

# **REPORT OF THE HEAD OF COMMUNITY AND PLANNING SERVICES**

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

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

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## **1. PLANNING APPLICATIONS**

**This section also includes reports on applications for: approvals of reserved matters, listed building consent, work to trees in tree preservation orders and conservation areas, conservation area consent, hedgerows work, advertisement consent, notices for permitted development under the General Permitted Development Order 1995 (as amended) responses to County Matters and submissions to the IPC.**

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
9/2012/0743	1.1	Castle Gresley	Linton/Church Gresley	1
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9/2012/0778	1.3	Hilton	Hilton	34
9/2012/0779	2.1	Melbourne	Melbourne	37

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 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 Head 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.** 9/2012/0743/OM

**Applicant:**  
**ST MODWEN DEVELOPMENTS LTD**  
**C/O PLANNING PROSPECTS**

**Agent:**  
**MR JASON TAIT**  
**PLANNING PROSPECTS LTD**  
**1 BROOMHALL BUSINESS CENTRE**  
**BROOMHALL LANE**  
**WORCESTER**  
**WR5 2NT**

**Proposal:** **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR MIXED USE DEVELOPMENT COMPRISING RESIDENTIAL (C3) AND EMPLOYMENT (B1 AND/OR B8), ACCESS, ROAD AND ASSOCIATED INFRASTRUCTURE, PARKING, PUBLIC OPEN SPACE AND LANDSCAPING AT LAND AT SK2818 0665 SWADLINCOTE LANE CASTLE GRESLEY SWADLINCOTE**

**Ward:** **LINTON/CHURCH GRESLEY**

**Valid Date:** **28/08/2012**

**Reason for committee determination**

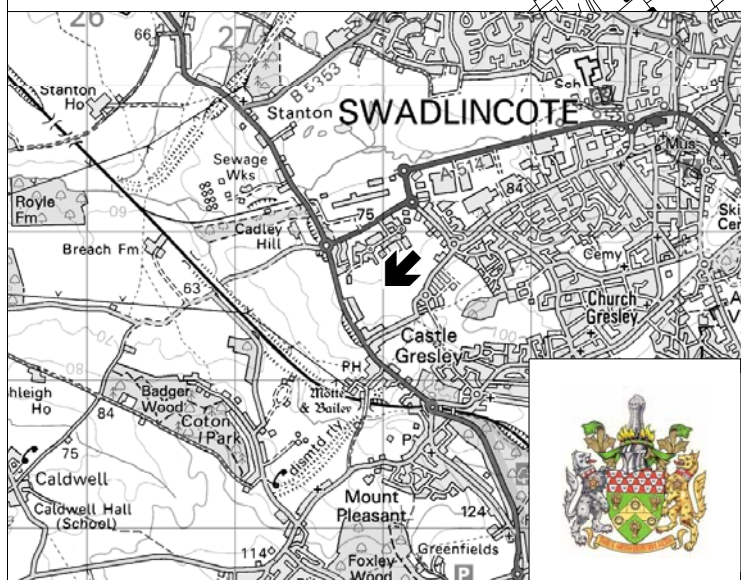
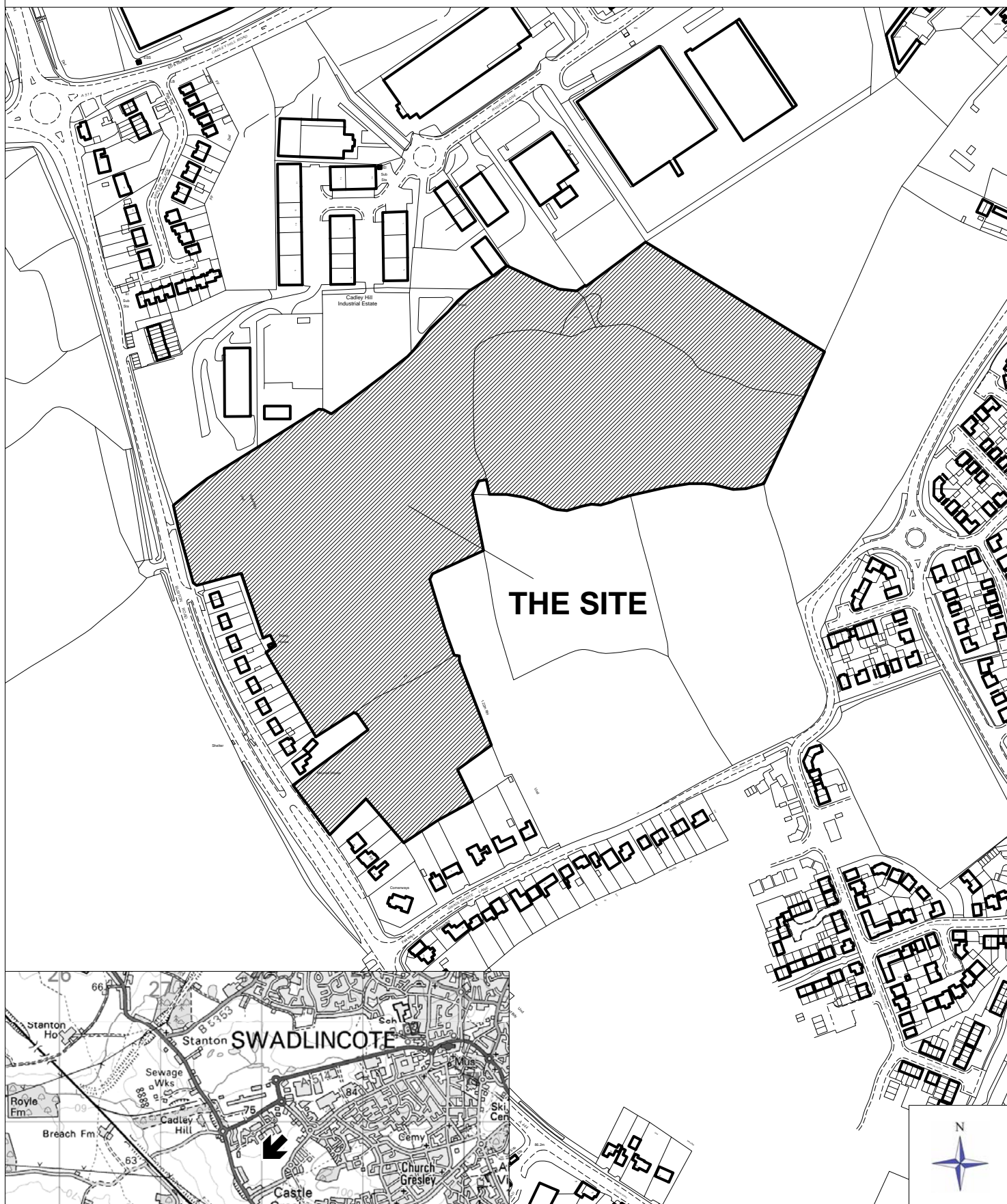
The application is brought before the Committee because this is a major development with more than two objections contrary to the development plan.

**Site Description**

This 10.32 hectare site to the south of Cadley Hill Industrial estate is currently open arable fields and pasture. The site overlaps the Local Plan employment allocation of policy E2. The site rises towards Burton Road to the west. Open land would surround the site to the south, south east and north east. Its western and south western boundaries are adjacent to the rear boundaries of 86 – 136 (evens) Burton Road and 3-13 (odds) Swadlincote Lane. The housing development of Castleton Park is to the south and south east.

The site slopes significantly from west to east. In the south western part of the site it slopes gradually from the south west to the existing pond adjacent to the northern boundary with a difference in levels of about 12 metres. The western part of the site adjacent to the A444 Burton Road is highest where the access is proposed and slopes down towards the centre of the site with a change in levels of about 10 metres. There

**9/2012/0743 - Land at SK2818 0665 Swadlincote Lane, Castle Gresley,  
Swadlincote (DE11 9EG, 9EU, 9EW)**



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**South Derbyshire District Council. LA 100019461. 2010**

are mature trees and hedges on parts of the northern and southern boundaries and adjacent to the pond in the north eastern part of the site.

## **Proposal**

Outline planning permission is sought for development of the site for mixed development of employment use within use classes business (B1), and storage and distribution (B8) and residential development. Approval of the access is sought at this stage with all other matters reserved. An indicative masterplan has been submitted which identifies the potential level of development. This layout has changed since the original submission which indicated 1.55 Ha (3,720 square metres) of employment land, 5.6 Ha of residential land (214 dwellings) with 2.25 Ha public open space to the rear of the Burton Road and Swadlincote Lane properties.

The amended proposal includes 3.75 Ha (9,375 square metres) of employment land and 5.67 Ha of residential land (215 dwellings) with 0.25 Ha public open space and a 0.65 Ha landscaped planting buffer.

The residential part would extend to the rear of the properties on Burton Road and Swadlincote Lane with a 10m in width planting buffer. The employment land would be adjacent to the existing Cadley Hill Industrial Estate along the northern boundary with the larger units shown adjacent to the access on Burton Road and in the north eastern part of the site. The access would also afford the opportunity to access the rear portions of plots on the existing industrial estate. The illustrative layout indicates a potential vehicle/pedestrian/cycleway link to the remaining part of the employment allocation as shown in the current Local Plan.

The access is proposed off Burton Road (A444), 45 metres north of the access for the Burton Road properties. The proposed access road would separate the two uses and it would curve around the north eastern boundary to provide access to the south eastern section of allocated land which bounds Swadlincote Lane. The POS would be in the middle of the housing area to the south west.

## **Applicants' supporting information**

### Design and Access Statement

This brief document sets out the vision for the site, site location and description, planning history, planning policy context, site analysis, public consultation, design and sustainability principles. The document has been updated to reflect the amendments. Scale parameters for the dwellings would be heights between 7-13m. The employment units would be one and two storey ranging from 3-12m in height.

### Planning Statement

This document includes the site and planning history which summarises the committee report for the industrial development granted in March 2010. It outlines the development proposal and the B1 and B8 uses that would operate between 0700 hrs and 2300 hrs which provide a buffer between the proposed housing and existing employment uses. The design of the road would assist in delivery of the remaining area of the employment allocation. The total number of dwellings proposed would be 215. The planning policy context is detailed together with the need for housing and retention of the site for

employment uses. A statement of community involvement is included which outlines the previous statutory consultations undertaken by the Council and the applicant's own neighbour consultation events prior to the residential application and this application. Traffic, noise, ecology and trees, flood risk, design issues are summarised and conditions and planning obligations are discussed.

### Justification for Mixed Use Scheme

The applicants' aim has been to embrace the principles of sustainable development within the NPPF as well as recent ministerial statement including Planning for Growth, each with their focus on delivery noting especially aims within the NPPF to;

- seek positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life... making it easier for jobs to be created in cities, towns and villages... widening the choice of high quality homes (paragraph 9).
- granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (paragraph 14);
- proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs (paragraph 17).
- avoid the long term protection of sites allocated for employment use... applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities (paragraph 22).
- Boost significantly the supply of housing (paragraph 47)
- approach decision-taking in a positive way to foster the delivery of sustainable development (paragraph 186)
- look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible (paragraph 187).

The site is allocated in the main for employment purposes however this allocation has been proposed since the 1990's and whilst it has planning permission, with limited occupier interest it is not viable to bring the site forward for employment development in the foreseeable future. This is particularly evident given the extent of new highway infrastructure and site enabling works which would be required in order to facilitate deliverable employment development plots.

The mixed use scheme represents a way of delivering the required highway access and service infrastructure for the site, together with site re-profiling works to create development plots which otherwise could not be delivered by an employment development alone. Its viability has been tested and subject to reasonable s106 obligations has shown to be viable and deliverable even in the current climate. The scheme balances aims to stimulate employment delivery with challenging infrastructure requirements and employment development viability. Through this application, a sustainable mixed employment and housing scheme can be achieved which accords with the NPPF including aims to promote and drive opportunities for economic development, new jobs and housing. The development will bring about the provision of infrastructure and readily available serviced plots for employment use which would not be achievable through an employment scheme alone.

In addition to the above, the development will bring with it needed housing, including an element of affordable housing which will contribute to the District's housing supply, deliverable within 5 years.

The development has gained considerable local support as evidenced through our consultation engagements with the local community whilst the large scale employment scheme as approved, with a major focus on B8 storage and distribution, raised significant local concerns.

