporarily suspended pending the outcome of this application.

The proposal is to erect a two storey detached dwelling on the site, together with an integral garage and parking and to retain part of the existing stables which are not the subject of any enforcement action. The application if approved would lead to improvements to the site, by removing all unauthorised structures and the caravan, addressing the untidy nature of the site (section 215 notice) and removing permission for a gypsy caravan site. Although the subject of a separate planning policy, it can be argued that the planning permission granted for the gypsy site would mean that the adjoining site already has a residential use, albeit in regard to the exception provided by legislation for gypsy accommodation in the countryside. Removal of this permission and replacement with a dwelling on the current site would in practice therefore be no more harmful to its location. The site could be considered as an infill site, located adjoining the village of Linton given the location of The Bungalow, and the reduction in size of the residential curtilage of the proposed dwelling that would safeguard open views of the countryside beyond.

The design and setting

The design of the property has been the subject of many negotiations with the agent and is representative of a modest property in this location. It's siting does not conflict with the Council's space about dwelling standards and the design is in keeping with the area and respects the countryside. Furthermore the proposed design would provide reasonable amenities in terms of light, air and privacy for both the proposed dwelling and existing dwellings, it is a safe and functional layout and provides private amenity space and landscaping as required by Saved Housing Policy 11. Proposed additional tree planting is shown and this would partially screen the development from Colliery Lane whilst respecting the open countryside. The site is sustainable with bus stops and the local primary school, services and community facilities within walking distance.

The proposal does not however comply with Environment Policy 1 in that it is not for a rural based activity (that is authorised) and there is no justification to locate the dwelling in the countryside. However it can be argued that the character of the countryside, landscape quality and wildlife would be enhanced in that the proposal would remove all the unauthorised structures from the site and would ensure the removal of all material/equipment; the subject of a section 215 notice.

Conclusion

The proposal is contrary to the development plan. However, given the specific site history, its location very close to the line which confines the village and good sustainability credentials, the design and siting of the proposed dwelling that would ensure open views would still be visible from the access track to the open countryside which currently make a valuable contribution to the character and quality of the village as required by Saved Environment Policy 8 it would result in a vast improvement for the area without setting a precedent. National policies in the form of Planning Policy Statements 1 and 3 both encourage housing development in appropriate locations such as this due to its sustainability and its design which will result in protecting and enhancing the environment.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority. 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.
3. Gutters and downpipes shall have a black finish and be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.
Reason: In the interests of the appearance of the building(s), and the character of the area.
4. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.
Reason: In the interests of the appearance of the area.
5. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been

submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.

B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

6. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.

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

7. Notwithstanding the provision of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, the dwelling hereby permitted shall not be enlarged or extended without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.

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

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, no buildings and no gates, walls, fences or other means of enclosure (other than as shown on the plan no's C1044/8 and C1044/7) shall be erected on the application site without the prior written approval of the Local Planning Authority.

Reason: To ensure that any such structures are appropriate to the character and appearance of the building.

9. 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 the land, 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.

10. 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.

11. No development shall take place until the applicant has submitted to and had approved by the Local Planning Authority a unilateral undertaking under Section 106 of the Town and Country Planning Act 1990 to secure the giving up of planning permission 9/2008/1096 for a gypsy caravan, the removal of all unauthorised buildings, caravans and material from the site, the subject of recent enforcement action.

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

Informatives:

The proposed development lies within a coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to The Coal Authority.

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority.

Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com. The phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance referenced in footnotes 1-4, to the relevant conditions attached to this permission.

For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp

Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: pollution.control@south-derbys.gov.uk.

