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Date: 7 September 2015

Dear Councillor,

**Planning Committee**

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, Civic Offices, Civic Way, Swadlincote on **Tuesday, 15 September 2015 at 18:00**. You are requested to attend.

Yours faithfully,



Chief Executive

To:- **Conservative Group**

Councillor Roberts (Chairman), Councillor Mrs. Brown (Vice-Chairman) and Councillors Atkin, Mrs. Farrington, Ford, Grant, Mrs. Hall, Stanton and Watson.

**Labour Group**

Councillors Dunn, Pearson, Shepherd and Southerd.

## **AGENDA**

### **Open to Public and Press**

- 1** Apologies and to note any substitutes appointed for the Meeting.
- 2** To note any declarations of interest arising from any items on the Agenda
- 3** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 4** REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES **3 - 142**
- 5** TREE PRESERVATION ORDER 392 AT NEWTON ROAD, NEWTON SOLNEY **143 - 144**

### **Exclusion of the Public and Press:**

- 6** The Chairman may therefore move:-  
That in accordance with Section 100 (A) of the Local Government Act 1972 the press and public be excluded from the remainder of the Meeting as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that there would be disclosed exempt information as defined in the paragraph of Part I of the Schedule 12A of the Act indicated in the header to each report on the Agenda.
- 7** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.

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

**SECTION 1: Planning Applications**

**SECTION 2: Appeals**

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

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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, hedgerow works, advertisement consent, notices for permitted development under the General Permitted Development Order 1995 (as amended) responses to County Matters and strategic submissions to the Secretary of State.**

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
9/2015/0391	1.1	Egginton	Etwall	5
9/2015/0452	1.2	Willington	Willington & Findern	13
9/2015/0498	1.3	Swadlincote	Swadlincote	21
9/2015/0557	1.4	Melbourne	Melbourne	41
9/2015/0563	1.5	Hartshorne	Woodville	47
9/2015/0613	1.6	Weston	Aston	59
9/2015/0641	1.7	Barrow	Aston	65
9/2015/0646	1.8	Willington	Willington & Findern	69
9/2015/0692	1.9	Barrow	Aston	79
9/2015/0731	1.10	Barrow	Aston	82

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

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

**Item** 1.1

**Reg. No.** 9/2015/0391/F

**Applicant:**  
Omnitrade Ltd  
Telford House  
Outram Wharf  
Little Eaton  
Derby  
DE21 5EL

**Agent:**  
Mr Simon Foote  
Simon Foote Architects  
28-28a Bradbea House  
Ashbourne Road  
Derby  
DE22 3AD

**Proposal:** THE ERECTION OF A CAR SALES  
SHOWROOM/VEHICLE SERVICING/REPAIR FACILITY  
AND CREATION OF HARD SURFACES FOR THE  
DISPLAY OF VEHICLES FOR SALE AND FOR PARKING  
AND THE ERECTION OF BOUNDARY FENCING AT  
LAND AT SK2828 0565 CARRIERS ROAD EGGINTON  
COMMON DERBY

**Ward:** ETWALL

**Valid Date:** 08/05/2015

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

The proposal is not in conformity with the development plan.

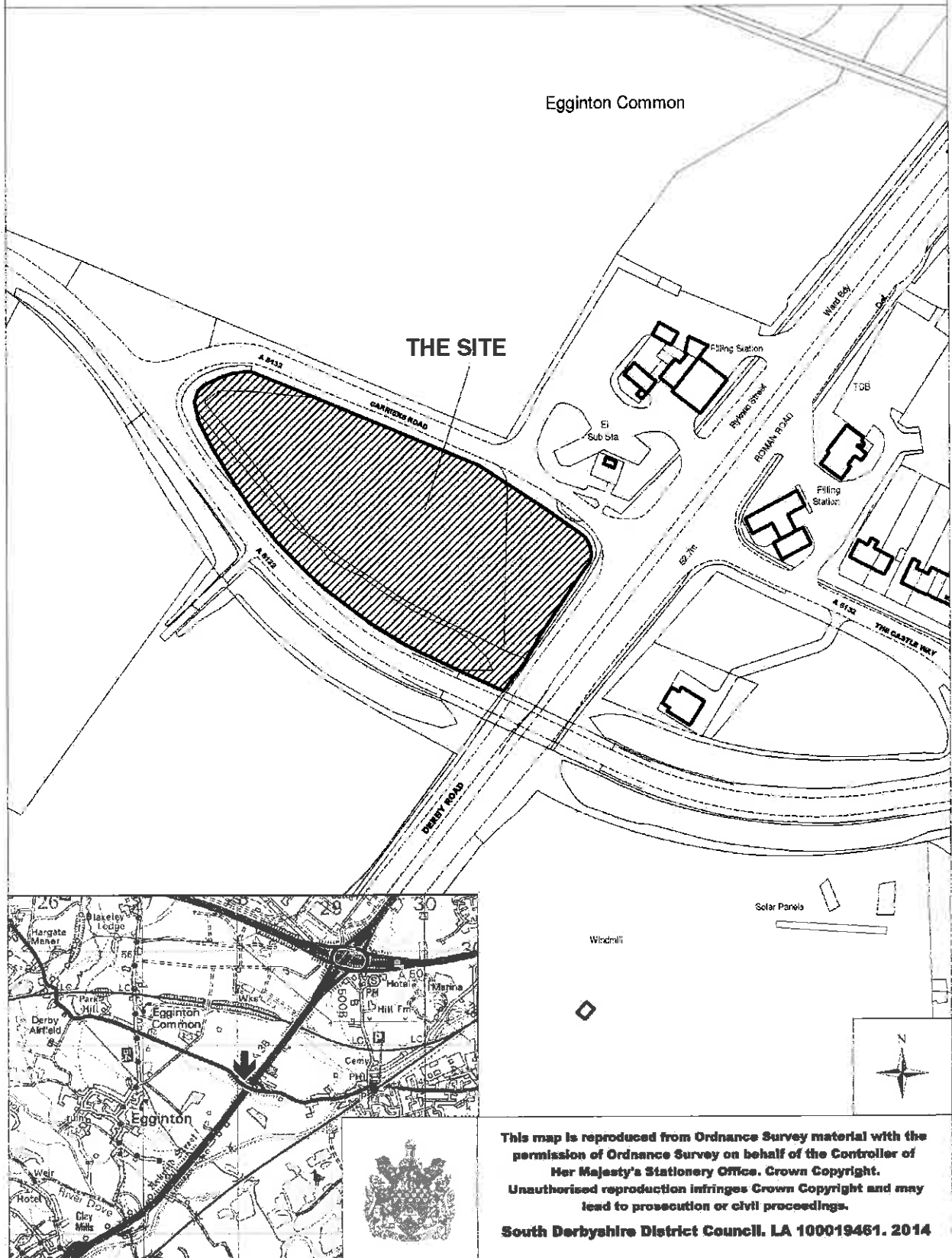
#### **Site Description**

The site is enclosed by the A5132, the A38 and its associated north bound slip road. There is a dense belt of trees on the southern embankments of the site, screening it from traffic and pedestrians using the A5132. From the A38 and the slip road the site is in clear view. Apart from the tree belt the site is largely clear of significant vegetation.

#### **Proposal**

The full application seeks permission for a building of some 530 sq m, which would incorporate a small car showroom and a vehicle workshop, with associated offices and ancillary facilities. Outside the building provision would be made to park 180 cars, 135 of which would be for sales vehicles. The remainder would be designated staff, visitor and service parking bays. The site's eastern and western margins would be left clear of development to enable landscaping to be undertaken.

**9/2015/0391 - Land at SK2828 0565, Carriers Road, Egginton Common, Derby (DE65 6GY)**



## **Applicants' supporting information**

A Design and Access statement assesses the proposal, having regard to site history and planning policy.

A Site Investigation Report assesses land contamination and stability and makes recommendations in respect of foundation design, drainage and measures to ensure site stability. The report also identifies evidence of past development at the site. Buried services are noted and recommendations made to identify and take account of these in the normal course of construction operations. [Officer comment: the new building would be no nearer to the services than the approved scheme, although the surface would be altered to form parking areas.]

The submitted Transport Statement highlights the nature of the main use of the site (car sales) to be such that traffic already using the adjacent highways may divert to the site during the course of normal commute. Other visits are likely to be undertaken by people visiting several car showrooms over the course of a day. Nevertheless the site is easily accessible to Willington by bicycle or on foot. The statement concludes that the development would not result in any significant increase in traffic, and no significant off-site impact would occur.

An Ecological Appraisal concludes that the site has low ecological value and there would be no loss of significant habitat.

## **Planning History**

Permission was granted for an office building and car parking on the site in 2002 (9/2001/0741). Development commenced in due time but has never progressed beyond initial construction of the approved vehicular access. Nevertheless the permission remains extant by virtue of its commencement.

## **Responses to Consultations**

Highways England has no objection in principle but wishes to agree the position of boundary fencing relative to the trunk road to ensure that future maintenance does not necessitate encroachment onto highway land. A condition is recommended accordingly.

The Highway Authority raises no objection subject to conditions to secure highway safety interests.

The Development Control Archaeologist notes the location of the site alongside the historic Ryknield Street Roman road. Nevertheless he considers that because of previous road building and development groundwork the probability of surviving remains are too low to warrant further investigation.

Derbyshire Wildlife Trust comments that sufficient ecological survey works have been undertaken, confirming the site's low ecological value. It is recommended that the boundary vegetation be protected during construction work.

## **Responses to Publicity**

Local Ward Member Councillor Muller has no objection.

Egginton Parish Council objects because the original permission was for a head office where people would be familiar with the potentially dangerous access, given its proximity to the A38. Visitors to the car showroom would likely be unfamiliar with the junction and the proposal would thus be detrimental to highway safety.

An individual objection has been made on the ground that visitors to the car showroom would likely be unfamiliar with the junction and not focussed on the road, and the proposal would thus be detrimental to highway safety.

### **Development Plan Policies**

The relevant policies are:

South Derbyshire Local Plan Saved Environment Policies 1 & 9, Employment Policy 5 and Transport Policies 6, 7 & 8.

Emerging Local Plan Policies S2, SD1, BNE1, BNE4, INF2

### **National Guidance**

National Planning Policy Framework (NPPF), in particular:

Paras 6-10 (Achieving sustainable development)

Paras 11-14 (The presumption in favour of sustainable development)

Para 17 (Core principles)

Chapter 1 (Economy)

Chapter 3 (Supporting a prosperous rural economy)

Chapter 4 (Promoting sustainable transport)

Chapter 7 (Requiring good design)

Paras 186 & 187 (Decision-taking)

Para 193 (Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.)

Para 196 & 197 (Determining applications)

Paras 203-206 (Planning conditions and obligations)

Annex 1 (Implementation)

Planning Practice Guidance ID 26 (Design) ID 42 (Transport)

### **Planning Considerations**

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

- The principle, including the extant permission
- Impact on the character of the countryside.
- Design
- Traffic and highway safety.

### **Planning Assessment**



### The principle, including the extant permission

The application gains modest support from Chapters 1 & 3 of the NPPF, the latter in particular indicating that local plans may promote well designed new buildings in rural areas. However it is not supported by the relevant local plan policies, being development in the countryside for which a special justification does not exist on first examination. Furthermore the NPPF (Para 17) emphasises the need to recognise the intrinsic character and beauty of the countryside.

Nevertheless the existence of an extant planning permission relating to the site of a proposed development is a particularly important material consideration. The principle that the existence of an extant permission is not lightly set aside is well demonstrated in the court case *Tesco Stores Ltd v SOS & Hounslow L.B.* 30/8/9, where the court felt that the SOS had erred in rejecting his inspector's recommendation that the extant permission was an important part of the case. In this particular case the extant permission for offices is not fettered by onerous occupancy conditions and therefore represents a realistic alternative for the owners, should this application fail.

On the balance of the circumstances it is therefore considered that the principle of development is acceptable.

### Impact on the character of the countryside

Given the somewhat urbanised nature of the site, surrounded by roads and adjacent to existing commercial development, an argument based on impact on the character of the countryside would be difficult to sustain in view of the extant permission and the effects of its implementation. The most sensitive viewpoints are from the A5132, from where the landscape impact would be minimised by the screening tree belt. From the A38 and the slip road the context is more commercialised and the development would not bring about a dramatic and harmful change in character.

### Design

The proposed building displays a very simple and modern form, with the design enlivened, following amendment, by contrasts in materials and a brise soleil detail to the principal elevations. This approach makes a clear statement as to the building's function and represents an appropriate design solution in its context. The setting of the building would be enhanced by landscaping secured by condition. The qualitative requirements of Local Plan Saved Environment Policies 1 & 9, Policies BNE1 & 4 of the emerging plan and Chapter 7 of the NPPF are thus satisfied.

### Traffic and Highway Safety

The application is accompanied by a proportionate Transport Assessment and neither Highways England nor the County Highway Authority considers the proposal unacceptable. The site is within reasonable walking and cycling distance of Willington, from where it is reasonably expected some employees would be sourced. As such Local Plan Saved Transport Policies 7 & 8 are satisfied. Safe access and adequate parking would be provided in accordance with Saved Transport Policy 6.

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

## **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing refs. 14/382/PL01 Rev C, 14/382/P02 Rev A and 14/382/P05; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).  
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), prior to its installation, there shall be 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 and to ensure that there is no conflict with the operation of the trunk road.
4. No development shall take place until a construction management plan or construction method statement has been submitted to and approved in writing by the local planning authority. The approved plan/statement shall provide for the storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto the highway, pedestrian and cyclist protection and any proposed temporary traffic restrictions. The approved plan/statement shall be adhered to throughout the construction period.  
Reason: The site lies alongside the slip road connecting the A5132 with A38 trunk road, such that it is necessary for these measures to be put in to place before development begins.
5. Throughout the period of development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site so as to prevent the deposition of mud and other extraneous material on the public highway.  
Reason: In the interests of highway safety.

6. Prior to any other works commencing, the new access shall be formed to Carriers Road. The access shall have a minimum carriageway width of 7.3m and be provided with 15m radii, all laid out in accordance with Derbyshire County Council's specification for adoptable roads (or any other specification as may subsequently be agreed in writing with the local planning authority). The access shall be provided with visibility sightlines of 2.4m x 120m in each direction, the area forward of which shall be cleared and retained throughout the life of the development clear of any obstruction exceeding 1m in height (600mm in the case of vegetation) relative to the nearside carriageway edge.

Reason: The site lies alongside the slip road connecting the A5132 with A38 trunk road, such that it is necessary for these measures to be put in to place before development begins.

7. Prior to the first use of the premises, the existing access to Carriers Road shall be reinstated as highway verge in accordance with a detailed scheme which shall have previously been submitted to and approved in writing by the local planning authority.

Reason: In the interests of highway safety.

8. Prior to the first use of the premises, a footway shall be provided along the northern boundary of the site, from the radius of the new site access, to link with existing footway to the eastern boundary, all in accordance with details and specifications which shall have previously been submitted to and approved in writing by the local planning authority.

Reason: In the interests of highway safety.

9. Prior to the first use of the premises, the car parking and manoeuvring space shall be provided in accordance with drawing no 14/382/P05 and shall be retained thereafter free of any impediment to its designated use.

Reason: In the interests of highway safety.

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

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

11. 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.

12. The measures for protecting trees/hedgerows required pursuant to Condition 10 above shall be implemented prior to any other development commencing. The approved measures shall be retained in position until all building works on have been completed unless otherwise agreed in writing with the local planning authority. Within the protected areas there shall be no disturbance to any trees plants or the ground, and in particular:
- (i) There shall be no changes in ground levels;
  - (ii) No material or plant shall be stored;
  - (iii) No buildings or temporary buildings shall be erected or stationed;
  - (iv) No materials or waste shall be burnt within 20 metres of any retained tree or hedgerow; and
  - (v) No drain runs or other trenches shall be dug or otherwise created;
- without the prior written consent of the Local Planning Authority.

Reason: To protect the trees/landscape areas from undue disturbance

13. Notwithstanding the submitted application details, before being incorporated in the development 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 shall be 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 building and the locality generally.