The applicants' commitment to stimulate the delivery of the employment element of the development can be demonstrated by the following which could be the subject of a suitably worded condition;

- The provision of highway access spine road and access to the A444 together with service infrastructure and in order to provide available serviced employment development plots amounting to 1.25 ha before the occupation of 75 dwellings, a further 1.25 ha before occupation of 150 dwellings and a further 1.25 ha before occupation of the final dwelling.
- Commission commercial surveyors or professional marketing agents to market the availability of the employment plots and provide the Local Authority with quarterly updates on the range and scale of interest.

#### Ecological Impact Assessment

This report presents updated ecological information obtained during a desk-study, a walkover survey and surveys for great crested newts and bats undertaken in May 2011 and April 2012. A low level of activity of common pipistrelle bats was found within the application site. The revised scheme does involve the removal of some trees, however no bat roosts were found in any of these trees.

Four ponds and a ditch were assessed for the potential for Great Crested Newts. Three of the ponds and the ditch were dry between March and May and thus had no potential. Surveys were carried out on pond 1 and no evidence was found. A single hole badger sett was found on the site which was active in April 2012 which will therefore require further monitoring activity.

A length of approximately 15m of hedgerow will be lost from the centre of the site together with a length of approximately 40m of hedgerow may be lost from the eastern side of the site. Mature and semi-mature trees would be preserved around the perimeter of the site but a small number of trees within hedgerows would be lost. These would be replaced by new woodland planting and hedgerows with a net gain overall. An Ecological Management Plan would be produced at detailed design state.

#### Flood Risk and Drainage Assessment

The site lies in Flood Zone 1 and therefore fluvial flood risk can be scoped out. The management of surface water is crucial to prevent flooding and SUDS may be appropriate. There are no local public sewers for connection to the site and it will be necessary to apply for sewer requisitioning for both foul and surface water sewers. The existing drainage ditches and ponds should be retained across the site to maintain

existing drainage pathways. Limiting runoff quantities generated by all events up to the 100 year plus climate changed event to a discharge rate of 4.38 l/s/ha is necessary for the amended scheme together with a volume of attenuation of 3569m<sup>3</sup> if long term storage in the form of a pond can be provided and 4189m<sup>3</sup> without long term storage.

### Noise Impact Assessment

The amended scheme does not propose any residential development directly adjacent to the existing Cadley Hill Industrial Estate. A 3m high noise barrier along the northern and north-eastern site boundary is proposed. A minimum 15m wide buffer would be provided between the A444 and the nearest dwellings where the site was identified as being within NEC C of PPG24. Noise impacts at the proposed residential areas during the weekday daytime are predicted to be between the 'marginal significance' and 'complaints unlikely' categories of BS 4142. At night-time noise impacts are predicted to be above the BS4142 'complaints likely' noise level. Impact predictions have been made on the basis of all of the industrial units being operational during the night-time which represents a 'worst case'. These represent the highest worst case predicted impacts. Therefore, only the daytime predictions represent the actual current worst case assessment. Additional screening that may be afforded by the employment use buildings between the Cadley Hill Industrial Estate and the proposed residential areas, may give rise to further noise reductions.

### Transport Assessment

The amended report states that the access would take the form of a priority junction with a right turning lane on Burton Road. The main pedestrian and cycle access would be located adjacent to the vehicular access. There would be an additional pedestrian access onto Burton Road to the south of the site. There is also the potential for a pedestrian and cycle link to the north of the site. Trips rates have been calculated for the residential and employment uses to predict traffic generation. The potential traffic generation for the remainder of the employment allocation has been included as the Highway Authority considers that the access onto Burton Road should be able to accommodate this also as access from Swadlincote Lane would not be acceptable. Predicted traffic flows have also been included in the assessment.

The predicted traffic generation for the revised scheme was estimated using trip rates obtained from the TRICS database. The predicted traffic generation of the proposed development equates to 193 two-way vehicle trips in the morning peak hour and 197 trips in the evening peak hour.

The Burton Road site access for the proposed development has been analysed using PICADY. The results show that the site access has capacity to accommodate the development traffic and there will only be a marginal impact on traffic travelling on Burton Road (A444). The site access also has plenty of spare capacity to accommodate traffic generated by the remainder of the allocated site in a future year scenario. The Burton Road/Cadley Hill Road/Cadley Lane roundabout has been analysed using ARCADY.

The results indicate that under the 'with committed and proposed development' scenarios, the Cadley Hill Roundabout is predicted to operate within capacity in the peak hours for the assessed flows in the future year of 2019.

### Framework Travel Plan



This FTP encompasses a package of measures which would be employed to encourage future residents and employees of the development to travel by sustainable modes.

#### Coal Mining Risk Assessment

The site is within the zone of influence from nine worked coal seams, however, any ground movement from the seams identified between 50m and 330m deep and last worked in 1967 is expected to have stopped by now. The Coal Authority has also confirmed that there are no known mine entries on the site, no mine gas issues have been recorded, no damage notices have been received since 1984, and the site does not lie within 200m of an opencast site. Subsidence associated with a former sewerage has been a problem in the area and grouting has been undertaken on an adjacent site associated with faulting present in a named coal seam.

#### Preliminary Site Assessment Report

Eight trial pits were excavated in 2011 and five in 2012. A mixture of clay, sand, silt, coal, sandstone and siltstone were found.

#### Report on Loss of Industrial Land

This report does not consider the 2008 Housing Market Area Employment Land Review to be a reliable source of evidence in projecting a realistic quantity and quality of employment land within the District over the next 15 years. For the purposes of supporting the remaining stages of the Core Strategy and informing planning applications, a review of this evidence base needs to be undertaken. The site has been marketed fully and actively since March 2011. However, no substantial interest has been received and this is not likely to significantly change in the immediate future. The residential led proposals of the revised application would enable delivery of some employment development and better access to unused parcels of land to the rear of Cadley Hill Industrial Estate. The employment element of the proposals – small to medium sized industrial units – respond best to the needs of the local Swadlincote market and, as part of a mixed use, scheme would promote delivery.

#### Affordable Housing Viability Submission

DBK have carried out a series of viability appraisal using the most widely used appraisal package, namely the HCA Development Appraisal Toolkit<sup>13</sup>. This was specifically designed to assist local authorities in assessing affordable housing and S106 contributions on residential and mixed use developments. The full policy appraisal incorporating the full requested S106 contributions including 40% affordable housing produces a negative Residual Land Value. However when the scheme is appraised without the affordable housing obligation but with all of the other requested S106 contributions a positive RLV is produced. On this basis the scheme is viable and the surplus demonstrates that an amount of affordable housing can be sustained by the scheme.

If the full S106 package including Health and Education is maintained, the affordable housing that can be provided based on the preferred tenure split of

80% social rent and 20% shared ownership is 3.75%. This equates to 8 affordable units comprising 6 social rent and 2 shared ownership units. This rises to 5.75% affordable housing if the tenure split is changed to 100% shared ownership. This equates to 12 units. If the S106 contributions are reduced to Health & Education payments then 9% affordable housing can be provided equating to 19 units (15 units for social rent and 4 for shared ownership). Again with the reduced S106 payments but with 100% shared ownership the viable affordable housing provision rises to 12.5% equating to 27 shared ownership units. The choice on how best to utilise the available S106 monies that the scheme can sustain is down to the priorities of the council.

## **Planning History**

9/2010/0845 - Outline application (all matters except for access to be reserved) for the residential development, public open space and landscaping, Refused 6/2/12 – appeal lodged and public Inquiry set for 18-21 December 2012.

9/2009/1037 - Outline application for Business (B1), General Industrial (B2) and Storage and Distribution Development (B8), including means of access, Granted 2/3/10.

9/2009/0603 - Outline application for Business (B1), General Industrial (B2) and Storage and Distribution Development (B8), including means of access. Withdrawn 8<sup>th</sup> October 2009.

## **Responses to Consultations**

The County Highway Authority considers that the Framework Travel Plan is sufficient at this stage, however, it should be backed up with detailed residential and workplace TP's with SMART objectives, informed by the results of resident or employee surveys, at the appropriate times as specified (reserved matters stage). The developer would be expected to enter into an agreement (or provide a guarantee) for the creation of the additional cycleway & footpath links, perhaps even to ensure that they are in place before the development takes place.

An amended detailed access design has been submitted to comply with the relevant guidance. Although it is confirmed that the access is acceptable in principle, the Highways Authority was unable to confirm the precise detail to be acceptable at the time of writing this report. It is anticipated that it can be confirmed verbally at committee. Conditions in relation to the access, construction compound, mud prevention, the gradient of the access, exclusion of the vehicle link to Ryder Close, estate roads, parking, bins stores, travel plan and access for emergency vehicles are recommended.

The County Council Rights of Way Section consider that the creation of footpath and cycleway links to the south to Swadlincote Lane, east towards Cadley Hill Road / Hearthcote Road junction and north to Cadley Hill Industrial Estate should be investigated to encourage sustainable travel.

The Environmental Health Manager agrees with the methodology and mitigation proposed in the Noise Impact Assessment and the Addendum. He considers that the issue in terms of noise has been satisfactorily addressed and conditions should be placed on the proposed industrial uses restricting hours of use or internal noise levels, doors and windows should be kept closed except for access and egress, no external

storage, no externally located equipment unless demonstrated to be below background at nearest residential receptor, no audible reversing alarms to be used outdoors (specified white noise type system could be considered, or use only during certain hours) and a scheme of lighting to be agreed.

The Economic Development Manager welcomes the proposal in terms of its potential to bring forward the site and to open up some new employment land in the town and also to facilitate the access to employment permissions / allocations on neighbouring sites. Whilst he raises concerns should the site be developed as shown on the illustrative drawings, he notes that the layout is only indicative and issues would be addressed in detail at Reserved Matters stage. In terms of the suggested condition, the staged release of housing is welcomed which ties in the provision of the industrial units. The construction of a speculative unit, however small, on the site would be preferable, ideally the nearest block to the entrance, because this will permanently establish it as a mixed use site.

Derbyshire Constabulary Crime Prevention Design Advisor has concerns regarding pedestrian links through industrial estates as there is no natural surveillance and they are closed at weekends. The residential and employment uses should have separate accesses and the uses should be segregated with secure boundaries. The footpath and cycle route to the Industrial estate should be avoided as it would be unsafe and provide leakage for offenders.

The Environment Agency had no objection to the original submission and recommended conditions regarding the Flood Risk Assessment and its mitigation measures in terms of surface water run-off together with submission of a drainage scheme.

Derbyshire Wildlife Trust considers that in relation to the amended scheme, the revised Ecological Impact Assessment addresses the original inaccuracies in respect of the evaluation of local wildlife site designations and the age of the hedgerows present on the site.

Clarification has been provided with regard to the extent of hedgerow loss and it is understood that this equates to the removal of a 15m section and potentially a 40m section. It is noted that the proposed compensation for hedgerow loss would be provided in the form of new hedge and tree planting at a ration of two to one which is supported. Meaningful buffer zones should be retained alongside the hedgerows with the final design ensuring that the hedgerows are located alongside roads, paths and public open space and are not incorporated within the curtilage of domestic properties. They advise that this should be secured by a planning condition.

It is understood that a small number of mature and semi-mature trees will be lost but it is noted that none of the trees identified as having bat roost potential are to be removed as part of the development. If this situation changes and any of the trees with potential to support roosting bats are proposed for removal it advises that a thorough survey of any affected tree for bats would be required, including an emergence survey. They note and welcome the provision of new woodland planting within the application site to compensate for the unavoidable loss of any mature/semi-mature trees but would add that any felled trees should be retained as dead wood habitat and incorporated within the nature conservation enhancement measures as part of the landscaping scheme.

The Trust fully supports the mitigation measures set out in the report and advise that they should be incorporated within any reserved matters/detailed design application and implemented in full as a condition of any outline consent.

With regard to the single hole badger sett within the site the Trust considers that it is unlikely to be damaged or destroyed by the development and that links between the sett and the wider landscape would be retained during construction and in the long term via the hedgerows to be retained within and around the perimeter of the site. However, given that the application is outline, if the surveys three months prior to commencement confirm the sett is active, consideration should be given to mitigation comprising an appropriate stand-off to avoid disturbance rather than to close the sett, given that the sett and linkages to the wider area for foraging are to be retained.

They advise that any ecology related conditions attached to the previously approved scheme under the reference 9/2009/1037 should be transferred to any permission and should be reflected in any reserved matters application. They also advise that all retained habitats, including hedgerows, trees and ponds are protected from damage during works by the erection of adequate temporary fencing.