2. PLANNING AND OTHER APPEALS

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

| Reference | Place | Ward | Result | Cttee/delegated |
|------------------|--------------|-------------|---------------|------------------------|
| 9/2010/0491 | Etwall | Etwall | Dismissed | Delegated |



Appeal Decision

Site visit made on 16 November 2010

by Alison Lea MA(Cantab) Solicitor

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

Decision date: 30 November 2010

Appeal Ref: APP/F1040/A/10/2134833

8 Chestnut Grove, Etwall, Derby DE65 6NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Yong Zheng against the decision of South Derbyshire District Council.
 - The application Ref 9/2010/0491/U, dated 22 May 2010, was refused by notice dated 29 July 2010.
 - The development proposed is a change of use from C3 (residential) to A5 (hot food takeaway).
-

Decision

1. I dismiss the appeal.

Main Issues

2. The main issues in this case are the effect of the proposal on
 - (a) the character and appearance of the appeal property and surrounding area; and
 - (b) the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance and odour.

Reasons

3. The appeal property is a detached bungalow situated in a primarily residential area. Chestnut Grove is characterised by similar single storey properties with a 2 storey parade of shops with residential accommodation above towards the junction with The Bancroft. The proposal would change the use of the bungalow to a hot food takeaway.

Character of the Area

4. I agree with the Council that there is a distinct change of character at the appeal site boundary, with a clear difference in height, design and function between the residential area of bungalows and the parade of shops. Although I note that the parade of shops steps down towards the appeal site I do not accept the appellant's contention that the appeal site forms a transition between uses or that the proximity of the appeal site to the shops mitigates against any adverse impact on character. The appeal property clearly forms part of the residential area of bungalows which have a distinctive character which reflects their function.

5. The alterations to the external appearance of the building would be limited. However, there would be an extractor ventilation duct on the side elevation facing the shops, customer parking to the front and the proposed use would generate comings and goings untypical of a residential property and is also likely to require some signage. All of these matters would give the property a commercial character and appearance which I consider would detract from the residential character and appearance of the row of bungalows of which the appeal property clearly forms part.
6. Accordingly I conclude that the proposal would cause material harm to the character and appearance of the appeal property and the residential area of which it forms part.

Living Conditions

7. The parade of shops includes a convenience store, a pharmacy and a hairdressers/beauty salon. The appellant states that they are open until 2100 hours, 1800 hours and 1700 hours respectively. It is proposed that the hot food takeaway would be open from 1700 hours until 2300 hours daily although the appellant has stated that a condition limiting opening until 2230 hours would be acceptable.
8. Given that the convenience store is the only shop which is open into the evening, that it closes at 2100 hours and that it is situated at the far end of the parade from the appeal site, the proposed use would attract comings and goings later into the evening and closer to the residential properties at a time when the occupiers could reasonably expect quite enjoyment of their properties. I do not accept the appellant's view that local residents will be used to an increased level of activity in an evening due to the presence of the convenience store.
9. I also do not accept that any noise problems could be adequately dealt with by requiring noise attenuation measures such as fencing, as noise and disturbance is likely to occur in the street from customers arriving and leaving both on foot and by vehicles and congregating outside the premises. I consider that given its proximity to a number of dwellings the proposal is likely to lead to unacceptable noise and disturbance to the occupiers of those properties contrary to Shopping Policy 3 of the South Derbyshire Local Plan which provides that small shops will be permitted provided that, amongst other matters, they do not adversely affect the amenities of neighbouring properties.
10. I note the concerns which have been raised with regard to the possibility of cooking odours. However, the Council accepts that this could be controlled through the imposition of appropriate conditions requiring the installation and maintenance of equipment and I agree. Nevertheless for the reasons given I conclude that the proposal would cause significant harm to the living conditions of the occupiers of neighbouring dwellings.

Other Matters

11. The appellant refers to advice in Planning Policy Statement 4: Planning for Sustainable Economic Growth and in Planning Policy Statement 7; Sustainable Development in Rural Areas. However, the advice referred to relates to the retention of existing shops and the role they play in communities rather than the conversion of residential properties to retail use and therefore does not provide assistance in this case.

Conclusion

12. Accordingly for all the reasons given, I conclude that this appeal should be dismissed.

Alison Lea

INSPECTOR