#### Informatives:

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy Transport & Environment at County Hall, Matlock regarding access works within the highway. Information, and relevant application forms, regarding the undertaking of access works within highway limits is available via the County Council's website

[http://www.derbyshire.gov.uk/transport\\_roads/roads\\_traffic/development\\_control/vehicular\\_access/default.asp](http://www.derbyshire.gov.uk/transport_roads/roads_traffic/development_control/vehicular_access/default.asp) , email [ETENetmanadmin@derbyshire.gov.uk](mailto:ETENetmanadmin@derbyshire.gov.uk) or telephone Call Derbyshire on 01629 533190.

The site is affected by a Building Line prescribed under the Road Improvement Act 1925. Whilst the proposed works do not require it to be rescinded, any future building works will need to be set back behind the line; alternatively the applicant may apply to have the line rescinded by contacting Mrs D Spencer in the Economy, Transport and Environment Department at Derbyshire County Council (01629 538650).

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

**Item**            1.2

**Reg. No.**        9/2015/0452/F

**Applicant:**  
**Mr Vid Patel**  
**135 Manor Road**  
**Littleover**  
**Derby**

**Agent:**  
**Mr Ranjit Seehra**  
**SREAR Design**  
**21 Blagreaves Avenue**  
**Littleover**  
**Derby**  
**DE23 2NT**

**Proposal:**        **CHANGE OF USE FROM CLASS A1 RETAIL TO CLASS  
A3 RESTAURANT WITH INSTALLATION OF  
EXTRACTOR CHIMNEY AT 2 THE CASTLE WAY  
WILLINGTON DERBY**

**Ward:**            **WILLINGTON & FINDERN**

**Valid Date:**     **03/06/2015**

**Reason for committee determination**

Councillor Ford has requested the application be referred to the planning committee as local concern has been expressed about a particular issue and the unusual site circumstances should be considered by the committee.

**Site Description**

The application site relates to a two storey mock tutor property situated within the village centre of Willington and relates to the former Co-op retail unit on the northern side of The Castle Way opposite the post office.

The building is split over two floors with two retail units located on the ground floor, the application unit being the larger of the two, the more modest unit adjoining is currently occupied by hairdressers.

The site benefits from two access points which runs to a rear car park and is operated on a one way system due to the restricted width of the access. The building is surrounded by residential properties differing in scale and design. The car park is large enough to accommodate the parking and manoeuvring of 9 cars.

**Proposal**

The application proposes the change of use of the retail unit (use class A1) to a restaurant (use class A3). No extensions are proposed to the building but a stainless



9/2015/0452 - 2 Castle Way, Willington, Derby DE65 6BT



steel extraction duct/flue is proposed to the rear of the property which would run from the ground floor up beyond the eaves of the property and would be approx. 450mm in width, fixed to the wall by brackets.

The main changes to occur would be to the internal layout of the building that would split the ground floor between the dining area (tables and chairs), bar area and back room space of offices, kitchen and storage.

The proposal would not incorporate a walk in takeaway element but would provide a delivery service.

The external swan neck lights have been removed from the proposal and details of signage would be dealt with under a separate advertisement consent application.

The shop front would be retained and the existing Co-op decals within the windows would be replaced with frosted/obscured film to reduced visibility in to and out of the restaurant.

### **Applicants' supporting information**

The Design and Access Statement outlines the proposed changes to the building in that the 200 square metre footprint would not be altered and access into the premises would be improved by a ramp for wheelchair access. It is proposed to retain the existing access and car park for customers and arrangements are being made with the Co-op store around the corner to share car parking facilities to avoid pressure for on street parking. The applicant intends to hire local staff for the restaurant which would avoid the need for further parking as staff would walk to work.

The supplementary planning document was prepared in response to the LPAs comments and details revised opening hours from midnight to 11pm Sunday to Thursday and 11:30pm on Fridays and Saturdays. The document provides further details on the extract duct/flue proposed which has been altered from 225mm duct to a 450mm duct which would incorporate a baffle grease filter and an actuated twin heavy duty carbon filter which are designed to capture grease within the duct and run off into a collection tray for easy cleaning and to neutralise odour particles by up to 90-95%.

The duct would also incorporate a fan and silencer which work together to remove odour and emissions cleanly and to prevent noise disturbance from the fan, rubber anti vibration mounting are also utilise to stop any reverberation noise traveling through the wall. The fan and ducting have been situated to maximise the full extraction potential and the duct, grease and carbon filters would all be maintained and cleaned in accordance with manufacturer's specifications including weekly wash downs and replacement filters through the year.

The applicant states that an underground grease interceptor would be in place to prevent any grease from entering the mains sewer in addition it is proposed to provide a commercial waste bin and two recycle bins which would be emptied/collected at least weekly.

The supplementary planning document also included a petition in support of the change is use which has been signed by local residents and businesses.

## **Planning History**

No relevant planning history with regards to the application.

## **Responses to Consultations**

The Environmental Protection Team has no objection in principle to the development but would request a condition for a scheme for the control of odour and noise emissions.

The Environmental Health (Commercial Team) has no objection to the change of use subject to waste storage being provided. It is clear that the applicant has properly considered waste disposal.

The County Highway Authority has no objections subject to the existing parking, access and manoeuvring space being maintained and available for use throughout the life of the development.

## **Responses to Publicity**

Eight objections received in response to the application which can be summarised as:

- Concern of smell and noise
- Would like to see access into residential close behind closed off
- Not a suitable location for Indian restaurant
- Extract fan would be close to property which would prevent windows from being open
- Would not be able to enjoy use of the garden in the evening
- Late opening hours would cause disturbance with cars leaving the site
- Limited parking spaces would mean people park on the street opposite houses and would cause disruption
- There are a number of other food establishments in the village and surrounding area, do we need any more?
- Customers would be able to look across directly into residential properties
- Would generate additional traffic
- Litter would increase adding environmental pollution
- Access is poor and has a blind corner when moving across pavement

## **Development Plan Policies**

The relevant Saved Local Plan policies are: Employment Policies 4 and 5, Retail Policy 3, and Transport policy 6,

Emerging Local Plan Part 1 2014:

S1 – Strategic Growth Strategy

S2 - Presumption in Favour of Sustainable Development

S3 – Environmental Performance

S6 - Sustainable Access

E2 – Other industrial and business development

SD1 – Amenity and Environmental Quality

SD2 – Flood Risk

INF2 - Sustainable Transport



## National Guidance

Relevant National Planning Policy Framework paragraphs and chapters include;

Paras 6-10 (Achieving sustainable development)

Paras 11-14 (The presumption in favour of sustainable development)

Para 17 (Core principles)

Para 19 (Building a strong competitive economy)

Para 23 (Ensuring the vitality of town centres)

Para 28 (Supporting a prosperous rural economy)

Para 196 & 197 (Determining applications)

Chapters of the National Planning Practice Guidance (NPPG) which are relevant are; ID:32 (Air quality), ID:26 (Design), ID:21a (Conditions), ID:9 (Duty to cooperate), ID:2b (Ensuring the vitality of town centres) and ID:30 (Noise).

## Planning Considerations

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

- Principle of change of use
- Highway safety
- Residential Amenity (noise and odour)

## Planning Assessment

### Principle of development

The existing site comprises a single retail (A1 use) unit within the settlement boundary and close to the village core where there is a mix of businesses and residential dwellings. The prospect of a village centre use to replace the existing unit is thus acceptable, and gains significant support from paragraphs 19, 23 and 28 of the NPPF.

The proposed change of use would be of benefit to the local community in drawing in visitors to the village, the business would compete with other food establishments in the local area, however healthy competition is encouraged within the NPPF as it ensures businesses operate to the best of their ability to maintain a healthy trade, which brings money and visitors into the village and is a benefit to the tourism of South Derbyshire associated with the canal network.

The retail unit has been vacant for over 6 months and there has been no interest for a retail operation. Its re-use would create an active front within the village centre and would improve the viability and vitality of the village centre in competing with other local centres and providing a service to the local community.

*NPPF Part 3 – Supporting a prosperous rural economy* – States that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. This to include the support of sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well-designed new buildings; the promotion of the development and diversification of agricultural and other land-based rural businesses; and the promotion of the retention and development of local services and community services in villages, this is supported by Local plan policy E4,

E5 and R3 whereby new development should be reflective of the surrounding rural character and support the growth of the existing shopping area.

Willington contains a range of services and has regular bus and train services, the stops for which are within walking distance of the site. While most journeys are likely to be made by private car, the site is accessible by alternative modes of transport and therefore considered to be a sustainable location.

### Highway Safety

The Highway Authority notes the existing situation/building use and as a consequence offers no objection on highway safety grounds as the existing access is well established and the one way system would remain to ensure no conflict with vehicles is created. The locality does benefit from a public car park (adjacent to the canal and Pub) and parking on the highway as well as a modest car park to the rear that can accommodate 9 vehicles and could be used for deliveries. Indeed, for the very reason of its village centre location and the aforementioned constraints, a proportion of the custom would likely arise from passing pedestrian trade. The highway authority also supports the linked working between the new Co-op and the applicant to share the parking to alleviate pressure for on the road parking given the close proximity of the sites, overall the proposed development would comply with the requirements of Transport Policy 6 as it is close to an existing road network and provides adequate provision for access, manoeuvring and parking.

### Amenity impacts

The site forms an existing business use which was readily used by the community and the site is close to the existing centre where other well established businesses are located. This tapers the degree of "tranquillity" which is possible to neighbouring dwellings, as does the highway network.

A key concern raised by local residents is the issue of noise and odour given the type of restaurant proposed. Part of the application proposes a large extractor duct/flue to be positioned on the rear wall away from residential properties and would extend above the eaves of the building to ensure emissions are set into the atmosphere above and not at ground level. The lower part of the duct/flue would be a succession of filters, fans and silencers which work together to push the odours up and away from the site whilst neutralising the odours by up to 90-95%. The silencers work to reduce any potential noise disturbance from the fans and would only be operational whilst the cookers are in use. The level of disturbance caused by odour nuisance is considered to be low given the extraction equipment proposed.

With regards to noise, the site as a former business use would have generated a level of noise from vehicles moving to and from the site which was open into the evening (10pm), it must be noted that another retail use could open up in the unit without the need for planning permission and operate 24 hours a day as the original permission for the retail unit did not control opening hours. The opening hours have been reduced from midnight to 11pm Sunday to Thursday and 11:30pm on Fridays and Saturdays which is in line with nearby drinking establishments and the Indian Restaurant located in Repton which has been used as a benchmark given the similarities between the sites and village setting. The car park can only accommodate 9 vehicles and it is likely that customers would be staying for a period of time, therefore there is not likely to be the

high turnover of vehicles as would have been associated with the Co-op previously, furthermore the business would not operate a takeaway collection but a takeaway delivery service only. Therefore the level of noise generated by the change of use is likely to cause some disturbance due to the movement of vehicles and proximity of residential properties but it is not expected to exacerbate the noise levels associated within the former use and therefore the amenity of neighbouring occupiers would be preserved to a reasonable degree. It must also be noted that separate legislation covers issues of noise and odour for which enforcement action can be taken if certain levels are breached.

It is not felt the use (there are similar in the village) would be unacceptable, subject to compliance with the Councils standard requirements for food premises (in regards noise, nuisance, odour emissions etc). It should be noted that the application form states longer hours of opening than the revised DAS. For the purposes of this report though the hours are as per the DAS and would be conditioned as such (an earlier closing time being more appropriate in line with nearby public houses and its proximity to residential premises).

### Design

The proposal would have a negligible impact on the character and appearance of the building and wider streetscene the obscure films proposed to the front windows would protect neighbour residents from loss of privacy from overlooking or increased sense of being overlooked and would be an enhancement on the existing decals which block out the windows. A condition should be attached to ensure the duct/flue is painted black to fit more comfortably on the rear of property and minimise its visual impact.

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

### **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Notwithstanding the originally submitted details, this permission shall relate to the amended plan/drawing ref. 001-A received 4th September 2015; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).  
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. The use hereby approved shall not be carried on and no customer shall be served or remain on the premises outside the hours of 17:00 hours to 23:00

hours Sunday to Thursday and 17:00 hours to 23:30 hours on Fridays and Saturdays

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

4. No amplified sound shall be generated at any time within the site.

Reason: To safeguard the residential amenities of occupiers of nearby properties from potential noise disturbance.

5. The shop front windows at ground floor on the south elevation shall be glazed with an obscure or frosted film prior to the first operation of the business and permanently retained as such.

Reason: To safeguard the amenities of adjoining occupiers from overlooking and loss of privacy.

6. The existing 9 parking spaces, access and manoeuvring space shall be retained and shall not thereafter be used for any purpose other than the parking, turning, loading and unloading of vehicles associated with the development, in accordance with the details of the approved drawings.

Reason: To ensure that sufficient provision is made for off-street parking, turning, loading and unloading of vehicles in the interests of highway safety.

7. The waste and recycle storage as detailed within the supplementary planning document shall be installed prior to the first operation of the business and retained for the life of the development.

Reason: To ensure safe storage and removal of waste from the site to prevent pollution and preserve the amenity of neighbouring occupiers from potential odour issues.

8. Prior to the new kitchen facility being brought into first use a scheme for the control of odour and noise emissions from the kitchen flue shall be submitted to and agreed in writing with the Local Planning Authority. The measures should be implemented and retained thereafter, and maintained in accordance with manufacturers recommendations

Reason: To safeguard the residential amenities of occupiers of nearby properties from potential noise and odour disturbance.

#### Informatives:

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

The developer should contact the Environmental Health Section on all matters relating to food hygiene and health and safety. Food businesses must also register with the Local Authority at least 28 days prior to opening for business.

**Item**                **1.3**

**Reg. No.**           **9/2015/0498/SMD**

**Applicant:**  
**Mr A Willis**  
**BNP Paribas Real Estate UK**  
**1st Floor Fountain Precinct**  
**Balm Green**  
**Sheffield**  
**S1 2JA**

**Agent:**  
**Mr Jason Rldgway**  
**White Ridge Architecure**  
**Hilton Hall**  
**Hilton Lane**  
**Essington**  
**WV11 2BQ**

**Proposal:**           **THE ERECTION OF 57 TWO, THREE & FOUR**  
                         **BEDROOM DWELLINGS AND ASSOCIATED HIGHWAYS**  
                         **AND PARKING AT THE FORMER H K WENTWORTH**  
                         **FACTORY & ARRIVA BUS DEPOT MIDLAND ROAD**  
                         **SWADLINCOTE**

**Ward:**                **SWADLINCOTE**

**Valid Date:**        **24/06/2015**

**Reason for committee determination**

The item is presented to Committee at the discretion of the Planning Services Manager as this is an important redevelopment site in the town.

**Site Description**

The site extends to approximately 1.45 hectares comprising the former H K Wentworth manufacturing and office premises along with the former Arriva Bus depot. All of the buildings have now been demolished to slab level. There are two existing vehicular accesses from the Midland Road and Eureka Park borders the northern and eastern edges of the site. There are mature trees located along the southern boundary of the site, protected by a Tree Preservation Order (TPO) with trees also along the northern and eastern boundaries (some within the park). Belmont Street Retail Park is located immediately to the south of the site, with the recently permitted replacement Lidl building under construction.

Swadlincote town centre is located a short distance from the site whilst a number of primary and secondary schools would serve the site. Swadlincote Health Centre, dental surgeries, Greenbank Leisure Centre and other sports and recreation facilities are within walking distance of the site.



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South Derbyshire District Council. LA 100019461. 2014

## **Proposal**

The proposals seek to provide 57 dwellings in a mix of 2, 3 and 4 bedroom terraced, semi-detached and detached dwellings. Access would be gained via the southern existing access point onto Midland Road, with the northern access closed off. Parking provision would ensure 2 spaces per dwelling with the exception of some of the 2-bedroomed units where provision is constrained to 1.75 spaces per dwelling. Street trees and landscaping to the peripheries of the site would provide a 'greening' to the built form, which would be outward facing to all but the southern edge of the site.

## **Applicant's supporting information**

A Design and Access Statement considers the proposed development helps enhance and provide a successful link between the existing surrounding properties with vistas and focal points created throughout the development not only offering interesting visual amenity but also provide natural surveillance of the area. By providing a built form that creates natural surveillance of both the public and private spaces within and beyond the site, perceived and actual safety would be increased creating a far more attractive environment for new and existing residents. Continuous building lines address the spaces within the site to clearly define the public and private realm. The also scheme sits with excellent connectivity to the town and relates to the existing recreation space at Eureka Park.