The National Forest Company's original comments highlighted that the application included little woodland creation against an expected contribution of 3.09ha for a development of this scale. The amended Design and Access Statement suggests that 0.25ha remains as public open space but from the level of detail submitted it is not possible to say that this would include enough planting to have a wooded character. Similarly, 0.65ha of buffer planting is proposed, though this is only shown indicatively on the layout plans. As the application is in outline form, the NFC considers that the s106 agreement should contain a schedule requiring the Reserved Matters details to clearly demonstrate where woodland creation can be accommodated on the site and that any shortfall is addressed by either a financial contribution at £20,000 per hectare or off-site planting.

The Coal Authority has no objection subject to a condition regarding remedial works to treat areas of probable shallow mine workings.

The County Education Authority states that the relevant normal area primary schools are Church Gresley Infant School, Pennine Way Junior School and Linton Primary School. Current and future projections show that the relevant normal area primary schools would be unable to accommodate the additional pupils arising from this development. The County Council's requirement is for £262,177 towards the provision of primary school places. The relevant normal area secondary school (The Pingle School) would be able to accommodate the additional secondary pupils arising from this development and therefore no contribution towards secondary places is required for this development.

Castle Gresley Parish Council states that a mix of housing and small industrial units is preferable to large industrial units but there are concerns regarding the development in terms of lack of amenities, dentist, doctors and schools. There are also concerns relating to infrastructure and access width onto Burton Road. They consider another traffic island is required; consideration of re-opening Castle Gresley School and some of the S106 money should be given to the Parish Council.

The NHS Derbyshire County anticipates an increase in population directly attributable to the new housing development of approximately 492 persons. The development would

have a direct impact on the GP practices in the Swadlincote area and as such a S106 contribution of £512 per dwelling should be secured.

Cllr Wheeler (Ward Member) suggests that there will clearly be a need for some leisure facilities for the intended residents, especially for children. S106 monies should be sought towards facilities in the immediate vicinity or in Castle Gresley.

Sport England objects to the application as there is no provision for outdoor sport. However, if S106 contributions were secured to meet the needs of indoor sport and AGPs then they may withdraw their objection.

The Council's Contaminated Land Officer states that as neighbouring land has historically been used for quarrying there are areas of unknown filled ground which may have contaminated the site. It is noted that a Phase I report has been completed. A phased contamination condition is recommended.

The County Archaeologist states that the site has been arable agricultural land with field boundaries in place since at least the 19<sup>th</sup> Century. The lack of previous development means that any archaeological remains are likely to be well preserved and therefore a phased programme of archaeological work should be secured by condition.

Severn Trent Water has no objection subject to a drainage condition and informative in relation to a public sewer within the site.

### **Responses to Publicity**

Four letters of objection were received initially and six letters as a result of the re-consultation on the amended scheme and are summarised as follows:

- a) There are concerns regarding the increase in traffic and how the access road to Burton Road properties would be affected.
- b) Environmental pollution is a concern together with the impact on wildlife particularly trees and hedgerows.
- c) The proposed public open space should be properly maintained.
- d) There would be a resultant impact on health care and education provision.
- e) The Castleton Park development roads are already congested.
- f) Existing facilities should as health centres, Police and Schools are already stretched.
- g) Accidents have increased on the A444.
- h) There are nearby industrial units for let and therefore what is the need.
- i) The proposal would result in the loss of outlook onto open fields.
- j) Traffic and industrial noise pollution would significantly increase.
- k) No building would be preferable, however, housing and small business units as per plan are acceptable.
- l) The employment permission would be the preferred option.
- m) There is no need for employment or housing development.
- n) There is not the right balance of industrial / commercial properties.
- o) There are no jobs for all the residential developments which are currently agreed and built / being built.
- p) The original submission proposed public open space and now it is filled with housing and no green space will exist in Swadlincote.
- q) Existing properties have had to put up with the construction noise and dust from Castleton Park for years.

- r) There is nowhere to walk dogs and this will limit it further.
- s) Two businesses from the Cadley Hill Industrial Estate have concerns regarding the vehicle link shown to their land which would reduce their ability to efficiently use their land and request that it be combined with the cycle access.

## **Development Plan Policies**

The relevant policies are:

EMRP: 3, 12, 20, 29, 30, 45, 48, Three Cities SRS3

Local Plan: Housing Policies 4 and 11, Employment Policy 2, Transport Policy 6,

Environment Policies 9 and 10 and Recreation and Tourism Policy 4.

## **National Guidance**

The National Planning Policy Framework (NPPF) paragraphs 17,18, 19, 20, 22, 32, 34, 36, 47, 49,109, 118 & 123.

## **Planning Considerations**

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

- Principle of Development
- Housing development and 5 year supply
- Highways Issues
- Impact on residential amenity
- Noise
- Ecological Issues
- Section 106 agreement

## **Planning Assessment**

### Principle of Development

The majority of the site is within the South of Cadley Hill Industrial Estate allocation defined in Local Plan Policy Employment 2 for industrial and business development B1, B2 and B8 uses. Outline permission was granted in 2010 for industrial development and in January of this year residential development was refused. This application represents a combination of the two uses and extensive negotiations have been undertaken to ensure that the employment land level would provide the Council with sufficient land to provide a substantial contribution to the surplus required for the future of the District. Whilst employment land needs are currently being refreshed, existing estimates set out in the 'Derby Housing Market Area Employment Land Review' (2008) indicate a shortfall in supply in South Derbyshire.

The original submission indicated a much lower level of employment land than now proposed and in order to maintain a viable scheme (as verified by the District Valuer) the housing level has had to remain unchanged (albeit an increase of 1 dwelling). By incorporating additional adjoining land for housing it is possible to achieve the early delivery of employment land take up which the Council needs to attract new business and generate sustainable growth. In accepting this mixed use scheme it is paramount that the employment land is secured through a suitably worded condition that ensures the infrastructure for the industrial development is constructed together with the housing

and a cap on the numbers of dwellings built prior to the employment land coming forward.

The steer from Central Government is to promote and enable growth in terms of both housing and employment development. This is evidenced by the major housing and planning package outlined by the Prime Minister and Deputy Prime Minister, alongside the Communities Secretary Eric Pickles, on the 6 September 2012 introducing measures which seek to unlock and boost development.

The NPPF and subsequent ministerial statements highlight the need for the planning system to promote sustainable growth including the provision of sufficient land to meet housing and employment needs. To this end, local planning authorities are required to both maintain a rolling five year supply of specific deliverable housing sites and plan proactively to meet the development needs of business.

The NPPF at para 7 identifies the economy as one of the three dimensions of sustainable development. It states that the planning system should contribute to *"building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation..."*. The Local Plan seeks to balance housing and employment growth in Swadlincote to nurture a more balanced and sustainable settlement, reducing the need for outward commuting and in securing 9,375 square metres of employment land on the best remaining site near Swadlincote the Council would achieve this aim.

Para 19 indicates that planning should *"operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system"*. Para 20 states that *"to help achieve economic growth, local planning authorities should plan proactively to meet the development needs of business..."*. The site is identified as the best available employment allocation and securing its delivery is in line with this policy.

Para 22 indicates that *"Planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities."* This mixed use development would create a viable scheme that would bring forward both housing and employment development in a sustainable location in the near future. Similarly, Policy 20 of the East Midlands Regional Plan advises local authorities to work together to undertake employment land reviews to inform the allocation of a range of sites at sustainable locations. The layout proposes a link to the remainder of the allocated employment site and as such the future of this further 4Ha site is also secured by this proposal.

#### Housing development and 5 year supply

Based on the development requirements of the extant East Midlands Regional Plan, the Council currently has more than a 5 year housing supply plus a 5% buffer for the non-Principal Urban Area 'remainder of the district' within which this site falls, although there will be an ongoing need to 2028.

Principally for this reason, together with the fact that the site is allocated for employment purposes in the Adopted Local Plan, the previous application covering a large part of this site was refused planning permission and is currently the subject of appeal procedures. Similarly, the Council's "Preferred Growth Strategy" – which is currently the subject of public consultation – does not prefer this site to be allocated for residential development in the emerging Local Plan.

Although there is no current shortage of housing land available in this part of the District, further residential development will be needed going forward. Furthermore, despite not being a "preferred" housing site in the emerging Local Plan, development of 215 dwellings here could be exceptionally justified given it would actively assist in the delivery of the employment land earlier than would otherwise be the case. Whilst the proposed residential component is on land not previously developed or allocated for development, greenfield land will inevitably be needed in allocating sites in the emerging Local Plan. This site is also contained within the existing defined urban boundary of Swadlincote and, in combination with other beneficial factors is considered appropriate when assessed against the criteria within Housing Policy 4 being on the fringe of the built up area and substantially surrounded by development. Furthermore, the proposal does not involve the loss of the best and most versatile agricultural land and, due to its location adjacent to an existing industrial estate and employment land allocation; it does not represent a landscape feature which makes a valuable contribution to the area. The site is not highly visible from the A444 due to the significant drop in levels and to the south is the much larger residential development of Castleton Park. Given the current economic climate, there are very few alternative employment sites in the urban area coming forward in the near future. As such, a major advantage in allowing a mixed use here would be to help facilitate bringing forward the application site to enable that short-term local opportunity and therefore help stimulate economic growth.

In summary therefore, this mixed use development could represent a viable scheme bringing forward both housing and employment development in a appropriate location in the near future. In accepting this mixed use scheme, it would be essential that the employment land be secured through a suitably worded condition ensuring the infrastructure for the industrial development were constructed together with the housing and a cap on the numbers of dwellings built prior to the employment land coming forward sought.

### Highways Issues

The principle of the access onto the A444 was agreed in 2010 in the industrial permission. However, further detail in terms of the detail of the access is required. Two harbourages for right-turning traffic for the existing residential access and the new access are provided for reasons of safety. The Highways Authority has yet to confirm whether the amended detailed access design is acceptable and this will be reported verbally at committee but a condition has been added in case this is not possible.

The Framework Travel Plan that has been submitted is sufficient at this stage although further work is required for the creation of the additional cycleway & footpath link to the north onto the Cadley Hill Industrial Estate and to the west onto Burton Road. The link to the industrial estate would be secured through the Section 106 agreement as the land is not within the developer's ownership. The Highway Authority has acceptable the



findings of the Transport Assessment and Addendum in terms of the proposals impact on the A444 in terms of capacity. The proposal is therefore considered to accord with Transport Policy 6 and NPPF paragraph 32.

#### Impact on residential amenity

The indicative layout plan shows a 10m area of buffer planting to the rear of existing properties on Burton Road and Swadlincote Lane and proposes properties 30-45 metres away from the rear of existing dwellings (illustrative layout). A minimum distance of 21 metres could be achieved between existing and proposed properties (but given the 10m planting area probably significantly more) therefore the residential amenity of existing properties would not be adversely affected. Land levels reduce to the rear of existing properties which would also help to reduce impacts. These relationships would be reviewed in greater detail at reserved matters stage, however, the indicative layout does indicate that acceptable relationships can be achieved in line with Housing Policy 11 and NPPF paragraph 17.

#### Noise

The amended scheme proposes industrial uses along the northern and north eastern boundary with the existing Cadley Hill Industrial Estate with a 3m high noise barrier proposed along this boundary. Therefore, the existing noise issues that exist would be mitigated and the proposed employment buildings would also offer screening and may give rise to further noise reductions.

The Noise Impact Assessment has been carried out on the basis of a 'worst case' situation whereby all industrial units are operational during the night-time. The daytime predictions represent the actual current worst case and as such these levels are predicted to be between the 'marginal significance' and 'complaints unlikely' categories of BS 4142.

A minimum 15m wide buffer would be provided between the A444 and the nearest dwellings. Therefore, the noise concerns which represented a refusal reason in the solely residential scheme have been overcome by this proposal as the new industrial units are limited to B1 and B8 and are able to be restricted by conditions in terms of hours of use, noise generation, outside storage, restricting manoeuvring of forklifts etc. to within the buildings. This differs from the refused residential scheme as housing was proposed adjacent to the boundary with the Cadley Hill Industrial Estate whereby some of the large existing units do not have any hours of use or noise level restrictions and as such complaints from the occupiers of the new dwellings would be highly likely and would prejudice the continued viability of these businesses contrary to Housing Policy 4 (vii).

The proposed employment units provide a significant buffer between the existing industrial estate and the new and existing dwellings that would not limit the activities of the existing industrial uses or their viability and is as such in accordance with the criteria of Housing Policy 4. The proposal is also considered to accord with NPPF paragraphs 109 and 123 as it would not amount to an unacceptable risk from noise.

#### Ecological Issues

The Ecological Impact Assessment does not identify any significant impact on protected species. There is a low level of activity of the common pipistrelle bats on the application site and the proposed tree removal does not involve trees with any potential for roosting bats. No evidence of Great Crested Newts was found within any ponds or ditches. A single hole badger sett was found which was active in April 2012. Further monitoring of the sett will be required to determine the status of the sett and assess the likely impact of the development to inform any proposed mitigation measures.

The loss of some hedgerow on the site would mainly be to facilitate the access through the site. Mature and semi-mature trees would be preserved around the perimeter of the site but a small number of trees within hedgerows would be lost. These would be replaced by new woodland planting and hedgerows with a net gain overall. An Ecological Management Plan would be produced at detailed design stage. The Wildlife Trust advise that any hedgerow removal should be adequately compensated for by new hedgerow planting at a ratio of at least two to one. Meaningful buffer zones should be retained alongside the hedgerows with the final design ensuring that the hedgerows are located alongside roads, paths and public open space and not incorporated within the curtilage of domestic properties. This can be secured by a planning condition.

The mitigation and nature conservation enhancement measures set out in section 6 of the report are fully supported and it is advised that they should be incorporated within any reserved matters/detailed design application as a condition of any outline consent along with related conditions attached to the previously approved scheme.

Given the advice of the Derbyshire Wildlife Trust and the mitigation proposed for the loss of trees and hedgerows, the proposal would not have an adverse impact on protected species and habitats and as such the proposal accords with Environment Policy 9 of the Local plan, Policy 29 of the EMRP and NPPF paragraph 118.

#### Section 106 agreement

The Affordable Housing Viability Submission has been independently assessed by the District Valuer and discussions with the applicants and the report author have taken place to reach agreement. The District Valuer has produced a valuation based on the applicant's report that results in a residual surplus available for Section 106 contributions.

The Committee therefore has to consider the priorities in terms of how the sum should be divided up between the competing causes. The Education Authority requires £262,177 towards primary school provision and this is considered to be a high priority. Recreation contributions would be made up of informal open space of £235,911, outdoor facilities of £165,660 and built facilities of £91,866, which totals £493,437. This total sum would also account for the recommendations made by Sport England and the National Forest Company.

The NHS Derbyshire County have requested the standard £512 per dwelling which amounts to £110,080. The applicant's have provided the NHS with evidence that there is existing capacity and a further consultation response that addresses this evidence is awaited.

In summary it would appear that at the time of writing, the education contribution is paramount along with the recreation sum. This would leave the remainder available for

affordable housing, the percentage/quantity of which would alter with the size and tenure of dwellings, as recommended by the Strategic Housing Manager, to meet specific need, although it has been demonstrated to the satisfaction of the District Valuer that there would not be sufficient funds for the target 40% (which the Strategic Housing Manager accepts).

### Other Issues

With regard to the access through to rear sites on the existing Cadley Hill Industrial Estate, the access shown is only intended to serve the surplus land that these businesses have to the rear of their properties. It would not serve as another entrance through to the whole industrial estate. It therefore has no role as a link road. The plan submitted is indicative only and the actual location of this road would be confirmed at reserved matters stage.

A renewal application has been received for the 9/2009/1037 outline permission for Business (B1), General Industrial (B2) and Storage and Distribution Development (B8), including means of access. The permission expires on 2 March 2013 and due to the Government recently extending the remit of 'Extension of Time' permissions to 2010, the applicant's consider it expedient to retain an extant permission on the site for employment use.

### Conclusions

The application site is identified as the best available employment allocation representing the only substantial remaining site in or adjacent to the Swadlincote urban area with the potential to provide jobs for local residents and reduce outward commuting to other areas. This mixed use development could represent a viable scheme bringing forward both housing and employment development in a appropriate location in the near future. The principle of an access from the A444 has previously been agreed and the Highway Authority has acceptable the findings of the Transport Assessment and Addendum in terms of the impact capacity on the A444. In terms of noise, this has been assessed and suitable mitigation has been agreed with the Environmental Health Manager. Restrictions on the new industrial uses can be secured through conditions to ensure the residential amenity of the existing and proposed dwellings is protected. The indicative layout shows that suitable relationships can be achieved between new and existing dwellings and the new dwellings and the industrial uses in terms of impacts on residential amenity. Adequate mitigation is proposed for the loss of trees and hedgerows in terms of replacement planting and the proposal would not have an adverse impact on protected species and habitats. The viability assessment has confirmed that all of the necessary sums for education and recreation are available with a significant surplus for affordable homes.

The proposal therefore accords with Local Plan Housing Policies 4 and 11, Employment Policy 2, Transport Policy 6 and Environment Policies 9 and 10; EMRP Policies 3, 12, 20, 29, 30, 45, 48, Three Cities SRS3; and NPPF paragraphs 17,18, 19, 20, 22, 32, 34, 36, 47, 49,109, 118 & 123.

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

- A. That the Committee authorise the Head of Community and Planning Services to complete detailed negotiations for the provision of contributions as follows: £262,177 towards primary school provision; £235,911 towards local recreation provision; provision of a cycleway / pedestrian link to Ryder Close; the remainder of available surplus (as agreed with the District Valuer) for affordable housing subject to the satisfaction of the Council's Strategic Housing Manager.
- B. Subject to A, **GRANT** permission subject to the following conditions (with delegated authority from the Committee to secure any amendments/further conditions as is considered necessary):
1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.  
  
(b) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.  
  
Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990.
  2. Approval of the details of the layout, scale, appearance and the landscaping shall be obtained from the Local Planning Authority in writing before any development is commenced.  
  
Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.
  3. Notwithstanding the originally submitted details, this permission shall relate to the amended indicative layout plan submitted on the 12th October 2012 and the amended Site Location Plan received on the 28th October 2012.  
  
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
  4. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) Revision 2.0, dated August 2012, Reference 5064268/42/DG/110, undertaken by Atkins and the following mitigation measures detailed within the FRA and Design and Access Statement:
    - a) Limiting the surface water run-off generated by all events up to the 100 year plus plus 30% for residential, 20% for commercial (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site (4.38l/s/ha) and not increase the risk of flooding off-site. Sections 3.3, 4.6 (Para 5), 5.1 (Table 4), 5.3, and 6.3.2.5.
    - b) Provision of surface water run-off attenuation storage on the site to accommodate the difference between the allowable discharge rate and the 100 year plus plus 30% for residential, 20% for commercial (for climate change) critical rain storm standard. Sections 4.2.2, 5.3.1 and 6.3.2.5.
    - c) Improvement, protection and maintenance of existing ponds and ditch systems as detailed on Figure 7 of the Design and Access Statement dated August 2012. FRA Sections 3.2.3 and 6.2.3. Note: Watercourse crossings required for the provision of access e.g. roads, should in preference be clear spanning bank top

to bank top, or where culverting is necessary, will need to be designed in accordance with CIRIA C689, the culvert design manual.

d) A maintenance programme should be established for all on-site drainage systems to ensure long term operation. Sections 5.1.1 and 6.5.

Reason : To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site. To reduce the impact of flooding on the proposed development and future occupants. To reduce the risk of flooding to the proposed development and future occupants.

5. Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority, in consultation with the Environment Agency. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

Reason : To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity, and to ensure future maintenance of the surface water drainage system.

6. The development permitted by this planning permission shall only be carried out in accordance with the approved Atkins Ecological Impact Assessment October 2012 and the mitigation measures detailed within Section 6.

Reason : To ensure the protection of wildlife and supporting habitat and secure opportunities for the enhancements of the nature conservation value of the site in line with national planning policy.

7. 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.

8. No development shall take place, until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the Local Planning Authority in writing. No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved.

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible.

9. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under condition 8 and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible.

10. No development shall take place until a schedule of Habitat Management and Monitoring for a minimum period of 5 years has been submitted to and approved in writing by the Local Planning Authority. The schedule shall include details of

the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.

Reason: In the interests of the appearance of the area and its biodiversity.

11. Any vegetation clearance shall be carried out to avoid the bird breeding season which extends from March to late August unless otherwise agreed in writing by the Local Planning Authority.

Reason : To protect habitats in accordance with NPPF Paragraph 109.

12. 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.

13. 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.

14. If remediation of the areas of shallow mine workings and/or any other mitigation measures are required that are not detailed in the Coal Mining Risk Assessment these shall be submitted to and approved by the Local Planning Authority prior to commencement of development. The development shall be undertaken in accordance with the recommendations of the Coal Risk Assessment.

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

15. 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.

16. 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.

17. There shall be no goods or materials stored in the open within any areas unless otherwise agreed in writing by the Local Planning Authority.

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

18. Prior to the first occupation of the development hereby permitted, measures to minimise the risk of crime to meet the specific security needs of the application site and the development shall be implemented in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority.

Reason: In pursuance of the Council's duty under section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in exercising its planning functions; to promote the well-being of the area pursuant to the Council's powers under Section 2 of the Local Government Act 2000 and to reflect government guidance set out in PPS1.

19. 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.

20. Prior to commencement of development a lighting scheme shall be submitted and approved in writing by the Local Planning Authority and the scheme shall be implemented in accordance with the approved details.

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

21. 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.

22. Any landscaping scheme shall include a landscaped buffer adjacent to the boundaries of properties on Burton Road and Swadlincote Lane and the open land to the south.

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

23. Notwithstanding the submitted drawings, the scheme for the access on to Burton Road (A444) shall be redesigned (also taking account of the nearby service road) in accordance with the Design Manual for Roads and Bridges, TD42/95, Geometric Design of Major/Minor Priority Junctions. The access shall have a minimum width of 7.3m, be provided with 10m radii and visibility sightlines of 2.4m x 120m in each direction, the area forward of which shall be cleared and maintained thereafter clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge. The scheme shall be submitted to and approved in writing by the Local Planning Authority in consultation with the County Highway Authority prior to any other works commencing.

Reason: In the interests of highway safety.

24. Before any other operations are commenced (excluding site clearance), space shall be provided within the site curtilage for storage of plant and materials, site accommodation, loading and unloading of goods vehicles, materials, parking and manoeuvring of site operatives' and visitors' vehicles, laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority, and maintained throughout the contract period in accordance with the approved designs free from any impediment to its designated use.

Reason: In the interests of highway safety.

25. Throughout the period of construction, wheel washing facilities shall be provided within the site and used to prevent the deposition of mud and other extraneous material on the public highway.

Reason: In the interests of highway safety.

26. Before any other operations are commenced (excluding Conditions 23,24 and 25 above), the new estate street junction shall be formed to Burton Road, located, designed, laid out and constructed in accordance with the scheme approved in writing by the Local Planning Authority in accordance with Condition 23 above.

Reason: In the interests of highway safety.

27. The gradient of the new access shall not exceed 1:30 for the first 10m into the site from the highway boundary and 1:20 thereafter.

Reason: In the interests of highway safety.

28. Notwithstanding the submitted drawings, the internal layout of the site shall accord with the Highway Authority's Policy Document "6Cs Design Guide" and national guidance laid out in Manual for Streets.



Reason: In the interests of highway safety.

29. Notwithstanding the submitted drawings, there shall be no vehicular through route onto Ryder Close in order to prevent additional traffic entering the site with the sole reason of accessing the adjacent industrial estate or Cadley Hill Road.

Reason: In the interests of highway safety.

30. A swept path diagram shall be submitted at Reserved Matter stage to demonstrate that emergency, goods and service vehicles can adequately enter, manoeuvre within the site and leave in a forward gear.

Reason: In the interests of highway safety.

31. The new dwellings shall not be occupied until the proposed new estate street between each respective plot and the existing public highway has been laid out in accordance with the approved application drawings to conform to the County Council's design guide, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

32. Before the commencement of any operations on site, a scheme for the disposal of highway surface water via a positive gravity-fed system, discharging to an outfall on public sewer, highway drain or watercourse, shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

33. Parking within the site shall be provided for residents and visitors along with secure covered cycle parking, all in accordance with the Transport Assessment - Addendum Report (October 2012), all laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

34. The gates hereby permitted shall be designed so as to open inwards only and not out over the highway.

Reason: In the interests of highway safety.

35. Bin stores shall be provided within private land at the entrance to shared private accesses, in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority, to prevent refuse bins and collection vehicles standing on the new estate street for longer than necessary causing an obstruction or inconvenience for other road users. The facilities shall be provided prior to the first occupation of the dwellings to which they relate and shall be retained thereafter free from any impediment to their designated use.