The design aims to retain any significant existing vegetation in order to protect wildlife and give a sense of maturity whilst the development would build on the local context and provide a design that considers its surroundings and adds character whilst also providing its own sense of place. The buildings have been designed and laid out to frame views within the site to provide pleasant focal points. The scheme also represents an opportunity to create a sustainable development that provides a positive contribution to the area and a sense of place where people would be happy to live and contribute to Swadlincote's vitality.

The Transport Assessment highlights that access would be via the existing site access on Midland Road, which would be modified to provide adequate visibility and geometry. The proposed on-site car parking provision is considered to be adequate for the scheme and occasional demand for unallocated/visitor parking can be met on-street within the proposed internal development road network. The proposed internal road layout would satisfactorily accommodate refuse collection vehicles. The development is also situated very close to local town centre facilities and amenities and has excellent access to local bus services such that it would be ideally located to encourage travel by bus, on foot and by cycle and these sustainable travel modes could potentially accommodate a significant proportion of trips generated by the development. Examination of local personal injury accident records does not provide evidence of any significant existing road safety issues within the local area that require mitigation in order to satisfactorily accommodate the proposed development and the volume of additional vehicular traffic generated is forecast to be very modest (31 movements in the peak AM hour, 30 in the peak PM hour and 275 daily movements). Detailed capacity modelling shows that the access would operate well within capacity.

A Flood Risk Assessment (FRA) considers the site would not be subject to any flooding issues and based on calculations, the proposals would ensure that there is a betterment to the existing drainage systems downstream of the site and within the surrounding

area, with a reduction in both flow rates through reducing current impermeable areas. Sustainable drainage measures (SuDS) would be introduced into the proposed drainage scheme, which would assist in returning storm drainage flows back into the natural ground porosity (where possible) and assist in purification of water. Future adoption and management of the SuDS would be arranged in due course although sewers would be adopted.

An Arboricultural Impact Assessment (AIA) considers protection for existing trees, both to crowns and rooting areas, effects of altering levels in and around root protection areas (RPAs), installation and layout of services within RPAs, sunlight and shading impacts and appropriate species for new planting. This AIA has informed the site layout proposed (including lengthening of the gardens to the southern edge) whilst it also makes recommendations for tree protection during the course of works, which trees could be removed to provide appropriate amenity for occupiers of the proposed dwellings, and that new planting would be secured under a landscaping scheme.

An Acoustic Survey Report notes the site is adjacent to a vehicle maintenance workshop and a retail park. It is recommended that the usual acceptance standards on interior sound levels within dwellings can be achieved by fitting reinforced double glazing to habitable rooms adjacent to and facing Midland Road, and conventional double glazing to all other windows, whilst ventilation can be achieved within the night interior noise requirements by using open window casements across the whole site except dwellings adjacent to Midland Road. It is recommended that acoustic trickle vents are also used on these properties. Outdoor sound levels in private gardens are expected to comply with the usual acceptance standards without using special mitigation measures whilst the south elevations of some dwellings proposed in the southwest corner of the site will receive sound from the delivery bay of the existing supermarket. Here it is recommended that the reinforced double glazing is again used to bedrooms as a precaution against the possibility of supermarket deliveries taking place at night. Sound from fixed plant items at the supermarket and at a fast food premises were estimated to have an adverse impact on the proposed dwellings at night.

The Site Investigation & Coal Mining Assessment notes the site overlies a secondary aquifer but does not lie within a groundwater source protection zone. The ground conditions comprise made ground to relatively shallow depth, placed as sub-base beneath the current hard-standing. Below this is colliery spoil to depths of between 3m and 6.5m. The natural ground comprises firm to stiff clay, becoming mudstone bedrock with depth. The Dickey Gobbler coal seam is present at shallow depth beneath the site, encountered at between approximately 10m and 14m across the site. The Coal Authority does not hold records of any past workings within this seam. Two shafts just north of the site also indicate the coal as being shaley and poor. Due to the depth of made ground most of the site will require piled foundations whilst, under the existing works, a basement is present beneath parts of the floor slab. These features will need to be removed and backfilled prior to redevelopment. Any underground tanks and associated infrastructure will need to be decommissioned and removed, with any significantly impacted ground and groundwater (perched in this area) removed or remediated. Generally some slightly elevated concentrations of heavy metals/metalloids and hydrocarbons are present within the made ground. It is proposed that a capping layer of inert material is placed in all gardens and areas of soft landscaping to mitigate any potential risks to human health and plants. Gas protective measures within dwellings are recommended.



## **Planning History**

9/2007/0975: Outline application for residential development (withdrawn)

9/2006/0060: Outline application (all matters to be reserved) for the erection of a residential development (withdrawn)

## **Responses to Consultations**

The Environment Agency notes the site has been occupied by a tram engineering works, a former bus depot (including underground fuel storage and an oil interceptor) and the HK Wentworth factory (which produced and distributed lubricants, office cleaning products and multimedia cleaning products and included the storage and use of various chemicals, a transformer, factory sub-station and a gas compressor). Such land uses have the potential to have caused contamination which may currently be impacting 'controlled waters' receptors of the groundwater in the underlying aquifer and local watercourses. Furthermore there is potential for re-mobilisation of any contaminants during development. They therefore have no objections but require planning conditions be imposed to mitigate for and/or control the above matters.

The County Flood Risk Team notes the FRA identifies two sources of potential flooding but fails to mention fluvial or groundwater flooding as additional sources. There is a culverted watercourse which flows westerly across the proposed site, which the applicant is advised to investigate the potential for hidden watercourses prior to any works being undertaken. Groundwater is also likely to be less than 3m below the surface. In addition no evidence is provided to show that utilising infiltration, or a surface water body, as a means of disposing of surface waters is not a viable option for the development whilst clarification is needed as to figures used in calculations for the existing runoff rate. Any drainage scheme would need to ensure the proposed system could be managed safely to avoid any flooding to properties on or off site and critical infrastructure. It is noted that permeable paving is not adopted by the County Highway Authority and hence the applicant should demonstrate where responsibility will lie for maintenance of such systems. Notwithstanding the above the Flood Risk Team raises no objection, instead requesting conditions to address the above matters and ensure an acceptable surface water discharge from the site.

The County Strategic Planning Officer seeks a contribution of £125,389.11 towards 11 primary school places at Belmont Primary School (through delivery of additional classroom accommodation), and that this should be secured by way of a planning obligation. They note that whilst the proposal would still have an impact on Household Waste & Recycling Facilities, they are unable to mitigate this impact because of the restriction on pooling contributions introduced by the CIL Regulations. They also seek that the development secures access to high speed broadband services for future residents whilst new homes are designed to Lifetime Homes standards. Finally The County recognises that the viability of development schemes will vary and that if the developer considers the contributions sought would impact on the viability of the proposal to the point where the scheme would not go ahead, a full financial appraisal should be provided for review.

The NHS Southern Derbyshire CCG considers the proposal would result in an increased patient population of approximately 143 persons, affecting the Heartwood and Swadlincote surgeries and also the Woodville and Newhall surgeries. The surgeries

identified have no spare capacity to manage increased patient demand, and space restrictions mean that the practice cannot provide the number of appointments to meet current demand. However the practices are looking to expand/alter their premises to provide capacity for additional patient space. The requested contribution of £21,759 would contribute towards this and mitigate the projected population increase arising from this proposal.

The Strategic Housing Manager seeks that 30% of the total number of dwellings be provided as affordable housing, all as social/affordable rent given its proximity to the town centre would likely lead to low demand for shared ownership. Based on 57 dwellings and needs in the local area, a mix of 17 one to three-bedroom properties are requested. It is advised that affordable housing shall be 'pepper-potted' across the whole site in clusters comprising of no more than 10, with a cluster including no more than 6 flats; and that a Section 106 Agreement is used to secure the overall requirements. The submission of a viability assessment is noted and it is acknowledged that further discussion of the quantum and split would be necessary of 30% provision cannot be secured.

The County Highway Authority raises no objection in principle to the proposals subject to conditions to secure space for storage, etc. during construction, an appropriately laid out access and visibility splays, wheel washing facilities, means of construction and drainage of estate roads and driveways and timing for provision of estate roads prior to occupation of respective dwellings.

The Development Control Archaeologist advises the site carried an early electric power station dating from 1915-1925, with map evidence suggesting it was associated with the Burton and Ashby Light Railway. However any below-ground remains of this site would not be of any archaeological significance or potential such that there is no need to place an archaeological requirement upon the applicant.

The Coal Authority indicates that the site is in an area of likely historic unrecorded underground coal mine workings at shallow depth and there is a mine entry within 20m of the site boundary. However, given the investigative report, its findings and that that none of the boreholes encountered voids or evidence of shallow coal mine workings beneath the site; no mitigation is requested.

The Environmental Protection Officer confirms the site is in the proximity of several potential sources of ground contamination as a result of historical industrial uses. These historical land uses have the potential to present risks to site workers, ends users and ecological receptors as a result of development. As a result conditions to identify and remediate any potential land contamination on the site are recommended.

The Environmental Health Officer has considered potential noise levels from the retail units to the south and is satisfied that extraction fans would not be significantly over background noise levels which prevail across the rest of the site. As such there is no objection to the proposals.

The National Forest Company (NFC) notes the proposals exceed the threshold where emerging policy would expect provision of woodland planting and landscaping, with some 0.29 hectare of woodland planting being required. Whilst the proposed layout does not propose to address this requirement on-site, the NFC considers that a financial contribution of £5,800 would be acceptable in this case given the proposed density of

development and limited opportunities for tree planting on-site. This would be used to undertake further specimen tree planting within Eureka Park, in conjunction with the Council, extending the current tree planting initiative which has been running for the previous three years; or alternatively a current programme of tree planting within the centre of Swadlincote, again being undertaken with Council.

The Crime Prevention Design Adviser considers the layout to be generally unproblematic, but highlights the need to ensure surveillance of open space and parking courts/spaces. Any routes to the side and rear of plots should also be securely gated at their point of origin. The eastern boundary to Eureka Park is will also require some form of enclosure since the footpath at the base of the embankment here would be out of view of overlooking housing, although the northern embankment is shallower and thus surveillance should be possible.

### **Responses to Publicity**

Councillor N Tilley requests that consideration be given to capacity of local schools to receive children arising from the development, and that contributions towards improving play facilities at Eureka Park should be considered.

### **Development Plan Policies**

The relevant policies are:

- Saved Local Plan 1998: Housing Policies 4, 9 and 11 (H4, H9 and H11); Transport Policies 6 and 7 (T6 and T7), Environment Policies 9, 10 and 14 (EV9, EV10 and EV14), Recreation & Tourism Policy 4 (RT4) and Community Facilities Policy 1 (C1).

### **Emerging Development Plan Policies**

The relevant policies are:

- Submission Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Need), S6 (Sustainable Access), H1 (Settlement Hierarchy), H19 (Housing Balance), H20 (Affordable Housing), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Delivering Sustainable Water Supply, Drainage and Sewerage), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF6 (Community Facilities), INF8 (The National Forest) and INF9 (Open Space, Sport and Recreation).

### **National Guidance**

- National Planning Policy Framework (NPPF) including (but not exclusively) paragraphs 6-8, 11-12, 14, 17, 32, 34-35, 47, 49, 58, 61, 69, 70, 73, 103, 111, 118, 120, 123, 129, 139, 173, 203, 204, 206, 215 and 216.
- National Planning Policy Guidance (NPPG)

## Local Guidance

- Housing Design and Layout SPG.
- Section 106 Agreements – Guidance for Developers.

## Planning Considerations

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

- Principle of development and weight afforded to policy;
- Infrastructure and affordable housing contributions;
- Highway capacity and safety;
- Drainage and flood risk;
- Land stability and contamination; and
- Design and amenity.

## Planning Assessment

### Principle of development and weight afforded to policy

The site lies within the Swadlincote settlement confines where saved policy H4 supports the principle of development. This is in line with the emerging Plan and the aim under the NPPG to reutilise brownfield sites wherever possible. The NPPF's desire to significantly boost the supply of housing must also be given significant weight in light of the lack of a 5-year housing supply. It must be recognised that additional housing in this location is very well supported by a range of services. There are also economic benefits arising from the whole proposal – both short and long term, with construction phase employment and subsequent occupation leading to increased revenue to local businesses and services.

Setting the above matter aside, the sustainability of the development is paramount with it important to strike the right balance between housing delivery and ensuring the environmental, social and economic needs of occupants and the existing community can be readily met. Whilst a lack of a 5-year supply might engage paragraph 49 of the NPPF, it does not automatically “stand down” local plan policies. An unsustainable development means the presumption in favour does not apply. With this point in mind attention is given to the impacts arising from the proposed development and any conflict with planning policy. For the presumption in favour of development to apply, sustainability must be viewed in the round, whilst remembering that sustainability and sustainable development is subjective – there is no minimum or consistent level beyond which a particular development can be said to be sustainable. It is a concept, and one that is determined differently from one site to another. The remaining parts of the report therefore give consideration to whether any other adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposals, after reaching a balance between the benefits and adverse impacts all the time noting that conditions or obligations may be used to mitigate or address an otherwise unsustainable impact.

### Design and amenity

The proposed dwellings benefit from isolation away from other dwellings such that there are no conflicts with the SPG. Consideration has been given to the plots along the

southern boundary in terms of noise and shading from the existing commercial units to the south and the protected trees. Noise from nearby ventilation equipment is not considered to pose a concern, and whilst there is some residual concern over future pressure for pruning and felling of protected trees (given their location within rear gardens to the south of habitable windows), the constraints of the site and need to maximise the quantum of development for viability reasons command such a layout. In any case prospective occupiers would be able to make an informed decision as whether to purchase a dwelling or not, and should be informed of the statutory protection at the conveyancing stage.

The overall scale and layout of the site is welcoming. The strong, regular building lines created by principal elevations as well as framing of the access and subsequent internal estate junctions provides legibility and interest. A connection from the end of the main estate road into Eureka Park has been explored, given prospective occupiers would inevitably have a desire to use the park which many of them will overlook. However the only suitable location, adjacent to the turning head would require a ramp which would exceed the available space (given gradient requirements) and would require a heavily engineered approach on the edge of the park also further exacerbating the already precarious viability position. Turning to comments from the Crime Prevention Design Advisor, the layout achieves many of these aims and conditions can ensure appropriate specifics at a later stage.

#### Highway capacity and safety

There is little concern as to the capacity of the local highway network to accommodate, what is relatively speaking, a small development within the confines of the urban area. Safe and suitable access can be achieved subject to the conditions recommended and the cumulative impacts of the development are not considered to be severe especially given the previous uses of the site. Parking provision is generally in accordance with expected standards, although the slight reduction in provision to 15 of the 57 dwellings (with 27 spaces instead of 30) is not considered to bring about an unacceptable risk of on-street parking given these would serve two-bedroomed dwellings and the proximity to the town centre and bus station.

#### Drainage and flood risk

Given the confines of the site, the scope for the provision of 'green' sustainable drainage is limited such that permeable paving and subterranean attenuation is proposed. The statutory consultees consider that the proposed drainage method can be addressed by way of condition without fear of exacerbating off-site flood risk. Foul drainage details can also be handled by way of condition.

#### Land stability and contamination

The responses of the Environment Agency, Coal Authority and Environmental Protection Officer confirm there are no significant concerns which would sterilise the development potential of the site, and that a conditional approach to remediation and control of construction activities can satisfactorily ensure the risks to life and property are minimised.

#### Infrastructure and affordable housing contributions



This forms the primary consideration under the application, which is supported by viability evidence. This appraisal has been fully tested by the District Valuer (DV) who concurs that the site would be unviable if the Council were to secure financial contributions and affordable housing in line with saved and emerging policy and the SPG. In fact the DV's own comparative appraisals demonstrate (1) that a policy compliant development (i.e. all financial contributions and 30% affordable housing in line with the Strategic Housing Manager's request) would render the scheme severely unviable, and (2) a 0% affordable housing along with the education and NFC contributions only would still place the development well below the viability benchmark for this site. Evidently the healthcare sum and any open space, sports and built facilities contributions would render this scheme even more unviable. Recent appeal decisions and a High Court ruling have ratified the fact that Section 106 packages need to be adjusted to suit the prevailing economic circumstances of the site which, in this case are poor, given the very high site reclamation costs.