Reason: In the interests of highway safety.

36. Any future "Reserved Matters" application shall be accompanied by a detailed Residential and Workplace Travel Plan with SMART objectives. The Travel Plan shall set out proposal, including a timetable, to promote and monitor travel by sustainable modes which are acceptable to the Local Planning Authority, and shall be implemented in accordance with the timetable set out therein, unless otherwise agreed in writing by the Local Planning Authority. Reports demonstrating progress in promoting sustainable transport measures shall be submitted annually, on each anniversary of the date of the planning consent, to

the Local Planning Authority for approval for a period of five years from first occupation of the development.

Reason: In the interests of highway safety.

37. Any "Reserved Matters" application shall be accompanied by confirmation from the Emergency Services that they do not consider that having a single point of access could prove to be problematic, restrict access for emergency vehicles and compromise safety should two or more incidents occur simultaneously within the site.

Reason: In the interests of highway safety.

38. Surveys of the badger sett shall be submitted to the Local Planning Authority at Reserved Matters stage to confirm whether the sett is active and consideration should be given to mitigation comprising an appropriate stand-off to avoid disturbance rather than to close the sett shall be implemented in accordance with a scheme agreed in writing by the Local Planning Authority.

Reason : To protect habitats in accordance with NPPF Paragraph 109.

39. No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times nor at any time on Sundays, Bank or Public Holidays: 07:00 - 19:00 Monday to Friday and 09:00 - 17:00 on Saturdays.

Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.

40. No equipment shall be located externally unless it can be demonstrated that its noise generation would be below background levels at the nearest residential receptor and details shall be submitted prior to occupation of the unit and agreed in writing by the Local Planning Authority.

Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.

41. No audible reversing alarms shall be used outdoors.

Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.

42. The provision of highway access spine road and access to the A444 together with service infrastructure and in order to provide available serviced employment development plots amounting to 1.25 ha before the occupation of 75 dwellings, a further 1.25 ha before occupation of 150 dwellings and a further 1.25 ha before occupation of the final dwelling.

Reason: To secure the timely delivery of the industrial units in accordance with Local Plan Policy E2.

43. Prior to the completion of any of the dwellings the applicants shall commission commercial surveyors or professional marketing agents to market the availability of the employment plots and submit quarterly updates on the range and scale of interest to the Local Planning Authority.

Reason: To secure the timely delivery of the industrial units in accordance with Local Plan Policy E2.

44. Notwithstanding the submitted details, the public open space and all pedestrian links shall be provided and available for unrestricted public use in perpetuity in

accordance with a phased scheme to be submitted to and approved in writing by the Local planning Authority prior to the first occupation of any dwelling on the site hereby permitted.

Reason: In the interests of the provision of necessary recreation space for the development and the general sustainability of the site.

#### Informatives:

The EA advise in respect of Condition 5 that the surface water drainage scheme shall include:

- Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken, and include SUDS elements with attenuation, storage and treatment capacities.
- Limiting the discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus plus 30% for residential, 20% for commercial (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus plus 30% for residential, 20% for commercial (for climate change) critical rain storm.
- A preference for a gravity surface water system to drain this site.
- Include protection of existing ditch courses within a watercourse corridor/easement, as detailed on Figure 7 of the Design and Access Statement dated August 2012.
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements.
- Provide an implementation programme for the timing of the provision of the scheme including any part which has been agreed in writing with Severn Trent Water.
- Provide written confirmation of any allowable discharge rate into the public sewerage system.
- Details of how the scheme shall be maintained and managed after completion.

The scheme shall be implemented in accordance with the agreed implementation programme unless otherwise agreed in writing with the local planning authority, in consultation with the Environment Agency.

The EA advises the following:-

The ditch courses to be retained within the site (whilst protected by a minimum 5m vegetation buffer on each side) could be liable to deterioration, due to them being located between the rear garden boundaries of the residential development parcels. As such fly tipping into these watercourse corridor/habitat areas is a foreseeable risk. We recommend watercourses are retained within public open space ideally adjacent to roads or footpaths with dwellings fronting on to them.

Severn Trent Water Limited should be consulted by the Local Planning Authority and be requested to demonstrate that the sewerage and sewage disposal systems serving the development have sufficient capacity to accommodate the additional flows, generated as a result of the development, without causing pollution.

#### Groundwater Quality:

We have the following comments to make which relate solely to the protection of 'Controlled Waters', matters relating to Human Health should be directed to the relevant department of the Local Authority.

Reference to the 1:50,000 scale geological map Sheet 141 (Loughborough) indicates that the site is located on Carboniferous Coal Measures strata which are designated as a 'Secondary (A) Aquifer' by the Environment Agency.

The site does not appear to have been subject to any significant development and consequently the potential for contamination to be present is limited. Therefore we have no requirement for any further investigation of the site.

It should be noted that in accordance with Government Policy detailed in Planning Policy Statement 23: 'Planning and Pollution Control' (2004), it remains the responsibility of the landowner and developer to identify land affected by contamination and to ensure that remediation is undertaken to secure a safe development. Therefore, should any significant contamination, not assessed by virtue of this report/project, subsequently become apparent responsibility remains with these parties.

Given the limited potential for any contamination to be present on the site we have no objections to the proposal to use soakaways to deal with surface water drainage at the site.

The applicant / developer should refer to our 'Groundwater Protection: Policy and Practice' (GP3) document, available from our website at [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk). This sets out our position on a wide range of activities and developments, including:

- Storage of pollutants and hazardous substances
- Discharge of liquid effluents into the ground (including site drainage)

All precaution must be taken to avoid discharges and spills to ground both during and after construction. For advice on pollution prevention measures, the applicant should refer to our guidance 'PPG1 - General guide to the prevention of pollution', available from our website.

The developer should also consult with the Environment Agency regarding the importation of any material to the site if landscaping works are to be undertaken using imported fill materials to ensure that all relevant legislation is complied with.

During the period of construction, oil and fuel storage will be subject to the Control of Pollution (Oil Storage) (England) Regulations 2001. The Regulations apply to the storage of oil or fuel of any kind in any kind of container which is being used and stored above ground, including drums and mobile bowers, situated outside a building and with a storage capacity which exceeds 200 litres. A person with custody or control of any oil or fuel breaching the Regulations will be guilty of a criminal offence. The penalties are a maximum fine of £5000 in Magistrates' Court or an unlimited fine in Crown Court. Further details of the Regulations are available from the Environment Agency.

It is recommended that the installation of fittings that will minimise water usage such as low, or dual, flush WC's, spray taps and economical shower-heads in the bathroom are installed. Power showers are not recommended as they can consume more water than an average bath. Water efficient versions of appliances such as washing machines and

dishwashers are also recommended. For outdoors consider installing a water butt, or even a rainwater harvesting system, to provide a natural supply of water for gardens. Simple treatment systems exist that allow rainwater to be used to supply WC's within the home. Following the above recommendations will significantly reduce water consumption and associated costs when compared to traditional installations. Rainwater harvesting utilises a free supply of fresh water and reduces the cost to the environment and the householder.

The County Archaeologist advises that the written scheme of investigation shall include an assessment of significance and research questions; and

1. The programme and methodology of site investigation and recording
2. The programme for post investigation assessment
3. Provision to be made for analysis of the site investigation and recording
4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
5. Provision to be made for archive deposition of the analysis and records of the site investigation
6. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.

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.

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/environment/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/environment/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 Environmental Protection Officer (contaminated land) in the Environmental Health Enforcement department: [thomas.gunton@south-derbys.gov.uk](mailto:thomas.gunton@south-derbys.gov.uk).

Further guidance can be obtained from the following:

- CLR 11: Model Procedures for the Management of Contaminated Land
- CLR guidance notes on Soil Guideline Values, DEFRA and EA
- Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.
- Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.
- Guidance for the Safe Development of Housing on Land Affected by Contamination Environment Agency. ISBN 0113101775.

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](http://www.groundstability.com). Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months prior notification should be given to the Environmental Services Department at County Hall, Matlock (tel: 01629 538589) before any works commence on the vehicular access within highway limits.

The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the householder.

Pursuant to Section 163 of the Highways Act 1980, where a plot curtilage slopes down towards the new estate street, 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. Pursuant to Section 278 of the Highways Act 1980, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Environmental Services Department at County Hall, Matlock. The applicant is advised to allow at least 12 weeks in any programme of works to obtain a Section 278 Agreement. Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Department of Environmental Services at County Hall, Matlock. Traffic management measures will be necessary throughout the works on Burton Road (A444). All traffic management details shall be submitted and approved in writing by Derbyshire County Council's Traffic Section (01629 538592) prior to implementation. The applicant is advised to ensure that the future maintenance responsibilities of the shared accesses/driveways and visitor parking spaces is clearly defined within the deeds of the individual properties.

The applicant should be aware that a commuted sum will be payable to the Highway Authority for the future maintenance of the extra over carriageway provided for the parking bays and any other non-standard highway infrastructure within the site.

**Item** 1.2

**Reg. No.** 9/2012/0761/U

**Applicant:**  
MR SUKHJINDER GILL  
ELEMENT PROPERTIES LTD  
66 ROLLESTON ROAD  
HORNINGLOW  
BURTON ON TRENT  
DE13 0JZ

**Agent:**  
MARK GOODWILL-HODGSON  
1 HIGHFIELD ROAD  
WEST BRIDGFORD  
NOTTINGHAM  
NG2 6DR

**Proposal:** THE CHANGE OF USE FROM (CLASS D2) TO (CLASS A1 OR A5) AT PETER SMITH SPORTS CARS STATION ROAD HATTON DERBY

**Ward:** HATTON

**Valid Date:** 04/09/2012

**Reason for committee determination**

Councillor Roberts has requested that Committee determines this application as local concern has been expressed about a particular issue.

**Site Description**

The level site comprises a former car showroom and hardstanding situated on Station Road. Sole access to the site is from Station Road. The site has been vacant for about a year.

**Proposal**

The proposal is to convert the north arm of the building to a supermarket and the west arm would be converted into two shops. Since submission an amended scheme has been submitted that includes the provision for a loading dock. The main changes to the building relate to the Station Road façades. A new sliding door would be inserted in the south facing range of windows and the remaining windows would be clad in an obscure film. A cash vending machine would also be in this façade. There are no details of changes to the west elevation at this time as the applicant expects that individual occupiers would make their own applications for changes.

**Applicants' supporting information**

The proposal involves the change of use from a car show room to A1 retail use of the whole premises.

**9/2012/0761 - Peter Smith Sports Cars, Station Road, Hatton,  
Derby DE65 5EL**



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**South Derbyshire District Council. LA 100019461. 2010**



The applicants contend that the site lies in what is essentially the village centre where existing retail facilities exist. The access from Station Road has good visibility in each direction but the on street parking that occurs narrows the road but would be amended to meet the requirements of the County Highway Authority. Parking space for 13 cars, including access parking, together with the provision of cycle and motorcycle parking. Whilst the standards require 16 spaces for the proposed floor space, the transport assessment asserts that this figure includes 3.5 parking spaces for staff and as staff would be recruited locally, there is no requirement for parking space for staff, as they would walk to work. The applicant contends that 13 parking spaces would be adequate to meet the site's needs particularly as the retail floor space has been reduced to accommodate the loading dock and there is no longer an A5 retail use proposed. Full compliance with the requirements of Part M of the building regulations is proposed in respect of persons with ambulant difficulties.

Since the last agenda was prepared, the applicants have been in consultation with the County Highway Authority. The scheme has been amended to include a loading/unloading bay in the unit next to the supermarket; the proposed waste store has been relocated within this loading area removing the need for a store adjacent to the neighbouring house and the formation of a new access to Station Road to facilitate access to the new loading bay area.

The other change to the application is the removal of the A5 – hot food shop from the application both units would be A1 retail only.

The Transport Statement acknowledges that the site cannot accommodate articulated vehicles but smaller commercial vehicles can access the site it is argued. The applicant now contends that the amended plans facilitate appropriate access for delivery vehicles of all types without compromising parking provision at the site.

The applicants existing store in Burton has similar delivery requirements by articulated vehicles to those that would be necessary at the application site. Deliveries by articulated vehicles are timed to occur between 0600 and 0900 on the Burton Site and evidence is submitted as an appendix to demonstrate that deliveries occur as proposed in this case. Two deliveries per week by articulated lorries would be the maximum, other deliveries such as milk and bread can occur within the site it is asserted.

The applicants state that there are no ecological, biodiversity, landscape, contamination or archaeological issues affecting the site as the buildings and ground around it will not be disturbed other than by internal alterations and the provision of sliding doors to the main part of the building. Whilst it is acknowledged that the site lies within a flood risk zone, there are no changes proposed to the building or site that would alter the surface water run off from the site.

The use of the building the applicants conclude would represent an expansion of choice for the village of retail operators and serve the local community.

## **Planning History**

The last planning application on this site was in 1999 that has resulted in the formation of the showroom now seen on the site.

## **Responses to Consultations**

The County Highway Authority originally raised an objection to the development (hence the previous report later withdrawn) on the grounds that the development would result in an increase in delivery vehicles and the use of the highway to perform onerous movements to access the site to the detriment of highway safety and also causing obstruction to the limited parking spaces on the site.

The amended plan represents a scheme that is now acceptable to the County Highway Authority subject to the recommended conditions and the objection is therefore removed.

The Environment Agency has no comments.

The Environmental Health Manager has drawn attention to the need to comply with food safety legislation and has noted that the underground tanks would remain undisturbed so there are no potential contamination issues arising from the development.

The Crime Prevention Design Advisor has no objection and provides advice on minimising the risk of antisocial behaviour in the vicinity of the development with regard to supervision of space and measures to minimise the risk to area around the ATM.

## **Responses to Publicity**

10 letters have been received that object to the development for the following reasons:

- a) There is a lack of parking to serve the proposed development.
- b) The proposed bin store would impact on the neighbouring dwelling due to its proximity to the boundary giving rise to odours.
- c) Atwall News had planning permission refused on the basis of traffic impacts arising from a small extension; the same grounds apply to this case.
- d) Cars parked on the road opposite the show room already delay busses; busses are more frequent than indicated with at two routes rather than the one stated in the study so that there are at least two busses passing through the village at the relevant times.
- e) Delivery vehicles should be timed to avoid peak hour traffic. There are already too many HGV's using the road; and long traffic queues have been observed in the village particularly when the level crossing gates are down or road works are taking place.
- f) Many people would use their cars to get to the premises as numerous residents currently drive to the Co-op even though it is less than 5 minutes away.
- g) Notwithstanding the assertions in the application, delivery vehicles would have to perform manoeuvres in the street to access the premises causing more hold-ups on an already busy road through a small village.
- h) If the car park were full then other smaller vehicles may not be able to access the site.
- i) The village is already well served by shops including the Co-op and local shopkeepers are likely to suffer if other ones open.
- j) There would be odours from a hot food use that would be detrimental to the occupiers of adjoining houses as well as contaminating any washing that is out at the time.
- k) There are more than enough hot food outlets and hairdressers already in Hatton and Tutbury.

- l) There is uncertainty as to whether the local sewers can cope with the development.
- m) The retail development may conflict with the use of the nearby church hall that is used as a nursery for young children as well as myriad community functions.
- n) The plans are wrong in terms of the layout of adjacent houses.

1 letter of support draws attention to the loss of local shops arising from the new Nestle access and welcomes the potential provision of new shops in the village, as there is a high demand for retail outlets.

### **Development Plan Policies**

The relevant policies are:

Local Plan: Shopping Policies 2 & 3, Transport Policy 6.

### **National Guidance**

The NPPF at Para 28 supports the provision of facilities in rural area to promote a strong rural economy. Para 32 states safe and suitable access should be provided for all people.

### **Planning Considerations**

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

- The Development Plan.
- Access, parking and manoeuvring issues.
- Impact on neighbours.

### **Planning Assessment**

Shopping Policies 2 & 3 and Transport Policy 3 have basic objectives that are consistent with the NPPF and as such they can continue to carry significant weight in determining planning applications.

Shopping Policies 2 & 3 seek the provision of a safe access and sufficient parking provision to serve a shopping development. Transport Policy 6 has a requirement for all development to have adequate access parking and manoeuvring and off-street servicing.

Members will be aware that a report, recommending refusal of the application on highway grounds, was withdrawn to allow the applicant to discuss the resolution of the highway objection with the County Highway Authority. An initial solution remained unacceptable to the County Highway Authority and the current proposal evolved following further discussions and subject to the imposition of planning conditions to implement the arrangements on the amended plan the County Highway Authority has removed its objection to the development.

The site lies on the main shopping street in Hatton and there has been the recent loss of the shops adjacent to the new Nestle access. As discussed above there is a solution to the access, parking and manoeuvring that was previously considered fatal to the

application in terms of Local Plan policies. Accordingly the way is clear to permit the use of the site for A1 retail purposes in terms of policy as it is considered now to meet the requirements of Shopping Policies 2 & 3 and Transport Policy 6.

The concerns of neighbours regarding smell from waste storage and fumes from the A5 use that previously submitted scheme, have been addressed in the amended drawing that removes the waste unit from the boundary and an A5 use no longer forms a part of the proposals. These issues therefore should not be a consideration in the determination of this application.

Neighbour concern about the number of parking spaces and the ability of delivery vehicles to access the site have also been addressed by the amended plan that in addition to proposing a new access also reduces the number of shops on the site and thus the number of parking spaces.

The advice of the Crime Prevention Design Advisor is incorporated in a condition and informative within the recommendation.

### **Recommendation**

**GRANT** planning 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. Notwithstanding the originally submitted details, this permission shall relate to the following drawings: L(08) 01 and L(08) 02 L(20) 01 Rev F and 02 Rev C received under cover of an e-mail dated 7 November 2012 and the revised Design and Access Statement received under cover of an e-mail dated 8 November 2012.  
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. Before any other operations are commenced a new vehicular access shall be created to Station Road in accordance with the revised application drawings nos: Thereafter the entire site frontage shall be maintained throughout the life of the development clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to the adjoining nearside carriageway channel level.  
Reason: In the interests of highway safety.
4. The premises, the subject of the application, shall not be taken into use for retail use as defined by Class A1 of the Town and Country Planning (Use Classes) Order 1987 until space has been provided within the application site in accordance with the revised application drawings Nos for the parking/ loading and unloading and manoeuvring of staff/customers and service and delivery vehicles. The area shall be laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.  
Reason: In the interests of highway safety to ensure that parking and manoeuvring space is available to serve the development prior to the new use of the premises coming into operation.

5. Prior to the first occupation of the development hereby permitted, measures to minimise the risk of crime to meet the specific security needs of the application site and the development shall be implemented in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority and incorporating the crime prevention measures referred to in Informative 2 below.

Reason: In pursuance of the Council's duty under section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in exercising its planning functions; to promote the well-being of the area pursuant to the Council's powers under Section 2 of the Local Government Act 2000 and to reflect government guidance set out in PPS1.

6. Prior to the commencement of the development and notwithstanding the details shown on Drawing L(20) 02 Rev C details of the shop front to a minimum scale of 1:20 shall be submitted to and approved in writing by the Local Planning Authority, the approved details shall be installed prior to the first occupation of the dwelling.

Reason: The submitted details are insufficient to determine if the shop front is acceptable in the street scene.

#### Informatives:

The indicative plan accompanying the planning application are accepted in principle but prior to the occupation of the small shops, precise details of the shop fronts should be submitted to and approved in writing by the Local Planning Authority through the mechanism of a planning application and an application under the Advertisement Regulations where that is necessary.

The Crime Prevention Design Advisor advises that the following measures can help to reduce crime in public spaces and inclusion of these methods should be incorporated in submitting the individual shop front applications referred to in Informative 1 above:

- Ways to avoid issues around ASB are, maintaining good levels of surveillance including from inside to out by not blocking windows and views with signs, marketing information or merchandise. Good external lighting levels, avoiding light pollution, and removing shelter by not having projecting canopies can deter miscreants, without the high cost of CCTV and its maintenance costs.
- An ATM is indicated on the main plan. A site for an ATM must have defensive measures built in to protect the machines location. Physical restrictions to prevent ram raid are required and must have a clearly defined operating space to prevent easy access for criminals to observe confidential transactions. Bollards to a standard known as PAS 68 should be used to prevent ram raid attack, if defensive landscaping and design features, to give sufficient stand off space, cannot be incorporated at the redevelopment stage. Planters, trees and public art are successfully used to give sufficient protection, without using bollards, which can be seen as obtrusive.
- Use of laminated glazing in any new shop front with quality framing and locking mechanisms will avoid the use of blank external shutters, which give a negative fortress effect especially when closed in the daytime.
- Consideration should be given to physically restricting access to the parking area out of hours to prevent use by boy racers and noise from vehicles congregating.

**Item** 1.3

**Reg. No.** 9/2012/0778/U

**Applicant:**  
**MRS DEBBIE GOODLIP**  
**17 LUCAS LANE**  
**HILTON**  
**DERBY**  
**DE65 5FL**

**Agent:**  
**MRS DEBBIE GOODLIP**  
**17 LUCAS LANE**  
**HILTON**  
**DERBY**  
**DE65 5FL**

**Proposal:** **RETROSPECTIVE APPLICATION FOR PART CHANGE  
OF USE OF THE GARAGE FOR HAIRDRESSING AND  
THE SALE OF HAIRDRESSING PRODUCTS AT 17  
LUCAS LANE HILTON DERBY**

**Ward:** **HILTON**

**Valid Date:** **03/10/2012**

**Reason for committee determination**

Councillor Patten (ward member) has requested that the Committee determine the application as local concern has been expressed about a particular issue.

**Site Description**

The application site is a garage on the frontage to the house at 17 Lucas Lane which has a large forecourt.

**Proposal**

In addition to being a hairdresser, the applicant also provides beauty products that are also stored in the garage for distribution.

**Applicants' supporting information**

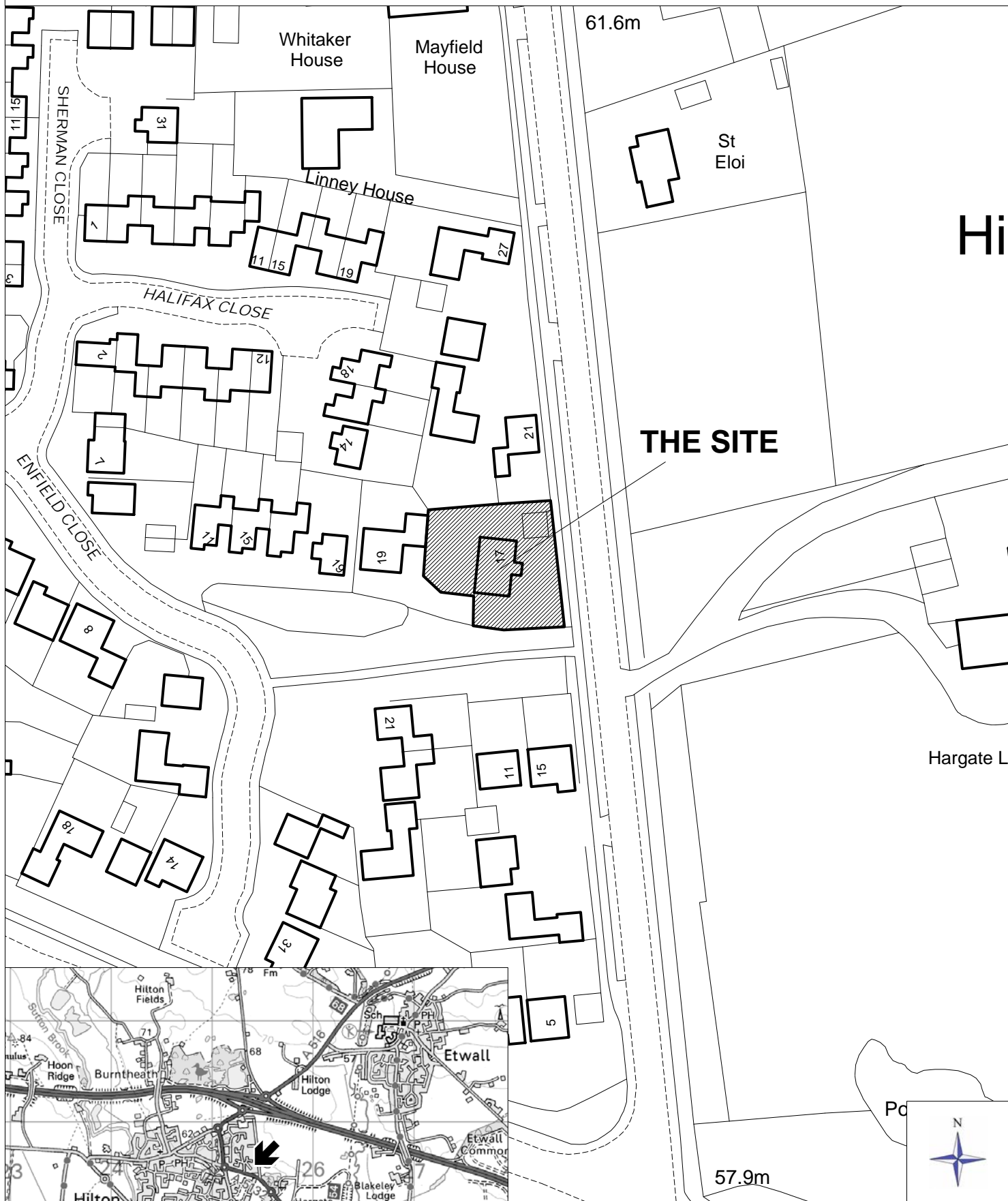
The store and hairdressers occupy some 2/5<sup>th</sup> of the garage area, there are no alterations, doors or signs required to retain the use, and an existing side door is used to access the area. A partition wall has been erected internally.