Notwithstanding this, the applicant recognises the need to achieve sustainable development in the round, acknowledging that the development of the site for residential use would inevitably bring about pressures on local services and infrastructure – particularly healthcare and education. In response it is advanced that a deficit of £150,000 could be sustained, and this sum is open for the Council to distribute as it sees fit in an attempt to cover the requests made so to achieve a sustainable balance. This gesture is acknowledged and welcomed – especially given the circumstances as outlined above. The applicant also highlights that the current owner of the site is a corporate sponsor of the NFC so is already making a valuable contribution to their objectives; the cost implications of design changes requested during the course of the application are likely to result in additional development costs (further negative implications on viability) but the above offer is still being made; the proposal would contribute to the 5-year housing supply and utilise a brownfield site within the urban area; and if used to fund education, health, open space and sports facilities only, more than two thirds of these items would still be met.

It is therefore necessary to consider the appropriate balance for distribution of available sums to achieve a sustainable balance. The NPPF specifies that planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

It is prudent to first establish the true necessity of the request. It is firstly necessary to question whether without the contribution, the development would be unacceptable in planning terms. Applying this question to the education and healthcare requests, it is considered there is a clear and convincing justification for these requests given existing services are already struggling under existing demand, let alone additional pressure. In terms of open space, sports and built facilities – again there is a similar argument (especially with the continued need for improvements at Eureka Park) although with recent improvements at Greenbank and the Grove Hall an immediate pressure on these built facilities has been alleviated somewhat. In this light the request for built facilities, whilst still compliant with the above tests given other identified projects to cater for increasing population trends in the area; could be stood down. The NFC contribution is also considered to be questionable given the development does not remove existing woodland which needs to be compensated for, nor would the development undermine

the continued strategic approach towards National Forest objectives. Again it is considered that this request could be set aside in the interests of viability, especially when the applicant makes an indirect contribution through sponsorship of the NFC.

In terms of affordable housing, regard is had to both the Strategic Housing Market Assessment (SHMA) and the NPPF. The SHMA identifies both market and affordable housing needs for the District, whilst the NPPF affords significant weight to boosting the supply of housing – not just a particular sector of housing. It is a later aspiration of the housing policies within the NPPF that Councils should plan for a mix of housing and in respect of affordable housing, *“policies should be sufficiently flexible to take account of changing market conditions over time”*. In this light it is not considered that the absence of affordable housing on one of many housing sites necessary to fulfil the SHMA objective need, would render the proposal unacceptable to a degree where affordable housing is a necessary component to achieving sustainable development.

Drawing together the above considerations, the education, healthcare, open space and sports facilities requests provide the following total:

Education	£125,389.11
Healthcare	£21,759.00
Open space	£21,261.00
<u>Sports facilities</u>	<u>£38,060.00</u>
Total	£206,469.11

However the above discussion identifies there is only £150,000 available to accommodate these requests. There are sub-regional and county level corporate aims underpinning some of these requests and it is difficult to determine how the split should be made given all these matters feed into the Council's own corporate plan. However it is recognised that the sum on offer represents nearly 73% of the total of requests in these respects and a proportional reduction of each request on this ratio would still provide meaningful sums to the relevant parties which could facilitate delivery of the identified projects, as opposed to falling short of facilitating that delivery. In this light, the following is recommended:

Education	£91,095.30
Healthcare	£15,807.93
Open space	£15,446.14
<u>Sports facilities</u>	<u>£27,650.63</u>
Total	£150,000.00

Members may of course wish to debate this split and reapportion the sums differently, but this split is recommended as a fair and reasonable approach to ensuring the impacts arising from the development satisfy the social dimension of sustainable development.

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. Authorise the Planning Services Manager to complete a Section 106 Agreement to secure the adjusted financial contributions, as set out above, towards education and healthcare provision, and open space and sports facilities; and

B. Subject to A, **GRANT** permission subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with the latest plans/drawings specified in the drawing issue sheet ref: 2104-DR; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

3. The development permitted by this planning permission shall be carried out in accordance with the approved non-mains drainage assessment including the following specific mitigation measures detailed therein:
  - i. No connection to watercourse or land drainage system and no part of the soakaway system to be within 10 metres of any ditch or watercourse; and
  - ii. SUDs implementation as specified in the drainage proposal plan and flood risk assessment, to reduce surface run-off by 20% of existing.

Reason: The Humber river basin management plan requires the restoration and enhancement of water bodies to prevent deterioration and promote recovery of water bodies. Without this condition the impact cause deterioration of a quality element to a lower status class in the Darklands Brook catchment, tributary of the river Trent, by way of the release of urban diffuse pollutants such as ammonia, phosphate and heavy metals.

4. No removal of trees, hedgerows, shrubs or scrub shall take place between 1st March and 31st August inclusive, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period; and details of measures to protect the nesting bird interest on the site have first been submitted to and approved in writing by the Local Planning Authority. The approved protection measures shall then be implemented as approved.

Reason: In the interests of safeguarding against harm to protected species.

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any Statutory Instrument amending, revoking and/or replacing it; the garage accommodation/parking space provided



pursuant to reserved matters approval shall not be used other than for the garaging and parking of vehicles except with the prior permission of the Local Planning Authority granted on an application made in that regard.

Reason: To ensure an appropriate level of parking provision is provided and thereafter maintained for the life of the development.

6. 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 materials on the public highway.

Reason: In the interests of highway safety.

#### Pre-commencement

7. No development or other operations on the site (including demolition, ground works and vegetation clearance) shall commence until a scheme which provides for the protection of all hedgerows and trees identified for retention growing on or adjacent to the site has been submitted to and approved in writing by the Local Planning Authority. The approved protection measures shall then be implemented prior to any development or operations commencing and thereafter retained until a time where vehicles or mechanical equipment cannot interfere with such hedgerow or trees, or completion of the development, whichever occurs first.

Reason: In the interests of maintaining existing habitat provision to the benefit of wildlife and visual amenity, recognising the potential for permanent and long term damage to such features could occur at the outset of any works on site.

8. No development shall commence until a scheme to treat and remove suspended solids from surface water run-off during construction works has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved.

Reason: The Humber river basin management plan requires the restoration and enhancement of water bodies to prevent deterioration and promote recovery of water bodies, and without this condition the impact of construction works (at all stages of development) could cause deterioration of a quality element to a lower status class and/or prevent the recovery of the Darklands Brook catchment, tributary of the river Trent, GB104028047310 water body by way of the release of suspended solids and potentially contaminated silts to the culverted watercourse that runs through the south of the proposed site.

9. (a) No development shall commence 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; 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 Local Planning Authority dispenses with any such requirement specifically and in writing.

(b) Prior to first occupation of the development (or parts thereof) an independent verification report must 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' and identifies any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

(c) In the event that it is proposed to import soil onto site in connection with the development, this should 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) If required by the conceptual site model, no development shall take place until monitoring at the site for the presence of ground 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 (in particular controlled waters) from hazards arising from previous contamination on or off the site which might be brought to light by development of it, including noting that initial ground works have the potential to open up a new pathway to a receptor or mobilise contaminated material around or off the site.

10. No development shall take place until details of the finished floor levels of the dwellings and other buildings hereby approved, and of the ground levels of the site relative to adjoining land levels, along with details of any retaining features necessary have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the agreed levels and any approved retaining features.

Reason: To ensure that the visual impact of the development is minimised as far as possible and to ensure acceptable impacts on adjoining residential property, recognising that site levels across the site as a whole are crucial to establishing infrastructure routing/positions (i.e. roads, drainage, SuDS, etc.).

11. No development shall commence until information has been submitted to and approved in writing by the Local Planning Authority to demonstrate that the drainage scheme is designed to manage surface water flood risk in accordance with S7, S8 and S9 of the Defra non-statutory technical standards for sustainable drainage systems (March 2015).

Reason: To ensure that the surface water is managed appropriately to avoid flooding on site for events up to and including the 1 in 30 year rainfall event and that flooding is managed safely on site within the development during events up to, including and in excess of the 1 in 100 year rainfall, recognising that the drainage scheme has implications for detailed layout and levels.

12. No development shall take place until details of the implementation, maintenance and management of a sustainable drainage scheme have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:

- i. a timetable for its implementation;
- ii. a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime; and
- iii. details of the disposal of highway surface water via a positive gravity-fed system, discharging to an outfall on a public sewer, highway drain or watercourse.

Reason: In the interests of highway safety and to ensure that the principles of sustainable drainage are incorporated into this proposal from the outset and sufficient detail of the construction, operation and maintenance of sustainable drainage systems is provided to the Local Planning Authority.

13. No development shall take place until construction details of the residential estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage) have been submitted to and approved in writing by the Local Planning Authority. The residential estate roads and footways shall thereafter be constructed in accordance with the approved details.

Reason: In the interests of highway safety, recognising that layout and levels of these features are linked to establishing appropriate drainage and utility infrastructure.

14. No development, except for works of demolition or site clearance, shall take place until space has been provided within the site curtilage for storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives and visitors vehicles; laid out and constructed in accordance with detailed designs to be first submitted to and approved in writing by the Local Planning Authority. The approved storage area shall thereafter be implemented and maintained throughout the contract period free from any impediment to its designated use.

Reason: In the interests of highway safety.

15. No development, except for works of demolition or site clearance, shall take place until the existing access to Midland Road has been modified in accordance with the application drawings, laid out, constructed to base level and provided with 6m radii, a 5.5m wide carriageway, a 2m wide footway, a 1m wide service strip and 2.4m x 43m visibility splays in both direction; the area in advance of the sightlines thereafter being maintained 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.

16. No development involving the construction of a road or dwelling shall take place until a detailed assessment has been provided to and approved in writing by the Local Planning Authority to demonstrate that the proposed destination for surface water accords with the hierarchy in Approved Document Part H of the Building Regulations 2000. The assessment should demonstrate with appropriate

evidence that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:

- i. into the ground (infiltration);
- ii. to a surface water body;
- iii. to a surface water sewer, highway drain, or another drainage system;
- iv. to a combined sewer.

Reason: To ensure that surface water from the development is directed towards the most appropriate waterbody in terms of flood risk and practicality by utilising the highest possible priority destination on the hierarchy of drainage options, recognising that such detail is crucial in determining detailed

17. No development involving the construction of a road or a dwelling shall commence until details of a scheme for the disposal of foul water has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

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

18. No development involving the construction of a dwelling or road shall be carried out until precise details, specifications and, where necessary, samples of the facing and surfacing materials to be used in the construction of external walls and roofs of the buildings, boundary treatments (including indicative elevational drawings) and public and private roads/parking courtyards/driveways/footways have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details with boundary treatments to be erected prior to first occupation of the dwelling(s) they border.

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

19. No development involving the construction of a dwelling shall be carried out until large scale drawings of eaves and verges, cills and lintels/headers, and string/plinth courses, have been submitted to and approved in writing by the Local Planning Authority. No dry verges shall be used. The development shall be carried out in accordance with the approved details.

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

20. The carriageways of the proposed estate roads shall be constructed in accordance with condition 11 up to and including at least road base level, prior to the erection of any dwelling intended to take access from that road(s). The carriageways and footways shall be constructed up to and including base course surfacing, drained and lit to ensure that each dwelling, prior to occupation, has a properly consolidated and surfaced carriageway and footway between the dwelling and the existing highway. Until final surfacing is completed, the footway base course shall be provided in a manner to avoid any upstands to gullies, covers, kerbs or other such obstructions within or abutting the footway. The carriageways, footways and footpaths in front of each dwelling shall be

completed with final surface course within twelve months (or three months in the case of a shared surface road) from the occupation of such dwelling.

Reason: In the interests of highway safety.

21. Notwithstanding the submitted details, further details of the position of the first floor bedroom windows on the dwellings on plots 50 and 51 shall be submitted prior to their commencement. Positions of those windows shall then be constructed in accordance with the finally approved details.

Reason: In order that the living conditions of the future occupiers of the dwellings are not compromised by the proximity of the trees to the south.

#### Pre-occupation

22. Prior to first occupation of a dwelling, a scheme of hard and soft landscaping, which shall include subterranean measures to ensure the establishment of and ability for trees to reach maturity, shall be submitted to and approved by the Local Planning Authority. 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 first occupation of the dwellings or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. Any publically landscaped areas shall be maintained as such until these areas are transferred to the Local Authority or nominated maintenance company

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

23. Prior to first occupation of any dwelling, a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

Reason: To ensure that any remedial works required as an outcome of the site investigation and risk assessment are completed to a satisfactory standard.

#### Other

24. 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 2A and



appropriate remediation proposals, and shall be submitted to the Local Planning Authority without delay. The approved remediation scheme shall be implemented to the satisfaction of the Local Planning Authority.

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.

Informatives:

- a. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning issues, suggesting amendments to improve the quality of the proposal, and promptly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.
- b. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.
- c. Derbyshire County Council do not adopt any private SuDS schemes. As such, it should be confirmed prior to commencement of works which organisation will be responsible for SuDS maintenance once the development is completed.
- d. Any works in or nearby to an ordinary watercourse require consent under the Land Drainage Act (1991) from DCC (e.g. an outfall that encroaches into the profile of the watercourse, etc). Upon receipt of any application (including the legislative fee) DCC has an 8 week legislative period in which to make a decision and either consent or object the proposals. If the applicant wishes to make an application for any works please contact [Flood.Team@derbyshire.gov.uk](mailto:Flood.Team@derbyshire.gov.uk).
- e. The Eastwood & Partners Consulting Engineers' Phase 2 Geotechnical and Geo-Environmental Site Investigation (submitted with the application) is considered to satisfy part of the land contamination condition above. The report's conclusions and recommendations form the basis for the scheme to control any contamination of land, or pollution of controlled waters. The remaining phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 2A. 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.
- f. The applicant/developer 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 [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 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.
  - Environment Agency document 'Guiding principles for land contamination' (particularly in respect of the type of information required in order to assess risks to controlled waters from the site).
  - [www.gov.uk/environment-agency](http://www.gov.uk/environment-agency).
- g. The applicant / developer should refer to the Environment Agency's 'Groundwater Protection: Principles and Practice' document, available from [www.gov.uk/environment-agency](http://www.gov.uk/environment-agency). This sets out our position on a wide range of activities and developments, including:
- Storage of pollutants and hazardous substances
  - Solid waste management
  - Discharge of liquid effluents into the ground (including site drainage)
  - Management of groundwater resources
  - Land contamination
  - Ground source heat pumps
- 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 guidance available on [www.gov.uk/environment-agency](http://www.gov.uk/environment-agency).
- h. The infilling of the basements present on the site and the potential remediation activities may generate material which is classified as 'waste' under the Waste Management Licensing (England and Wales) (Amendment and Related Provisions) Regulations 2005. For further guidance on how waste is classified, and best practice for its handling, transport, treatment and disposal the applicant should refer to [www.gov.uk/managing-your-waste-an-overview](http://www.gov.uk/managing-your-waste-an-overview).
- i. Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from Mr K Barton in the Economy, Transport and Environment Department at County Hall, Matlock (tel: 01629 538658). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.
- j. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy Transport & Environment at County Hall, Matlock regarding access works within the highway. Information, and relevant application forms, regarding the undertaking of access works within highway limits is available via the County Council's website

[www.derbyshire.gov.uk/transport\\_roads/roads\\_traffic/development\\_control/vehicular\\_access/default.asp](http://www.derbyshire.gov.uk/transport_roads/roads_traffic/development_control/vehicular_access/default.asp), email [ETENetmanadmin@derbyshire.gov.uk](mailto:ETENetmanadmin@derbyshire.gov.uk) or telephone Call Derbyshire on 01629 533190.

- k. Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway, measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.
- l. Pursuant to Sections 149 and 151 of the Highways Act 1980, steps shall be taken to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
- m. 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 Strategic Director Economy, Transport and Environment at County Hall, Matlock (tel: 01629 580000 and ask for the Development Control Implementation Officer Mike Hawkins).
- n. Pursuant to Section 50 (Schedule 3) of the New Roads and Streetworks Act 1991, before any excavation works are commenced within the limits of the public highway, at least 6 weeks prior notification should be given to the Strategic Director Economy, Transport and Environment at County Hall, Matlock (tel: 01629 580000 and ask for the New Roads and Streetworks Section).
- o. New housing should be designed to addresses safety and the needs of vulnerable people. Domestic sprinkler systems are exceptionally effective through their ability to control a fire and help prevent loss of life. As a minimum, new residential development should incorporate a 32mm mains water riser which will enable the installation of domestic sprinkler systems, and ideally should incorporate the sprinkler systems themselves. The cost of installing a 32mm mains water riser is approximately £26 per dwelling and the cost of a domestic sprinkler system is approximately £1500. Derbyshire Fire and Rescue Service can advise further on such provisions.