The forecourt could take up to 6 cars.

**Planning History**

The garage was constructed when the house was built by Persimmon Homes in the 1990s.

**9/2012/0778 - 17 Lucas Lane, Hilton, Derby DE65 5FL**



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**South Derbyshire District Council. LA 100019461. 2010**

## **Responses to Consultations**

Councillor Mrs Patten objects to the development and asks if neighbours have been consulted.

The County Highway Authority has no objection in principle but parking and manoeuvring space should be retained available in association with the proposed use.

The Environmental Health Manager has no comment.

## **Responses to Publicity**

Two responses to consultation have been received, neither objects to the principle of the development, but there would be concern if the business expanded and concern if the house were sold with a business use with it. It is also suggested that the hairdressers would be better situated within the dwelling rather than in the garage as conversations in the garage can be overheard; the main concern is that the area remains residential.

## **Development Plan Policies**

The relevant policies are:

Local Plan: Employment Policy 4

EMRP: Policy 20

## **National Guidance**

The NPPF Core Planning Principles and Chapter 1 refer to the encouragement of rural businesses as a means of supporting the rural economy.

## **Planning Considerations**

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

- The impact on neighbours,
- Conditions in the event that planning permission were granted.
- Other issues

## **Planning Assessment**

Neither of the comments received raise objections to the development; one of the respondents was willing to discuss mitigation measures with the applicants. Conditions are recommended to limit the use to that described within the application documents, and it is recommended that the permission be limited to a year at this stage to ascertain if the use can operate without undue disturbance. This has the benefit of allowing a fledgling business to continue and allow the Local Planning Authority to further assess the impact of the business in this residential area. With these safeguards it is considered that the Local Planning Authority would be able to assess any adverse impacts during the period of the temporary planning permission and review that situation should a further application be received to retain the use. Clearly when the permission expires, it is up to the applicant to decide if they wish to continue with the



business as if the business was no longer at the premises, there is no need for a further planning application.

Councillor Mrs Patten objects to the retrospective nature of the planning application. The application has been made under the provisions of Section 73 of the Town and Country Planning Act 1990. This is a specific clause in the Act that allows for a party who has undertaken development without the benefit of planning permission to seek to rectify the situation by making an application to retain the use. This applicant has chosen to exercise the clause and has made the application. If permitted the use would continue, but if the clause did not exist, then the householder, in this case, would be faced with lengthy enforcement action and the associated expense to arrive at the same position. Clearly, if Members were minded to refuse planning permission then that same process would apply. However if the matter can be resolved at the planning application stage, unnecessary delay and expense can be avoided.

### **Recommendation**

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

1. This permission shall be for a limited period only, expiring on 30 November 2013 on or before which date the use of the garage shall be discontinued to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period.

Reason: Temporary planning permission is granted on the basis that the Local Planning Authority wishes to assess the impact of the development on the residential character of the area and having assessed it will either grant or refuse planning permission in response to a planning application to retain the use in the garage.

2. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) and Article 3 and Part 3 of the Town and Country Planning (General Permitted Development) Order 1995, this permission shall relate to the use of the premises as a hairdressers and for the storage of beauty products as described in your application and for no other purpose.

Reason: In order that the Local Planning Authority may retain control over the future use of the premises and in the interests of the amenity of the area.

3. This use shall be operated by Debbie Goodlip and no other operator unless the Local Planning Authority has granted planning permission for any other operator.

Reason: The permission is granted on the basis that the operations will continue on the basis that formed a part of the application. Debbie Goodlip is the sole practitioner and as such the Local Planning Authority wishes to assess the use on the basis of the submitted information.

**Item** 2.1

**Reg. No.** 9/2012/0779/U

**Applicant:**  
MRS E DEVEY-SMITH  
C/O CT PLANNING  
TRAFALGAR HOUSE  
20A MARKET STREET  
LICHFIELD  
WS13 6LH

**Agent:**  
MR CHRISTOPHER TIMOTHY  
CT PLANNING  
TRAFALGAR HOUSE  
20A MARKET STREET  
LICHFIELD  
WS13 6LH

**Proposal:** THE CHANGE OF USE OF MELBOURNE LIBERAL CLUB  
TO FORM A 14 ROOM HOTEL WITH BAR AND  
RESTAURANT AT 50 MELBOURNE LIBERAL CLUB  
AND PUBLIC HALL CO LTD DERBY ROAD  
MELBOURNE DERBY

**Ward:** MELBOURNE

**Valid Date:** 06/09/2012

**Reason for committee determination**

The application is reported to Committee at the request of Councillor Hewlett because local concern has been expressed about a particular issue.

**Site Description**

The former Liberal Club and Public Hall is a large building dating from 1889, and extended in 1899. It is prominently sited opposite the junction of Derby Road with South Street. An applied modern frontage covered its original ornate roadside elevation some 40 years ago. Nevertheless it remains as one of the many 19<sup>th</sup> century public, semi-public, industrial and institutional buildings to which Melbourne owes a great deal of its distinctive character.

Although there is a large garden area to the rear of the building there is no means of vehicular access to it and no off-street parking.

The building is presently vacant, the ground floor having been last used as a drinking establishment and the first floor as a public hall. Part of the second floor was used for general storage.

**Proposal**

The application proposes 14 hotel rooms on the first and second floors with the ground floor to be used as a bar and restaurant. Externally windows would be inserted in the

**9/2012/0779 - Melbourne Liberal Club and Public Hall Co Ltd, 50 Derby Road, Melbourne, Derby DE73 8FE**



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**South Derbyshire District Council. LA 100019461. 2010**

side elevation, to allow light into the upper floor hotel rooms. In particular the modern frontage would be removed and the front wall would be reinstated to an appearance closer to the original. A large gable would also be constructed to the front to facilitate lifts and stairs to the hotel rooms.

### **Applicants' supporting information**

In addition to the statutory Design and Access Statement the applicant has submitted a Highway Statement, Bat Survey and Planning Statement, the main conclusions of which are:

#### Highway Statement

- The Trip Rate Information Computer System (TRICS) analysis demonstrates a 35% reduction in midweek traffic flows when compared with the potential of the existing use, and 48% reduction on Saturdays.
- The removal of the Liberal Club with its potential to generate significant traffic movements and associated on-street parking is considered to be a highway gain, with associated reduction in risk of accident.
- The analysis shows a reduction in demand for on street parking of 39 vehicles midweek and 31 fewer at the weekend.
- Customers will be encouraged to use the nearby public car park.

#### Bat Survey

- While three dead bats were found it is unlikely that they arrived from a roost in the building. The bats appear to have become trapped in the building after entering through an open window.
- The proposal would convert within the existing structure, which is unlikely to result in any disturbance to a bat roost such as would give rise to the need to obtain a European Protected Species License.
- If dormers or rooflights are installed this could disturb a bat roost between the tiles and roof felt, but this is unlikely. If this is proposed then a further survey will be required when the building has been scaffolded. If there is evidence of a bat roost at this time then a license will have to be obtained. If not then work can proceed, with appropriate methods of working followed.
- Roosting opportunities can be provided as part of the development in order to promote use of the building by local bat populations.

#### Planning Statement

- The proposal will secure the full and beneficial use of a significant vacant building in the conservation area.
- The proposed use is entirely consistent with local and national planning policy, concerned with securing the reuse of existing buildings and with providing new tourist accommodation, which will in turn secure new economic activity.
- Having regard to the historic use of the building as a venue for private functions, weddings, theatre productions, dances, weekly community events and as a drinking establishment, it is not considered that the use would give rise to any greater harm to the living conditions of nearby residents by reason of noise or disturbance.

- Similarly the development will not give rise to significantly greater amounts of traffic or demand for parking compared with the lawful use.
- The proposals will not prejudice the vitality of the shopping area. Rather, it will enhance the area, adding to its vitality and viability.
- The new use of the building, in conjunction with improvements to its frontage, will procure a significant enhancement to the character and appearance of the conservation area.

## **Planning History**

There is no recent relevant planning history.

## **Responses to Consultations**

The Parish Council objects on the grounds that there is no on site parking.

Melbourne Civic Society welcomes the proposed reuse of the building and is particularly pleased to see the restoration of the original façade. There is concern over parking and options should be explored. On balance, however, the Society supports the application.

Severn Trent Water Ltd has no objection.

Natural England has used its standing advice to establish that the application does not involve a medium or high risk building for bats.

The Environmental Health Manager has no objection in principle.

The Highway Authority comments that the proposal is not ideal due to the lack of associated parking. However it is noted that there is a public car park a short distance from the site, the use of which would be encouraged by the applicants. In view of the existing use of the property, and based on the submitted Highway Statement, it is not considered that the proposal would result in any material increase in the number of vehicle movements over and above those which could potentially be generated by the existing use.

## **Responses to Publicity**

Two letters of support have been received, with particular mention being made to the restored frontage and increased business for Melbourne.

Fourteen objection letters have been received raising the following concerns:

- a) Existing parking problems would be made worse.
- b) When the building was in use as a public hall most visitors lived locally and arrived on foot.
- c) An application opposite the site was turned down on lack of bin space, which would be worse for an hotel.
- d) There could be noise and disturbance.
- e) Hotel room windows would overlook neighbours.

## **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan Policies 3 & 27.

South Derbyshire Local Plan Saved Recreation and Tourism Policy 1, Environment Policy 12 and Transport Policies 6 & 7.

## **National Guidance**

National Planning Policy Framework (NPPF)

Paragraphs 11-14 (presumption in favour of sustainable development)

Paragraph 17 (Core planning principles)

Chapter 1 (Building a strong competitive economy)

Chapter 3 (Supporting a prosperous rural economy)

Chapter 12 (Conserving and enhancing the historic environment)

## **Planning Considerations**

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

- The principle and sustainability
- Traffic and parking
- Residential amenity
- Impact on the conservation area

## **Planning Assessment**

### The principle and sustainability

The use of the ground floor restaurant is a change of use that could normally be undertaken without express grant of permission, by virtue of the General Permitted Development Order. Regional Plan Policy 3 encourages the re-use of existing buildings in sustainable locations. Local Plan Saved Recreation and Tourism Policy 1 favours such facilities provided that disturbance to local amenity does not occur, there is adequate access and parking, and the development is of appropriate scale and design, integrated with the surroundings.

Melbourne is a sustainable settlement, served by public transport and the site is within easy walking distance of most locations in the village. The use of the upper floors as hotel accommodation would provide tourist accommodation in a central location. Therefore in locational terms the development would be sustainable and in accord with Chapters 1 & 3 of the NPPF, which encourage economic development in general and in rural areas, particularly where development involves conversion of existing buildings.

### Traffic and parking

Local Plan Saved Recreation and Tourism Policy 1 and Transport Policy 6 require adequate access and parking. The applicant's Highway Statement compares the potential for traffic generation in the building's existing use with that of the proposed development, and concludes that the proposal would not increase traffic and demand

for parking. The Highway Authority does not contest this. The building is accessible by means other than the private car and there is in any event a public car park nearby, which could reasonably be expected to help cater for parking demand associated with the use. Given the lawful use of the building, and the lack of opportunity to provide off-street parking, the proposed conversion would not result in any material increase in the number of vehicle movements over and above those which could potentially be generated by the existing use.

### Residential amenity

Subject to conditions to control outlook from the side windows, and also to control noise and odours, there would be no increased impact on neighbours.