**Item**            **1.4**

**Reg. No.**        **9/2015/0557/FM**

**Applicant:**  
**Ms Annabel Roberts**  
**Kings Newton Hall**  
**Kings Newton**  
**Melbourne**  
**Derby**  
**DE73 8BX**

**Agent:**  
**Mr Simon Hicks**  
**BHB Architects**  
**24 Bird Street**  
**Lichfield**  
**WS13 6PT**

**Proposal:**        **THE ERECTION OF A 3 BED DWELLING AND 2 CAR  
CAR-PORT (RESUBMISSION OF 9/2014/0544) WITH USE  
OF EXISTING ACCESS FROM ROAD ON LAND TO THE  
REAR OF 78 ASHBY ROAD MELBOURNE DERBY**

**Ward:**            **MELBOURNE**

**Valid Date:**     **24/06/2015**

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

The application has been brought to committee as the development does not accord with the Development Plan.

#### **Site Description**

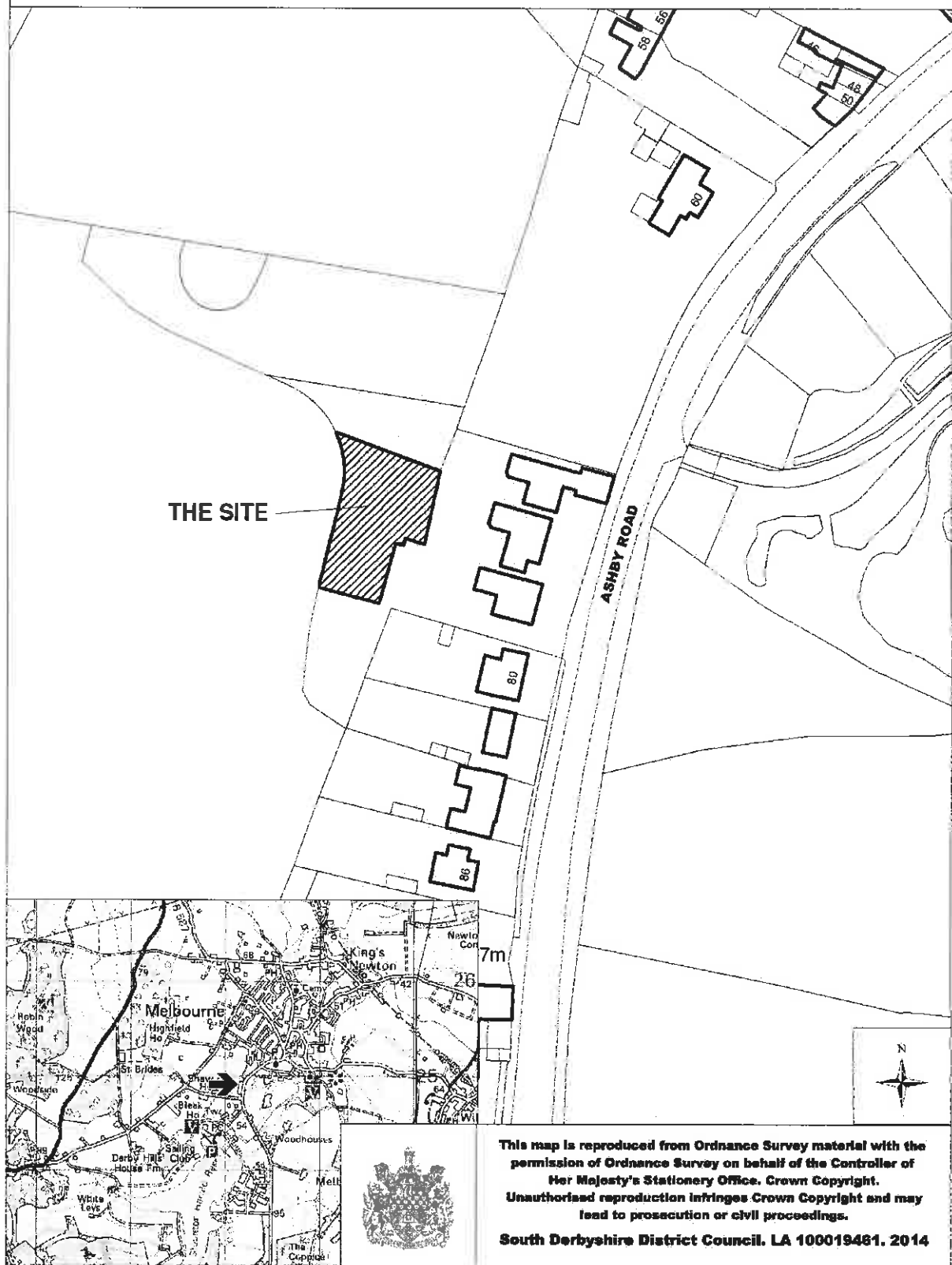
The site is located to the rear of three houses which were granted planning permission under application reference 9/2013/0313. The site is bounded by dwellings to the east and a steep embankment to the west.

#### **Proposal**

Planning permission was granted under planning application 9/2014/0544 for the erection of a 3 bedroom detached property and under planning application 9/2014/1030 for the erection of a 2 car, car port on the site. This was following the submission of planning application 9/2013/0460, where the application for the erection of a single dwelling house was refused and allowed at appeal. The current application seeks the following amendments to the previous approved scheme:

- The addition of a single storey extension to accommodate further living room space.
- The removal of 2no. windows and replacement of 1no. window on the western elevation.

9/2015/0557 - 78 Ashby Road, Melbourne, Derby DE73 8ES



- The creation of french doors at first floor level with decked bridge to terrace area on the western elevation.
- Installation of a roof light into the roof space and installation of a door to the eastern elevation.

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

- Design and Access Statement.

### **Planning History**

9/2013/0460 – single dwelling refused appeal allowed

9/2014/0544 - The erection of a dwelling with use of existing access from road –  
Approved with conditions - 05/08/2014

9/2014/1030 – The variation of condition 2 of planning permission 9/2014/0544 to show  
the proposed two car car-port - Approved with conditions - 19/12/2014

### **Responses to Consultations**

The County Highways Authority has no objection subject to a condition.

The Flood Risk Management Team has no objection.

The County Archaeologist has no objections.

Severn Trent Water has no objection.

### **Responses to Publicity**

There have been six comments submitted from two local residents and one comment from the Parish Council, which raise the following concerns:

- a) Issues and inconsistencies with the material contained within the Design and Access Statement.
- b) Allegations that the ownership details are not correct on the application.
- c) The ground levels and differences in height are not shown on the plans.
- d) Proposed changes to the eastern elevation will impact negatively on no.66-70 Ashby Road
- e) The proposed dwelling is not small or humble and is not characteristic of a cottage.

### **Development Plan Policies**

The relevant policies are:

- Saved Local Plan 1998: Housing Policies 5 and 11, Transport Policy 6

## **Emerging Development Plan Policies**

The relevant policies are:

- Submission Local Plan Part 1:  
S2 – Presumption in favour of Sustainable Development

## **National Guidance**

National Planning Policy Framework (NPPF) paragraphs

- 9 - Purposes of Sustainable Development
- 14 - Presumption in favour of Sustainable Development
- 17 - Core Planning Principles
- 56 - Requiring Good Design
- National Planning Practice Guidance (NPPG) ID 26 Design

## **Supplementary Planning Guidance (SPG)**

- Housing Design and Layout.

## **Planning Considerations**

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

- Principle of a single dwelling house on the site.
- Installation of a roof light window and door on the eastern elevation.
- Erection of a single storey extension and creation of terrace area
- Increase in size of proposed dwelling house

## **Planning Assessment**

### Principle of a single dwelling house on the site

The principle of the erection of a 3 bedroom dwelling at the site has already been established at appeal and there has been no change to national or local policy to alter this decision.

### Installation of a roof light window and door on the eastern elevation

The installation of the roof light and the door to the eastern elevation, overlook the amenities of the neighbouring properties 66-68 Ashby Road. However, on the basis that the roof light is installed within the roof space and provided that there is boundary treatment on the eastern elevation of the proposed property, this would not create an adverse effect on the neighbouring properties. The separation distance between the proposed dwelling and the existing residential properties remains unchanged from the previous application.

### Erection of a single storey extension and creation of terrace area

The erection of the single storey extension is proposed on the western elevation of the proposed property and further away from the existing residential properties. The

proposed dwelling acts as a buffer between the neighbouring properties and this new development. Therefore, there are no issues of overlooking or overshadowing created as a result of this addition. For the same reasons, the changes to the first floor windows in the sitting room area and the creation of the walkway to the terrace area, are to be created on the western elevation of the proposed property and similarly do not create any issues of overlooking or overshadowing.

#### Increase in size of proposed dwelling house

It has been noted during the consultation process that there has been an increase in floor area of the proposed dwelling from the previous application 9/2014/0544. Whilst it has been noted there has been a marginal increase in certain aspects of the main body of the proposed dwelling (in addition to the single storey extension, terrace area and the garage approved under planning application 9/2014/1030) that have not been assessed above, these negligible additions do not outweigh the principle of the dwelling house that was established at appeal or impact negatively on the setting of the Conservation Area.

#### Conclusion

In conclusion, the proposed additions listed above to the previous amended scheme do not alter the appeal decision and previous planning application 9/2014/0544, with regard to the principle of the siting and size of the proposed dwelling. The proposed changes do not create issues of overlooking or overbearing and are consistent with the Councils Housing Design and Layout SPG.

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

#### **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the approved plans; drawing number 2806-002 Rev B received on 19th June 2015; drawing number 2806-040 Rev A received on 19th June 2015; 2806-042 received on 19th June 2015; 2806-043 received on 19th June 2015 and 2806-044 received on 19th June 2015; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).  
  
Reason: For the avoidance of doubt.
3. The premises, the subject of the application, shall not be occupied until space has been provided within the application site in accordance with the submitted



application drawing No. 2806-002 Rev B for the parking and manoeuvring of resident's / service and delivery vehicles, 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.

4. Notwithstanding the submitted details, prior to the commencement of the development hereby permitted, details of boundary structures/landscaping to screen adjacent windows from overlooking shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented prior to the first occupation of the dwelling to which it relates and retained thereafter.

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

5. A sample of both the roof tile and the brick shall be submitted for approval in writing by the Local Planning Authority before work commences.

Reason: To ensure the building/extension is in keeping with its surrounding in the interest of the character and visual amenity of the area.

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

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

7. 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.

#### Informatives:

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

**Item**            1.5

**Reg. No.**        9/2015/0563/OX

**Applicant:**  
**Mrs Iris Evans**  
**c/o agent**

**Agent:**  
**JVH Town Planning Consultants**  
**Houndhill Courtyard**  
**Houndhill**  
**Marchington**  
**Uttoxeter**  
**ST14 8LN**

**Proposal:**        **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR  
ACCESS TO BE RESERVED) FOR THE RESIDENTIAL  
DEVELOPMENT OF UP TO 5 DWELLINGS AT 124  
REPTON ROAD HARTSHORNE SWADLINCOTE**

**Ward:**            **WOODVILLE**

**Valid Date:**     **22/06/2015**

**Reason for committee determination**

The item is presented to committee because the proposal is not in accordance with the Development Plan, and at the request of Councillor Mrs Coe on the basis that local concern has been expressed about a particular issue, and that the committee should debate the finely balanced issues in this case and consider unusual site circumstances.

**Site Description**

The application site is situated on the edge of Hartshorne village, adjacent to the house and garden of 124 Repton Road but outside of the defined development boundary. The site is bordered to the east and south by a ribbon of housing with open countryside to the north and west. A hedge forms the boundary of the site with Repton Road as well as to the open countryside to the west. The land gently slopes away from Repton Road across the site with a further slight fall east to west. The northern boundary is not marked by a physical delineation with it sitting centrally to the wider land ownership, although it is at a point where the land begins to steeply slope down towards an elongated pond. To the north of the pond is the Repton Brook, flowing from east to west across the site and beyond. The land starts to gradually rise beyond this watercourse but remains below the road level by some 3 metres.

**Proposal**

The proposal is in outline with only the detail of access to be considered. Whilst indicative plans provided show up to 5 five dwellings arranged parallel to Repton Road

9/2015/0563 - 124 Repton Road, Hartshorne, Swadlincote DE11 7AE



behind the existing hedgerow (where retained) and a private driveway across their frontage; this is not a detailed part of the proposal. At present a mix of three and four bedroomed dwellings are indicated. The indicative layout shows the driveway served by a new access, slightly repositioning the one installed under an extant permission. The dwellings would in essence continue the existing northern side to the ribbon of development along Repton Road which terminates on the southern side level with the western boundary. Each dwelling would have front and rear amenity space, including car parking. The indicative plans suggest bungalows with rooms in the roof space. Again this is only indicative and falls to consideration at the reserved matters stage.

### **Applicants' supporting information**

The Planning, Design and Access Statement (PDAS) highlights that a previous permission for the erection of 5 holiday lodges, retail and community building and associated access and parking has been implemented and is extant. The PDAS then discusses the national policy position in respect of housing land supply and the status of local planning policy in this respect, of which it is considered to be out of date. Taking this into account and in view of the extant consent, it is considered the proposal would result in a logical amendment to the village confines as the proposal represents a logical development adjacent to the built up area with development already on two sides. In terms of design, whilst in outline it is considered the development can be accommodated without any compromise to the amenity of the surrounding residents, with accessed via a shared private drive and adequate parking provision. The dwellings are in character and the scale and layout of the area, and would sit comfortably on the application site. Overall it is considered that the development comprises a logical and sustainable form of development in line with the emerging but as yet untested local plan. The PDAS also sets out the case that due to the lawful implementation of the aforementioned permission, the site is classified as brownfield – not greenfield – and a legal opinion is provided in support of this stance.

A review of the Ecology Report provided with the previous application is provided. This concludes no material changes in circumstances since the previous assessment was carried out. That Report assessed the site for the presence and suitability of habitat for protected species, namely bird nesting sites, badgers, bats, great crested newts and water voles. No evidence of the site being used by any protected species was found. However badger paths and snuffle hole were observed, whilst two species of bat were observed but not roosting within the site. No notable or listed trees were identified on site, and no evidence of rabbits or hares were found. Advice and recommendations for the biodiversity enhancement of the site are provided, including nest boxes bat boxes and protection of species during the course of development.

### **Planning History**

9/2014/0810: Outline application (all matters except for access reserved) for residential development – Refused October 2010.

9/2012/0712: Variation of condition 12 of planning permission 9/2009/0346 to allow for the submission of a scheme for the removal of a temporary access culvert prior to the commencement of lodges 1 & 2 – Approved September 2012.

9/2009/0346: Erection of five holiday cabins, village shop, tea rooms and hair salon with associated access, parking and landscaping – Approved September 2009.

## **Responses to Consultations**

The County Highway Authority notes the previous approval provided access to 5 holiday lodges, tea rooms and a village shop. They seek conditions to secure suitable access and visibility arrangements alongside informatics, noting the application is made in outline only.

The NHS Southern Derbyshire CCG considers the GP practices serving the site have spare capacity to manage increased patient demand of this scale. Accordingly they do not seek a contribution.

The Development Control Archaeologist notes the proposal is within a site described on the Derbyshire Historic Environment Record as an “amorphous area of earthworks, possibly representative of deserted medieval settlement”. The earthworks are visible on aerial photographs, but it is felt that the majority represent palaeochannels associated with a former course of the brook through the site. The eastern part of the site does however exhibit some more regular earthworks which could well be the remains of medieval or early post-medieval settlement. He therefore recommends that any archaeological interest should be addressed through a scheme of archaeological recording to take place in advance of development, secured by condition.

Derbyshire Wildlife Trust notes the findings of the update to the Ecology Report comprising a protected species survey assessment, Phase 1 Habitat Survey, bat surveys and great crested newt surveys. The protected species interest is not considered to be a significant constraint and overall it is considered that adequate ecological survey work has been undertaken in support of the application. The landscaping detail under reserved matters can look to secure appropriate compensation for loss of hedgerow and an overall biodiversity gain.

Severn Trent Water Ltd raises no objection.