### Impact on the conservation area

Although the building's frontage has been defaced, it is nevertheless one of the many 19<sup>th</sup> century public, semi-public, industrial and institutional buildings to which Melbourne owes a great deal of its distinctive character. As such it continues to contribute positively to the special architectural and (particularly) historic interest of the conservation area and its frontage has the potential to be redeemed, as recognised by the current proposal. In short it remains worthy of retention despite unfortunate past changes, and is well preserved externally apart from its frontage. Therefore this is a significant heritage asset that Chapter 12 of the NPPF, Policy 27 of the Regional Plan and Local Plan Saved Environment Policy 12 would seek to conserve and bring back to beneficial use.

Whilst the proposed conversion is likely to create pressure for parking, in the case of this substantial building there is clearly a balance to be struck. The size of the building means that most proposals for re-use are likely to require some on-street parking for vehicles. To preclude new uses for the building on this basis would potentially blight the building and place it "at risk", which would itself be harmful to the conservation area. It is also the case that the building could simply be brought back into use as a drinking establishment and hall, without any external enhancements.

Nevertheless from conservation area point of view the proposed raising of the front elevation would result in a ponderous and top-heavy appearance, which would spoil the beneficial effect of undoing the deleterious frontage work of 1970. Whilst the building is higher than those in its immediate context the parapet maintains a reasonable sense of scale in the street, with the main roof sloping away from Derby Road behind it. The introduction of the large gable in the plane of the front wall would result in an increase in scale of the building in the street such that it would dominate its context and harm the character of the conservation area. As such this aspect of the proposal offends the policies referred to above, by failing to preserve or enhance the character and appearance of the conservation area.

The site is large and there is a strong likelihood that the development could be undertaken without the need for the incongruous gable at the front. In accordance with Paragraph 187 of the NPPF, and in the interest of sustainable development, officers have actively looked for solutions and have sought to negotiate an amendment to the scheme to omit the large gable. Unfortunately this has not yielded a positive response from the applicant.

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 reason:

1. Although the building's frontage has been defaced, it is nevertheless one of the many 19th century public, semi-public, industrial and institutional buildings to which Melbourne owes a great deal of its distinctive character. As such it continues to contribute positively to the special architectural and (particularly) historic interest of the conservation area and its frontage has the potential to be redeemed, as recognised by the current proposal. In short it remains worthy of retention despite unfortunate past changes, and is well preserved externally apart from its frontage. Therefore this is a significant heritage asset that Chapter 12 of the NPPF, Policy 27 of the Regional Plan and Local Plan Saved Environment Policy 12 would seek to conserve and bring back to beneficial use. Nevertheless the proposed raising of the front elevation would result in a ponderous and top-heavy appearance, which would spoil the beneficial effect of undoing the deleterious frontage work of 1970. Whilst the building is higher than those in its immediate context the parapet maintains a reasonable sense of scale in the street, with the main roof sloping away from Derby Road behind it. The introduction of the large gable in the plane of the front wall would result in an increase in scale of the building in the street such that it would dominate its context and harm the character of the conservation area. As such this aspect of the proposal offends the policies referred to above, by failing to preserve or enhance the character and appearance of the conservation area.

## **Informatives:**

The site is large and there is a strong likelihood that the development could be undertaken without the need for the incongruous gable at the front. In accordance with Paragraph 187 of the NPPF, and in the interest of sustainable development, officers welcome further discussions to secure an amendment to the scheme, to omit the large gable.



## **2. PLANNING AND OTHER APPEALS**

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

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/Delegated</b>
9/2012/0169	Linton	Linton	Allowed	Committee



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# Appeal Decision

Site visit made on 11 October 2012

**by Alan M Wood MSc FRICS**

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

**Decision date: 25 October 2012**

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**Appeal Ref: APP/F1040/A/12/2178938**

**1 High Street, Linton, Swadlincote, DE12 6QL**

- 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 Mrs Karie Musson against the decision of South Derbyshire District Council.
  - The application Ref 9/2012/0169, dated 1 March 2012, was refused by notice dated 7 June 2012.
  - The development is a change of use of dwelling with business use to a mixed use of dwelling, business and use for occasional accommodation of up to ten people.
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## Decision

1. The appeal is allowed and planning permission is granted for a change of use of dwelling with business use to a mixed use of dwelling, business and use for occasional accommodation of up to ten people at 1 High Street, Linton, Swadlincote, DE12 6QL in accordance with the terms of the application, Ref 9/2012/0169, dated 1 March 2012, subject to the conditions set out in the schedule below.

## Main Issues

2. The effect of the development on (i) highway safety and, (ii) the living conditions of the future occupiers of the visitors' accommodation in respect of amenity space provision and the neighbouring occupants in relation to noise and disturbance.

## Reasons

### *Highway Safety*

3. The development relates to the front element of No 1 which functioned as a village shop until its closure in 2009. The appellant has a theatrical production business and part of that business includes the invitation for visitors, often from abroad, to put on shows in the local area. Since June 2011, the visitors have been accommodated in the previous shop premises. The appellant has stated that typically the visits last no more than three days on each occasion and, on average, there are thirty visits per annum. For the remainder of the time the previous shop premises are unused.
4. The visitors arrive and depart from the premises in minibuses or coaches and these vehicles are parked on the highway outside the appeal site. No 1 is situated at the junction of Hillside Road and Main Street. The presence of the parked vehicles therefore restricts the visibility of highway users to some

degree in this location. This has led to concerns being raised by local residents with regard to highway safety. The highway authority has however raised no objection to the development and I note that vehicles could have been parked in this location in relation to the previous retail use. The existing off-street parking arrangement at No 1 has remained unchanged during this period. Furthermore, there are no parking restrictions in this part of Main Street and there is no substantive information before me in respect of traffic incidents in this locality.

5. In light of all of the above considerations, I find that no substantial technical evidence has been provided to demonstrate that the development has resulted in an unacceptable level of risk to highway safety. Accordingly, I find that the development does not conflict with Transport Policy 6 of the South Derbyshire Local Plan (1998) [LP]. The supporting text to the policy indicates that its aim, amongst other things, is to ensure that new development does not generate levels of traffic which cause fears over road safety.
6. A condition will be necessary however with regard to the retention of the existing off-street parking provision at the appeal site as its loss could lead to a cumulatively adverse effect on highway safety.

#### *Living Conditions*

7. The decision notice refers to the inadequate provision of private amenity space associated with the visitors' accommodation forcing the occupants to loiter on the footway. I observed that there is only a very small area of outdoor private space adjacent available to the visitors. Housing Policy 11 of the LP cited in the decision notice refers to the provision of private amenity space but this is in the context of new housing development. Given the intermittent nature of the use and the fact that the occupants are essentially guests of the appellant, I find no substantive grounds for the provision of additional amenity space in this case.
8. It is quite clear however from the representations of the local residents and other interested parties that the intensification of the residential use has raised concerns in respect of noise, disturbance and litter generation. One of the core planning principles in the National Planning Policy Framework (the Framework) is to always secure a good standard of amenity for all existing and future occupants of land and buildings. This requirement however has to be balanced against paragraph 28 of the Framework which supports the sustainable growth and expansion of all types of business and enterprise in rural areas.
9. Paragraph 109 of the Circular 11/95: *The Use of Conditions in Planning Permissions* states that a temporary permission would be appropriate where a trial run is needed to assess the effect of a development on the area. In my judgement, such an arrangement would be appropriate in this case. It would enable the Council to monitor the impact of the activity associated with the development on the living conditions of the local residents over a defined period of time and within specific occupancy constraints and requirements. The latter can also be the subject of conditions. The development will become unauthorised if no further planning permission for the use is granted before the expiry of the time limit of the temporary permission.

#### **Other Conditions**

10. A condition is also necessary to confirm all of the plans upon which the decision has been made for the avoidance of doubt and in the interests of proper

planning. I have not however imposed the standard time limit condition as the development has already begun. I have amended the wording of some of the suggested conditions in light of the advice in Circular 11/95 and in the interests of clarity and enforceability.

## **Conclusion**

11. I have taken account of the views of local residents and other interested parties in reaching this decision and have considered all of the matters before me. For the reasons given above, the appeal succeeds subject to the conditions imposed.

*Alan M Wood*

Inspector

## **Schedule of Conditions**

- 1) The use hereby permitted shall be discontinued and the site restored to its former condition on or before two years from the date of this decision in accordance with a scheme of work submitted to and approved in writing by the local planning authority.
- 2) Notwithstanding the submitted details, there shall be no more than ten people residing overnight at the premises outlined in red on the site plan submitted with the application.
- 3) Notwithstanding the submitted details, the premises outlined in red on the site plan submitted with the application shall not be occupied for more than one hundred nights per annum.
- 4) With regard to Conditions 2 and 3 above, the owner of the site shall maintain an up-to-date register of all visitors who stay overnight at the premises outlined in red on the site plan submitted with the application and shall make that information available at all reasonable times to the local planning authority. A copy of the register shall be submitted to the local planning authority for each year of this permission. The first copy shall be submitted one year from the date of this decision and a subsequent copy shall be submitted within twelve months of the first submission.
- 5) The premises outlined in red on the site plan submitted with the application shall not be used or operated in accordance with terms of this permission unless a schedule, setting out the dates for a six month period in advance of when the premises are to be used in association with the use hereby permitted, has been submitted in writing to and agreed in writing by the local planning authority. The schedule of dates shall be submitted at least one month before the relevant six month period begins with subsequent schedules submitted every six months thereafter. No variation to the approved schedule shall be made unless they have been agreed in writing by the local planning authority at least one month before the variation is to come into effect.
- 6) The car parking and manoeuvring space within the site as indicated on the car park/drive plan submitted with the application shall be retained free of any impediment to its designated use.

- 7) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan, Ground Floor Plan, Upstairs Plan and Car Park/Drive Plan, the latter three plans being annotated 9.2011 0804.



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## Costs Decision

Site visit made on 11 October 2012

**by Alan M Wood MSc FRICS**

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

**Decision date: 25 October 2012**

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### **Costs application in relation to Appeal Ref: APP/F1040/A/12/2178938 1 High Street, Linton Swadlincote, DE12 6QL**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mrs Karie Musson for a full award of costs against South Derbyshire District Council.
  - The appeal was against the refusal of planning permission for a change of use of dwelling with business use to a mixed use of dwelling, business and use for occasional accommodation of up to ten people.
- 

### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **The submissions for Mrs Karie Musson**

2. The costs application was submitted in writing. Reference is made to paragraph B20 of Circular 03/2009.

### **The response by South Derbyshire Council**

3. This was also made in writing.

### **Reasons**

4. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. Paragraph B20 states that, as in this case, planning authorities are not bound to accept the recommendations of their officers. If however that advice is not followed authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision. The Council's decision notice sets out two primary grounds for refusing the planning application. The first related to highway safety. I have found in my Appeal Decision however that no substantive technical evidence has been provided to demonstrate harm in this respect. Furthermore, the Highway Authority, a key consultee in this regard, raised no objections on highway grounds. In relation this issue therefore I find that the Council has acted unreasonably in the context of the paragraph B20.
6. The second ground for refusal was the effect of the development on the living conditions of future occupiers of the visitors' accommodation in respect of

amenity space provision and the neighbouring occupants in relation to noise and disturbance. For the reasons set out in the Appeal Decision, I have not however been provided with any compelling substantive evidence to demonstrate the need for the provision of additional amenity space in this case given the nature and frequency of the visitor occupancy. Moreover the development plan policy upon which the Council relied was not directly applicable to this case. I find therefore that the Council has acted unreasonably in relation to this matter.

7. The above requirement is linked in the decision notice to the concerns relating to noise and disturbance to the neighbouring occupiers. In this respect, I have taken full account of the information before me provided by the Council, local residents and other interested parties. The appeal has been allowed but I have restricted the period of the permission to two years so that the effect of the development on the surrounding occupants can be tested within the constraints imposed by the conditions attached to the permission. In this regard therefore, I find that the Council has not acted unreasonably with reference to the evidence provided in relation to this issue.
8. Accordingly, I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a partial award of costs is justified in respect of the issues relating to highway safety and the living conditions of the future occupiers of the visitors' accommodation.

### **Costs Order**

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Derbyshire District Council shall pay to Mrs Karie Musson, the costs of the appeal proceedings, in so far as they relate to highway safety and the living conditions of the future occupiers of the visitors' accommodation, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
10. The applicant is now invited to submit to South Derbyshire District Council, to whom a copy of these decisions have been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Court Costs Office is enclosed.

*Alan M Wood*

Inspector