## **Responses to Publicity**

Hartshorne Parish Council objects on the following grounds:

- i) the development falls outside the village envelope;
- ii) the village is unsustainable with very limited transport;
- iii) a similar application was refused recently; and
- iv) along with other proposed development, the primary school would be unable to accommodate any additional students.

Hartshorne Village Residents Association objects on the following grounds:

- i) all previous reasons for refusal are still valid, in particular the intrusion into the countryside
- ii) the contention that the site is now a brownfield site is not valid; with the extant consent for non-permanent buildings and it is understood that on cessation of the use the buildings would be demolished and the site restored to greenfield status;



- iii) the laying of one concrete base upon which no building was ever erected cannot denote a "lawful start"; and
- iv) the holiday lodges project failed and the planning consent has lapsed.

7 objections have been received from 6 separate addresses, raising the following concerns:

- a) the proposal would lead to an extension of the existing ribbon;
- b) the proposed development is outside the village boundary;
- c) would result in a harmful intrusion into the countryside;
- d) encroachment into the National Forest;
- e) would not compromise sustainable development;
- f) the site is still essentially a greenfield site;
- g) houses would look out of place and look odd on entering the village;
- h) the proposals are out of character for the village;
- i) removal of hedgerow;
- j) the majority of the wildlife survey was carried out over a year ago and prior to recent clearance of vegetation;
- k) recent surveys identified young brown trout, crayfish; 32 different species of birds, toads, herons, rabbits, hare, pheasants, kestrels, buzzards and barn owls;
- l) there is a pond on the site attracting wildlife;
- m) a bend in the road could be dangerous for vehicles leaving the site;
- n) access is onto a narrow busy road at a point where vehicles exceed the limit;
- o) the proposals would cause a material increase in traffic onto Repton Road;
- p) horses and riders use the road daily;
- q) whether there would be sufficient parking provision;
- r) increased surface water runoff to the brook causing flooding downstream where Repton Road crosses over it;
- s) limited sewer capacity to serve the dwellings;
- t) it is a re-hash of previously rejected application; and
- u) the proposal is very different to holiday lets of partial annual occupancy.

## **Development Plan Policies**

The relevant policies are:

- Saved Local Plan 1998: Housing Policies 5, 8 and 11 (H5, H8 and H11), Environment Policies 1, 11 and 14 (EV1, EV11 and EV14), and Transport Policies 6 and 7 (T6 and T7).

## **Emerging Development Plan Policies**

The relevant policies are:

- Local Plan Part 1 (Submission Version): policies S4 (Housing Need), S6 (Sustainable Access), H1 (Settlement Hierarchy), H19 (Housing Balance), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport) and INF9 (Open Space, Sport and Recreation).

## National Guidance

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

## Local Guidance

- Housing Design and Layout SPG.
- Section 106 Agreements – A Guide for Developers

## Planning Considerations

As discussed above the application is made in outline with all matters of detail reserved. The main issues central to the determination of this application are:

- principle of development and weight afforded to policy;
- infrastructure and services;
- visual and landscape impacts;
- ecological considerations;
- heritage considerations;
- highway safety; and
- other relevant planning matters.

## Planning Assessment

### Principle of development and weight afforded to policy

The site lies outside the settlement confines for Hartshorne, not catered for by way of saved policy H5 and beyond the scope and intentions of saved policy H8. It therefore conflicts with H8 as well as saved policy EV1. H5, which defines the village confines, can be afforded little weight as it is no longer playing a part in significantly boosting the supply of housing. The purpose of H8 does not align with a proposal of this nature and thus the policy is not considered applicable. Recent appeal decisions point to EV1 also being a policy relevant to the supply of housing. Notwithstanding this, EV1 accepts that some development in the countryside is unavoidable and indeed it could be argued that this proposal could fall as 'unavoidable' given the current shortage in the supply of housing. Hence whilst restraining housing delivery in principle and limiting the weight which can be afforded to it; it provides qualitative protection to the countryside by safeguarding character and landscape quality, as well as ensuring all development in the countryside is designed so as to limit its impact. These secondary parts of the policy provide a degree of consistency with section 11 of the NPPF.

With this in mind, the decision rests on the balance of sustainability when considering the merits of the proposal. The desire to significantly boost the supply of housing must be given significant weight, particularly in light of shortfall of the 5-year housing supply. The emerging Plan envisages this quantum of development for Local Service Villages such as Hartshorne, so there is some affinity with the emerging Plan. In this sense the principle of the existing services and infrastructure to support this scale of development has already been established at a strategic level, although detailed consideration of this remains necessary (as set out below). Paragraph 55 of the NPPF also provides support noting "housing [in rural areas] should be located where it will enhance or maintain the

vitality of rural communities". There are also economic benefits arising from the whole proposal - both short and long term, with construction phase employment and subsequent occupation leading to increased revenue to local businesses and services.

The applicant advances that the site should be classed as brownfield given the holiday lodges permission has been implemented. The implementation is not disputed with the access and foundations for one lodge formed within the specified time limit, and such works have been held by the Courts to constitute commencement of development for the purposes of the 1990 Act. Whether the site falls to be classified as brownfield or greenfield is more subjective, based on a matter of fact and degree. The NPPF provides guidance on the matter. However it is not considered to be an important factor in the determination of this application. Whilst brownfield sites are preferred for development under current and emerging policy, they occur within and outside of settlement confines – sometimes in remote locations. However remote sites are less likely to be appropriate for proposals such as this one, whereas those within or on the edge of settlements would be more appropriate. The same is just as true for greenfield sites. The test therefore is whether the development is sustainable – not the status of the land.

Whilst a lack of a 5-year supply might engage paragraph 49 of the NPPF, it does not automatically "stand down" local plan policies – it merely challenges the weight which may be afforded to them; and an unsustainable development means the presumption in favour set out under paragraph 14 does not apply. With this point in mind, attention is given to the impacts of the development and conflict with planning policy. For the presumption in favour of development to apply, sustainability must be viewed in the round whilst remembering that sustainable development is subjective – there is no minimum or consistent level beyond which a particular development can be said to be sustainable. It is a concept, and one that is determined differently from one site to another. The remaining parts of the report therefore give consideration to whether any other adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposals, after reaching a balance between the benefits and adverse impacts all the time noting that conditions or obligations may be used to mitigate or address an otherwise unsustainable impact.

### Infrastructure and services

The site is of a scale which ordinarily triggers contributions towards education and healthcare. Members will be aware that the NPPG was amended last year to preclude Councils from seeking contributions on developments of 10 or less, but that guidance has been recently quashed by the Courts such that it appears that the Council's former threshold of 5 dwellings or more can be relied upon again. Healthcare needs have been considered but the proposal is not considered to have a significant impact, and therefore a contribution cannot be substantiated given there is no identified need. Whilst no response has been received from the County in respect of education contributions, it is anticipated a similar response will be given although this will be reported to Members at the meeting. The maximum number of dwellings sought would trigger sums towards play and open space, built and sports facilities. With no provision on site and with existing deficiencies identified in the local area which would be further compounded by this development, the seeking of financial contributions is justified and CIL compliant.

### Visual and landscape impacts

A core principle of the NPPF is that planning should recognise the intrinsic character and beauty of the countryside. EV1 reflects this principle. The proposal would lead to an extension of the existing ribbon along this part of Repton Road and result in an intrusion into the countryside. However there are matters to consider in establishing the degree of harm arising. The extent of the development results in a 'squaring off' of the ribbon such that the northern and southern sides of it are contiguous. The extent of the intrusion is thus limited and to no more than the previous development. Indeed a form of residential development has already been permitted, and implemented, at this site and this had a similar arrangement of lodges continuing the existing line of dwellings to the Repton Road frontage, as well as arguably a greater harm by way of depth to the development through two of the lodges and the village shop. Indeed that development could be fully implemented bringing about similar or greater visual impacts, albeit the arrangement and design of those lodges, as well as intervening landscape features, helped to 'sink' the development within a largely wooded site over time. A public footpath crosses the agricultural land to the north of the brook at the rear of the site where, from this aspect the development may appear slightly more prominent than its predecessor, although this would only likely be to there being less woodland planting around the dwellings given the 'full time' residential nature proposed. The need to remove additional hedgerow in order to achieve the proposed access and visibility splays would further increase the initial visual impact.

It must also be noted that the development is in outline. Layout, scale, appearance and landscaping are to be reserved. Whilst 5 dwellings are suggested, the balance between built form and maintaining prevailing character may well result in a 'less dense' layout – which could include fewer dwellings – all the time either viewed against the backdrop of existing built form or as a similar intrusion to that already consented. The indicative layout under this proposal also addresses some concern under the previous application regarding an increase in floor levels relative to the approved lodges. Structural and substantial landscaping could be secured to the Repton Road frontage and on land to the rear in the control of the applicant. Whilst these matters are reserved for later consideration, there is sufficient confidence that minimal visual harm and intrusion would arise and on balance the impacts arising are not significant and demonstrable to sustain a refusal.

#### Ecological considerations

It is considered there is adequate information to enable determination of the application. The updated survey demonstrates that protected species are either absent or can be appropriately mitigated for. Detailed design and layout at reserved matters stage could also work around the constraints and offer biodiversity enhancement where possible. An additional element of hedgerow requires removal due to a slight repositioning of the access when compared to the original approval. This additional loss is not considered to bring about a material impact above and beyond that already accepted and implemented under the previous approval.

#### Heritage considerations

The comments from the Development Control Archaeologist are noted. Officers previously queried the differing approach to this application compared to the implemented approval in order to ensure compliance with the NPPF. It arises that the historic environment record was not added until after the original permission and that as the archaeological interest in the site has emerged in the intervening period it is now a

material consideration. This is no different to relatively recent changes in coal mining legacy leading to later permissions being subject to additional constraints. It is not considered unreasonable to support the requested investigation in the form of a condition, in line with the provisions of EV14 and the NPPF.

#### Highway safety impacts

The proposed new access would be located at a point where the speed limit is 30 mph, virtually in the same position as the 2009 approval. The alterations to the existing frontage hedgerow have already been implemented in the majority and would ensure the required visibility in both directions is achieved. A pedestrian footway into the site would be provided as an extension of the northern footway to Repton Road. As a result the Highway Authority has no objection subject to a condition, and the site appears capable of providing suitable parking and turning space to serve the dwellings.

#### Other relevant planning matters

As discussed above the design of the proposal is for later consideration. It is considered the site can be developed in compliance with the space between dwellings standards set out in the SPG. The indicative scale and massing would harmonise with surrounding dwellings as the first floor would be accommodated within the roof space.

Although the Repton Brook passes through the land ownership, where it is subject to Flood Zone 2 and 3 designations, the proposal would be located outside of these areas with a less than 1 in 1000 annual probability of flooding. There was no objection in principle from the Environment Agency to the holiday lodges and this is considered to remain applicable now with similar areas put to hard surfaces. Surface water drainage can be addressed through condition to ensure sustainable drainage principles are implemented.

#### Summary

Whilst not in compliance with the Development Plan, the emerging Plan provides indication that such sites could form part of a formal allocation at a later date, and it is of a quantum commensurate with that Plan. In the wider strategy it is clear that sites beyond the existing settlement confines will need to be utilised to meet overall housing need for the District, and those confines and related policies can be afforded very limited weight given the status of housing supply – especially when taking cues from recent significant appeal decisions. A quasi-residential form of development has also been secured on this site, which is within reach of a reasonable provision of local services and facilities or connections to, and that development could be built out leading to a similar degree of visual harm arising from the extension of the existing ribbon intruding into the countryside. In this sense the extent of harm arising is substantially tapered. Coupled with appropriate design, density and setting the dwellings at appropriate levels, the visual impact of the development is considered to be outweighed by the wider benefits of contributing towards the supply of housing in the settlement and wider area. Hence whilst broadly similar to the previously refused proposal, there is now greater evidence at hand that saved policies cannot be relied upon and given the harm would be little different to that already established under the extant consent, permission should be granted.



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.** Grant delegated authority to the Planning Services Manager to complete a Section 106 Agreement to secure financial contributions towards open space, sports and built facilities; and

**B.** Subject to A, **GRANT** permission subject to the following conditions:

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. This permission is granted in outline under the provisions of Article 5(1) of the Town & Country Planning (Development Management Procedure) (England) Order 2015, and the further approval of the Local Planning Authority is required (before any development is commenced) with respect to the following reserved matters:

(a) appearance;

(b) landscaping;

(c) layout; and

(d) scale.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

3. Details submitted under condition 2 shall include the proposed finished floor levels to the dwellings, including existing and proposed surrounding land levels relative to the dwellings, as well as proposed boundary treatments and surfacing materials, a substantial landscaping buffer to the Repton Road frontage and the rear of the site (on land in the control of the applicant), and details and positions of existing rear and side facing windows at 124 Repton Road, Hartshorne.

Reason: To ensure that a detailed assessment of the impact of the dwellings on the visual and neighbouring amenities of the area can be undertaken.

4. No development shall commence until all retained hedgerows and trees, as shown on the approved plan, have been fenced with steel mesh fencing to 2.3m high supported by steel scaffold poles staked at 3 metre centres. This protection shall ensure vehicles, building materials and other temporary structures/cabins are not located on the land outlined in blue to the rear of the site. The fencing shall be retained in position until all building works on adjoining areas have been completed unless otherwise agreed in writing with the Local Planning Authority.

Reason: To protect the hedgerows/trees from undue disturbance, and to safeguard against protected species previously identified in the Repton Brook, recognising the initial stages of development could cause unacceptable impacts.

5. a) No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved in writing by the Local Planning Authority, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and
- i. The programme and methodology of site investigation and recording;
  - ii. The programme for post investigation assessment;
  - iii. Provision to be made for analysis of the site investigation and recording;
  - iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - v. Provision to be made for archive deposition of the analysis and records of the site investigation; and
  - vi. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- b) No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under condition (a).
- c) 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 (a) 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, recognising that initial groundworks could lead to irrevocable loss of heritage assets.

6. No development shall commence until an Ecological Mitigation & Enhancement Strategy has been submitted to and approved by the Local Planning Authority. The Strategy shall follow the recommendations of the Ecology Survey ref: WLC/ES/160614 prepared by Wildlife Consultants Limited (dated 14th July 2014) submitted with the application. Temporary mitigation provisions shall be implemented prior to any works commencing on site and thereafter retained throughout the course of construction. Permanent mitigation and enhancement measures shall be implemented prior to first occupation of the dwelling(s) hereby approved and thereafter maintained as such.

Reason: In the interests of safeguarding protected species and providing an overall net biodiversity enhancement, recognising the initial stages of development could cause unacceptable impacts.

7. Before any other operations are commenced, a new vehicular and pedestrian access shall be formed to Repton Road in accordance with the plan/drawing ref: 15.3108.01 and provided with visibility sightlines extending from a point 2.4 metres from the carriageway edge, measured along the centreline of the access, for a distance of 45 metres in each direction measured along the nearside carriageway edge. The land in advance of the visibility sightlines shall be

retained throughout the life of the development free 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, recognising the initial stages of development could cause unacceptable impacts.

#### Informatives:

Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 12 weeks prior notification should be given to the Environmental Services Department of Derbyshire County Council before any works commence on the vehicular access within highway limits; please contact 01629 538537 for further information.

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 landowner.

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

**Item**            **1.6**

**Reg. No.**        **9/2015/0613/FH**

**Applicant:**  
**Mrs Joanne Nicol**  
**80 Main St**  
**Weston on Trent**  
**Derby**  
**DE72 2BL**

**Agent:**  
**Mr Joshua Botham**  
**Bothams Architectural Design**  
**11 Norton Ave**  
**Somersall**  
**Chesterfield**  
**Derbyshire**  
**S40 3NG**

**Proposal:**        **DEMOLITION OF EXISTING BARN AND**  
                         **CONSTRUCTION OF REPLACEMENT ANNEXE AT 80**  
                         **MAIN STREET WESTON ON TRENT DERBY**

**Ward:**            **ASTON**

**Valid Date:**     **07/07/2015**

**Reason for committee determination**

Councillor Watson has requested this case be considered by the Committee as local concern has been expressed about a particular issue.

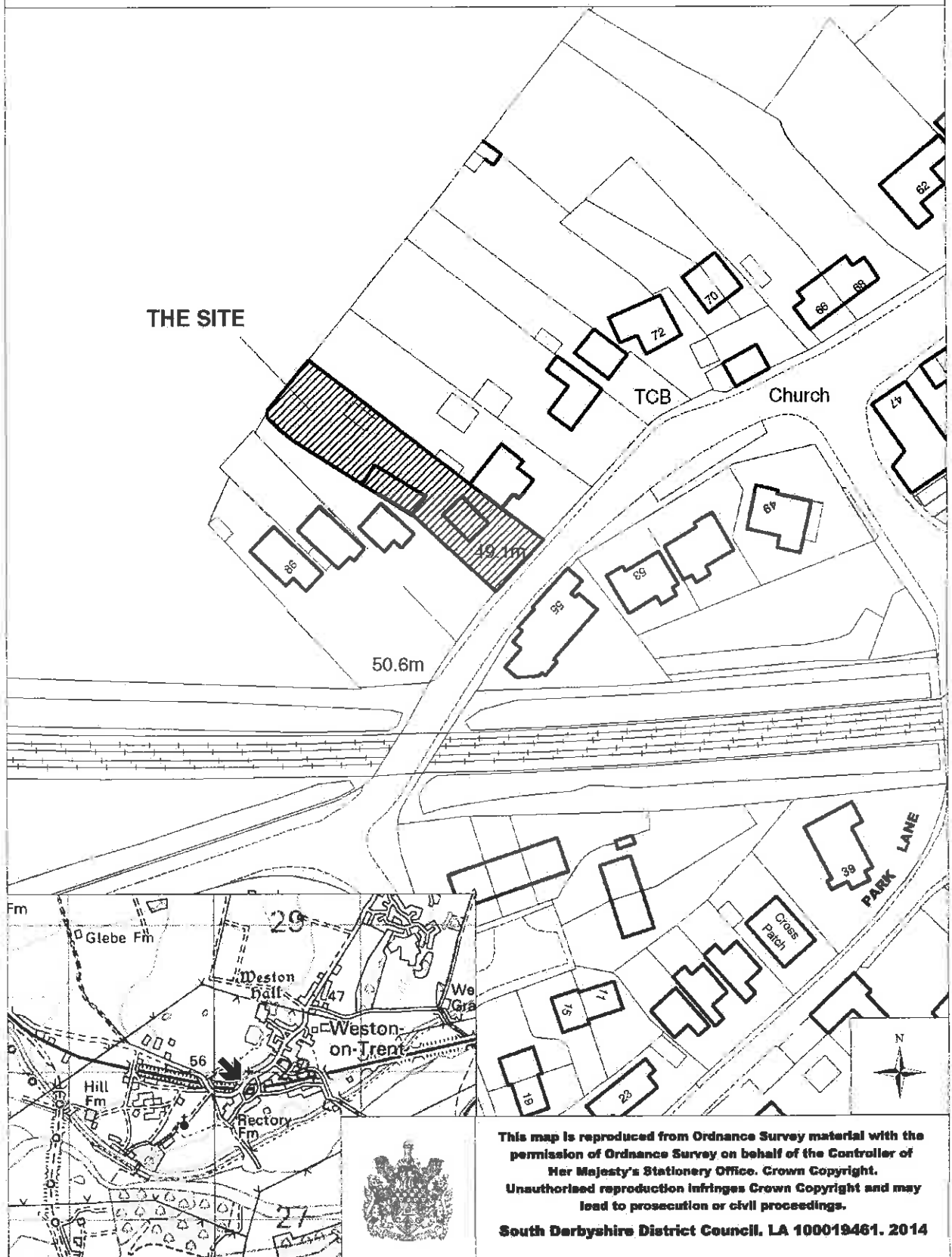
**Site Description**

The site consists of a two storey detached dwelling, which is set back from the highway and is elevated from the street. There is a two storey barn to the rear of the premises and a single storey outbuilding to the rear that is used as a garage/shed for the purposes of the dwelling.

**Proposal**

Consent is sought to demolish the existing barn to the rear of no.80 Main Street and to erect a two storey building which would be of the same footprint as the existing building. The proposed building would be connected to the existing property by a conservatory.

The development would be used as an ancillary annexe to no.80 Main Street and consent is sought to not be used as a separate dwelling.





## **Applicant's supporting information**

- Householder application form for planning permission.
- Design and Access Statement
- Justification Statement for Demolition of Existing Barn
- Site Location plan and amended block plan (drawing number – PL01)
- Existing plans and Elevations (drawing number - PL\_02)
- Proposed Plans and Elevations (drawing number – PL\_03)

## **Planning History**

9/2013/1020 - the conversion of a barn to domestic annexe with two storey conservatory – Refused - 17/02/2014

9/2014/0261 – conversion of a barn to domestic annexe with the erection of a conservatory - Approved with conditions - 13/05/2014

## **Responses to Consultations**

The County Highway Authority has no objection subject to a condition which would limit the parking and access to be ancillary to the main dwelling (no.80 Main Street).

## **Responses to Publicity**

The Parish Council comments that Main Street is a busy road and it is necessary that the hours of construction are conditioned in order to limit the impact of the construction on the highway and neighbouring properties.

Three comments from local residents and their representatives. Their comments include;

- a) Concerns that the proposed annexe will be used as a separate dwelling house and that the internal doors within the linked conservatory area would be bricked up to create separate dwellings.
- b) The proposed development should be assessed “as a proposal to erect a single new separate dwelling” to the rear of the existing property. This would be harmful in terms of; increased residential use, loss of amenity space and the level of overlooking that the development poses.
- c) A change of use to an annexe should fall within Permitted Development.
- d) The existing building acts as boundary treatment for neighbouring property no.82 Main Street. Therefore, the new building would cause a detrimental effect to the setting of the neighbouring property due to the impact of the proposed building and its new materials.
- e) On the basis that the building is being demolished, the development should be assessed in context as new development.
- f) If the development can only be facilitated by the demolition of the existing building, why does the proposed building have to use the same size and footprint as the existing building? This is too large; surely a single storey building would be more appropriate.

- g) The demolition of the proposed building is driven by cost implications as opposed to structural instability. The building to be demolished was used as a workshop, not as a barn and was therefore, “over-engineered” and would be sufficient and suitably structurally sound for residential conversion.
- h) The foundations of the existing and proposed building are too close to neighbouring property (no.82 Main Street). This would result in an additional application being submitted in order for the works to be carried out, so that the property can be accessed.
- i) The position of the stove extractor flue can be seen from no.82 Main Street. This would create an eyesore and bring fumes and smells from cooking into the garden on no.82 Main Street.

## **Development Plan Policies**

The relevant policies are:

- Saved Local Plan 1998:  
H13 – Residential Extensions

## **Emerging Development Plan Policies**

The relevant policies are:

- Submission Local Plan Part 1:  
  
S2 – Presumption in favour of Sustainable Development

Supplementary Planning Guidance (SPG)

- Extending your Home
- Housing Design and Layout

## **National Guidance**

National Planning Policy Framework (NPPF) paragraphs

- 9 - Purposes of Sustainable Development
- 14 - Presumption in favour of Sustainable Development
- 17 - Core Planning Principles
- 56 - Requiring Good Design
  
- National Planning Practice Guidance (NPPG) ID 26 Design

## **Planning Considerations**

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

- Principle of ancillary annexe.
- Principle of the demolition of the existing barn.
- Impact on residential amenity.

## **Planning Assessment**

### Principle of ancillary annexe

The principal of a two storey ancillary annexe building to the rear of the premises has already been established as part of planning application 9/2014/0261, where planning permission was granted subject to conditions, for the retention and conversion of the existing building to an annexe to be used for ancillary purposes to the main dwelling. With the exception of the relocation of the conservatory to link between the two properties, this element of the proposal remains unchanged.

It would therefore, not be advisable to withhold permission on the principle of the use of an annexe to the rear of the premises, as an annexe building of this size has already been assessed by Planning Committee to be acceptable.

### Principle of the demolition of the existing barn.

It is necessary to assess if the demolition and rebuilding of the existing building would result in causing unacceptable harm to neighbouring properties and the amenity of residents.

Concerns have been raised with regard to the need to demolish the existing building, as due to its previous use as a workshop, it should be suitably, structurally sound to accommodate an ancillary residential use. It is noted that the barn is a noteworthy building and does retain some character. However, as the building is not a listed building, does not fall within a Conservation Area and does not make a substantial contribution to the public amenity i.e. is not visible from the street scene, the Council would have no powers to resist the demolition of the building.

### Impact of proposed barn

As an erection of a new building, the development does not strictly comply with the Council's SPG, the proposed building would fail to comply with the 45° code and the standard 5-6m gap between properties. However, when assessing the proposal against the existing situation and context, the proposed development would pose no greater harm, i.e. no increase in footprint or height than the existing building, which could remain indefinitely without the need for planning permission. The re-building of the existing building, subject to suitable materials would not result in the proposal being out of character or scale with the existing, and the proposal has fewer side facing windows than the existing building and therefore, on balance, creates less of an opportunity for overlooking. Therefore, the development complies with Housing Policy 13 of the Saved Local Plan.

### Conclusion

In conclusion, the rebuilding of the barn using the same footprint and to the existing height would pose no greater harm than the existing structure and therefore, would not warrant withholding permission. On the basis that the principle of the use of the existing barn has been deemed acceptable as an ancillary annexe through the previous permission 9/2014/0261, it would not be prudent to resist the proposal, especially as the ancillary use could be controlled further through the use of planning conditions.

## Recommendation

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with plan/drawing PL01, received on 7th July 2015; plan/drawing PL\_02, received on 7th July 2015 and plan/drawing PL\_03, received on 7th July 2015 unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).  
Reason: For the avoidance of doubt.
3. A sample of both the roof tile and the brick shall be submitted for approval in writing by the Local Planning Authority before work commences.  
Reason: To ensure the building/extension is in keeping with its surrounding in the interest of the character and visual amenity of the area.
4. The living accommodation hereby permitted shall be occupied solely by members of the household of 80 Main Street or by domestic staff, and shall not be severed from the main house as a separate and unconnected dwelling.  
Reason: Although the erection of an extension to provide additional accommodation to be used in conjunction with the existing dwelling is acceptable, the Council would not normally be inclined to allow the formation of a separate residential unit in this locality. Since the extension includes all the domestic facilities necessary for the establishment of a separate self-contained unit, the Council hereby seeks to make it clear that separate occupation is not authorised by this permission.
5. The annexe, the subject of the application, shall remain ancillary to the main dwelling, No.80 Main Street, and be for the use of the dependent relatives only.  
Reason: Although the erection of an extension to provide additional accommodation to be used in conjunction with the existing dwelling is acceptable, the Council would not normally be inclined to allow the formation of a separate residential unit in this locality. Since the extension includes all the domestic facilities necessary for the establishment of a separate self-contained unit, the Council hereby seeks to make it clear that separate occupation is not authorised by this permission.

### Informatives:

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

**Item**            1.7

**Reg. No.**        9/2015/0641/FH

**Applicant:**  
**MR H ATWAL**  
**THE HILL**  
**DEEP DALE LANE**  
**BARROW ON TRENT**  
**DERBY**  
**DE73 7NH**

**Agent:**  
**Mr Ernie Austin**  
**E. Austin Planning & Building Services**  
**Solitaire**  
**Main Road**  
**Higham**  
**Derby**  
**DE55 6EH**

**Proposal:**        **THE ERECTION OF AN EXTENSION AND**  
                         **ALTERATIONS AT THE HILL SINFIN LANE BARROW**  
                         **ON TRENT DERBY**

**Ward:**            **ASTON**

**Valid Date:**     **27/07/2015**

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

The item is presented to Committee at the result of a Councillor Watson because local concern has been expressed about a particular issue and unusual site circumstances should be considered by the Committee.

#### **Site Description**

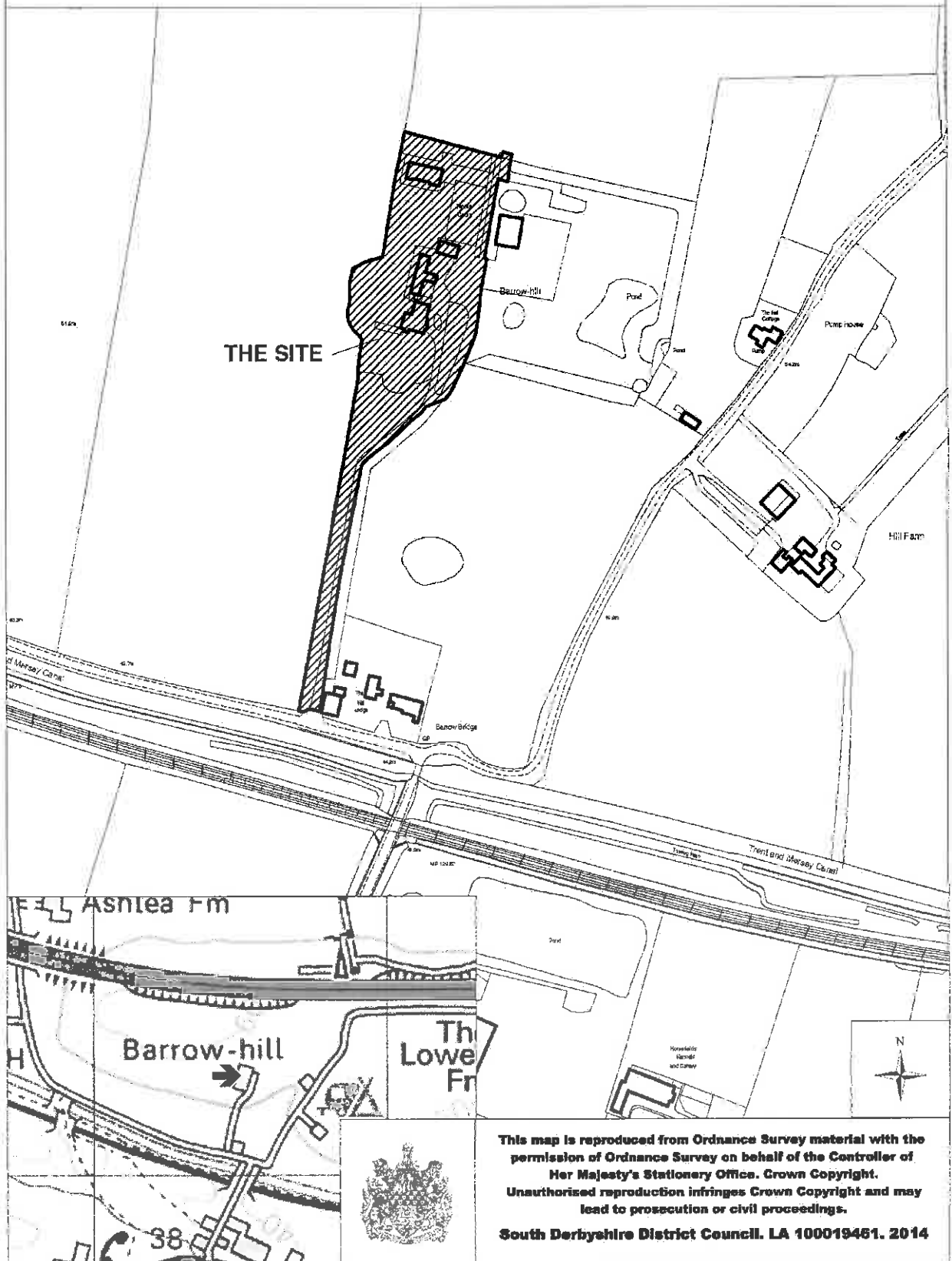
A long tree lined drive leads from the main entrance (at the south of the plot) to the application property dwelling (in the northern part of the plot). There are several other built structures close to the application property dwelling, including other dwellings within the same ownership. The application property is of Victorian origin with several additions to it and other additional buildings around it. The site curtilage is extensive with a large residential curtilage.

The land levels gently slope from the main southern entrance of the site to the northernmost part of the site.

#### **Proposal**

The application proposes the replacement of a two-storey extension.





## **Applicant's supporting information**

None.

## **Planning History**

9/1991/0142 – Planning permission was granted for the two-storey extension that the proposal now seeks to replace.

## **Responses to Consultations**

None.

## **Responses to Publicity**

Barrow on Trent Parish Council questions whether all of the work that has taken place at the property has the relevant planning consents. They also state that the application property is not a bungalow, but a large house that stands out against the skyline and dominates the view from the road and that continual expansion of the property does nothing to retain or enhance the nature of this original Georgian property and curtilage.

## **Development Plan Policies**

The relevant policies are:

- Saved Local Plan: H13(LP)

## **National Guidance**

- National Planning Policy Framework (NPPF) 11-14, 17, 58, 196, 197.
- National Planning Policy Guidance (NPPG) ID21b, ID26.

## **Local Guidance**

- Supplementary Planning Guidance 'Extending Your Home' (SPG).

## **Planning Considerations**

The main issue central to the determination of this application is the design of the proposal.

## **Planning Assessment**

The proposal replaces an extension that is of poor design not in keeping with the main house. The replacement extension on the other hand is of a design more in keeping with the existing Victorian character of the house. A condition that ensures the use of matching materials would help to ensure sympathetic execution of the development. From a design point of view the proposal is therefore considered acceptable.

Due to the substantial distance from the proposal to any neighbouring property, there would be no impact upon neighbouring amenities.

The proposal has no impact upon the current parking arrangement.

In response to the comments raised by Barrow on Trent Parish Council, limited information was supplied in order to ascertain which specific developments were believed to have been undertaken without planning consent. On-going discussions with the Parish Council are being pursued to ascertain the precise subjects of this complaint.

### **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. All external materials used in the development to which this permission relates shall match those used in the existing building in colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.  
Reason: To safeguard the appearance of the existing building and the locality generally.

### **Informatives:**

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

**Item**            **1.8**

**Reg. No.**        **9/2015/0646/FM**

**Applicant:**  
**Mrs Jo Mead**  
**1 Wheatfield Court**  
**Willington**  
**Derby**  
**DE65 6PT**

**Agent:**  
**Mr Darryn Buttrill**  
**bi Design Architecture Ltd**  
**79 High Street**  
**Repton**  
**DE65 6GF**

**Proposal:**        **PROPOSED REPLACEMENT DWELLING AND  
DETACHED GARAGE AT 54 THE CASTLE WAY  
WILLINGTON DERBY**

**Ward:**            **WILLINGTON & FINDERN**

**Valid Date:**      **13/07/2015**

**Reason for committee determination**

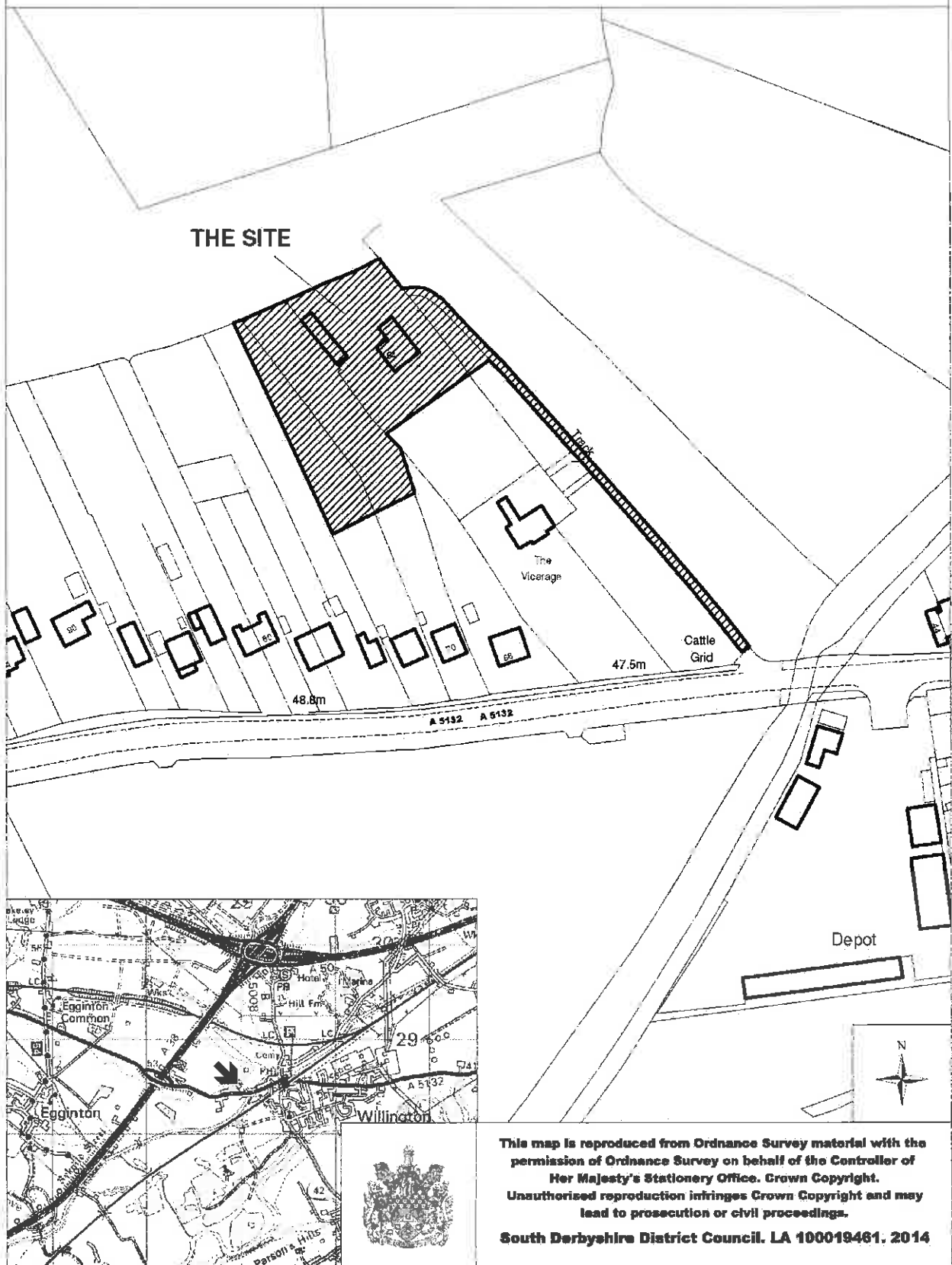
The application is brought to committee at the discretion of the Planning Services Manager as there are policy implications that should be considered.

**Site Description**

No. 54 Castle Way comprises a large, detached brick and tile, two-storey Victorian dwelling with two 'walk-in' bay windows in the main elevation, and a brick and tile stable outbuilding to the rear, which was the subject of a planning application for conversion to a dwelling in 1989. The approved conversion has not been pursued and part of the roof of the building is now in a state of disrepair. The outbuilding is linked to the house by a series of brick walls. The house is set within a spacious plot and is surrounded by mature trees some of which are visually important. There is an external metal fire escape stair on part of the south-west facing elevation. The building was originally used as a vicarage and, most recently, as a nursing home for the elderly. This latter use ceased during the 1980s, although the building has been occupied as a dwelling until comparatively recently.

The site is accessed via an existing open track leading off Castle Way close to the Trent and Mersey Canal and the Conservation Area. There is an existing modern dwelling (The [new] Vicarage) to the south of the site. The open land to the east of the access is used as grazing land for livestock.

9/2015/0646 - 54 The Castle Way, Willington, Derby DE65 6BU





## **Proposal**

It is proposed to demolish the existing dwelling and outbuilding and redevelop the site by the erection of a 6-bedroom, 2½ storey dwelling, with attached double garage in a similar position to the existing buildings, together with the erection of a detached 2-storey, 6-bay garage with workshop and storage above, in the south-western corner of the site. The dwelling would be of a modern, design, incorporating extensive glazing and steep roof pitches with solar panels. It would comprise living rooms, dining room, dining kitchen, games room, bar area, utility/w.c. and double garage on the ground floor, six bedrooms (four of which would be en-suite), dressing rooms, a further sitting room by way of a mezzanine on the first floor and a study area and balcony within the roofspace.

## **Applicants' supporting information**

By way of justifying the proposal, the application is supported by a Planning Statement, a Design and Access Statement and an Ecological Appraisal.

The Planning Statement can be summarised as follows:

- The existing buildings could be significantly increased under permitted development rights;
- The design of the proposed replacement dwelling is considered to be a better solution in order to create a purpose built energy efficient house;
- The dwelling would be well integrated into the site rather than a series of ad hoc extensions and outbuildings;
- Whilst the existing property would have been seen from the road when it was originally built, subsequent housebuilding and tree planting to the front of the property now provide good screening;
- The existing building is not listed or in a conservation area;
- Previous changes to the buildings and years of neglect have left the buildings severely dilapidated and not fit for human habitation;
- The building has little architectural merit and no longer offers amenity value to the area;
- The replacement dwelling will be well insulated and air tight and will achieve a value of 5 on an air pressure test under the Building Regulations;
- The proposed dwelling will provide a modern family home that could not be provided by the extending and linking the existing dwelling and outbuilding;
- The new property will be re-oriented to face the access road and the countryside beyond;
- The proposed design of the replacement dwelling takes inspiration from Tony Holt designs, incorporating modern materials and proportions whilst using traditional roof pitches and building form and will be built to a high standard;
- Whilst the dwelling would not completely accord with Saved Housing Policy 8B it has been designed to overcome a number of design challenges of a unique design that will become part of Willington over the next 100 years.

The Design and Access Statement reiterates much of the Planning Statement and also provides comparisons between the existing and proposed dimensions and provides information on the family composition and why such a large dwelling is required.

The Ecological Appraisal provides information on breeding birds and roosting bats and confirms that evidence of roosting bats were found within the outbuilding.

### **Planning History**

9/1174/532 – Conversion of building to a Home for the Elderly – approved 26/02/1975

9/789/440 – Change of use from residential nursing home to offices – approved  
12/09/1989

9/789/441 – Conversion of stable to dwelling – approved 19/10/1989

### **Responses to Consultations**

The Environmental Protection Officer (contaminated land) requires a condition with regard to ground gas.

The County Highway Authority considers that, whilst the existing visibility splays from the existing vehicular access currently fall below current national guidelines, the proposal is for a replacement dwelling and therefore a highway objection would not be sustainable. The CHA, therefore, has no objections subject to conditions.

Severn Trent Water has no objections and no comments.

Derbyshire Wildlife Trust confirms that sufficient survey work has been carried out with regard to roosting bats and supports the recommendation for the incorporation of integrated bat roost features within the new buildings. The Trust also recommends conditions with respect of breeding birds and alternative nesting opportunities for house sparrow and swallow.

### **Responses to Publicity**

None received

### **Development Plan Policies**

The relevant policies are:

- Saved Local Plan: Housing Policy 8B, Environment Policy 1, Environment Policy 9, Environment Policy 12, Environment Policy 13, Transport Policy 6

The emerging policies are:

- Local Plan Part 1 (Submission Version): S2, S3, S6, H19, SD1, SD4, BNE1, BNE2, BNE3, BNE4, INF1, INF2

### **Local Guidance**

- Trent and Mersey Canal Conservation Area Character Statement
- Housing Design and Layout SPG

## National Guidance

- National Planning Policy Framework (NPPF) paragraphs 7, 8, 11, 14, 17, 49, 56, 57, 64, 109, 111, 118, 121, 135, 186, 187, 203
- National Planning Practice Guidance (NPPG)

## Planning Considerations

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

- The principle of the development
- Neighbouring amenity
- Highway matters
- Existing trees within the site
- Ecology

## Planning Assessment

### The principle of the development

Saved Housing Policy 8B of the adopted Local Plan supports the replacement of existing dwellings outside settlements provided that:

- (i) The form and bulk of the new dwelling does not substantially exceed that of the original;
- (ii) The design and materials are in keeping with the character of the surroundings;
- (iii) The new dwelling is on substantially the same site as the old; and
- (iv) There is no increase in the number of dwelling units.

Whilst the proposal would accord with parts ii, iii and iv of the above policy, there is some debate as to whether the first criterion would be complied with. In order to assess this calculations have been provided to show the comparisons between the existing and proposed structures as follows:

Existing house footprint = 130 square metres  
Proposed house footprint = 351 square metres  
- difference = 231 square metres

Existing outbuilding footprint = 80 square metres  
Proposed outbuilding footprint = 172 square metres  
- difference = 92 square metres

It is acknowledged by the applicant's agent that the differences could be considered to be extensive. However, it is argued that with extensions and outbuildings that could be constructed under the permitted development allowances, the floor area for the existing buildings could total 1032 square metres compared to 523 square metres of the proposed buildings.

The Local Planning Authority has previously supported replacement dwellings in the District where the new dwelling has been considerably larger in form and bulk than the original. Two such permissions relate to Threeways and No. 45 Coalpit Lane, Coton in the Elms where the dwellings to be replaced held no architectural merit and therefore a positive benefit ensued. In this instance, the existing dwelling and outbuilding/stable, whilst not designated as listed buildings, are of some merit and hold some presence on the site.

Paragraph 135 of the NPPF relates to non-designated heritage assets and states:

*“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset”.*

Historically, the site is shown on old maps as accommodating The Vicarage which would have been a prominent building in the landscape, particularly as the dwellings along the road frontage did not exist at that time. The building quite obviously was designed to ‘make a statement’ to the wider area, including the Trent and Mersey Canal, which is now a designated Conservation Area.

Furthermore, whilst the NPPF recognises the importance of non-designated assets, it does not define what constitutes such an asset and therefore at appeal it would likely be viewed as being a subjective opinion only and one that would be arguable and open to interpretation, challenge and criticism. Given that the NPPF advises that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise (paragraph 11), a decision to approve or refuse the application should therefore be based on development plan policies, i.e. Saved Housing Policy 8B (i) of the adopted Local Plan, relating to the form and bulk of the replacement dwelling. The form and bulk of the existing dwelling is quite substantial and whilst the proposed dwelling would be larger, the size of the plot is extensive and is quite capable of accommodating the dwelling without it being cramped. The merits of the proposal are finely balanced and consequently a decision should be based on any harm that would likely result from the development. In this case, the site is not visible from any public footpaths, the road or from any public viewpoint, and therefore it would be difficult to argue that any harm that would result from the proposed replacement dwelling would be sufficient to withhold permission.

The site is no longer as prominent as it once was, and whilst it could be considered to retain some historic interest, this is insufficient reason for refusal, given that the building is not listed or in a conservation area. The arguments that have been made by the applicant in favour of new build with regard to energy performance are a consideration under paragraph 96 of the NPPF and can therefore be attached some weight.

#### Neighbouring amenity

There are no amenity issues with regard to neighbouring residents as the plot is extensive and well-screened by existing trees, and there would be more than sufficient distance between the existing dwelling to the south and the proposed dwelling to prevent any loss of privacy or amenity.

### Highway matters

The access track is existing and there are no proposals to alter its alignment or the junction with The Castle Way as part of the application. However, the Highway Authority has recommended, among other things, that the junction sightlines are improved as part of the overalls scheme in order to improve the applicant's safety and other highway users given the minor works involved and the substantial benefit that would be achieved.

### Existing trees

There are existing mature trees within the site, two of which are of notable value, namely an Oak and a Cedar. Both trees are in good health with a crown spread each of 8 to 12 metres. Both are considered to provide good habitats for wildlife. The young mature Oak tree is in very good condition, has a uniform shape and the potential to mature into a magnificent specimen. The Cedar is also considered to be a magnificent specimen and provides outstanding amenity value. Both trees are worthy of full TPO protection. There are other trees within the site that offer some amenity, notably a mature Oak located close to the Cedar. This tree, however, has a major defect (30% lean and an open decaying cavity on the main stem) and therefore a TPO should be avoided. Whilst the block plan for the proposed development indicates that the two trees identified would not necessarily be affected by the proposals it was considered advisable to protect the trees owing to their high amenity value. The Tree Preservation Order (No.408) has been made and is currently waiting to be confirmed.

### Ecology

Derbyshire Wildlife Trust has no objections to the proposal subject to conditions. It would be possible to incorporate integrated bat roost features within the buildings and a condition is proposed to ensure compliance with a scheme to be approved. There is also a requirement for a condition relating to breeding birds, in particular House Sparrow and Swallow.

### Overall conclusions

On balance, the loss of the existing dwelling and outbuilding/stable needs to be assessed against the harm that would result from the re-development of the site by the replacement dwelling. Whilst of limited historic merit, the buildings are not listed or within a conservation area and therefore there is no justification for refusing the application on heritage grounds. The form and bulk of the proposed dwelling and detached garage would not exceed that of the existing buildings to such a degree as to warrant refusal under Saved Housing Policy 8B (i) of the adopted Local Plan. A recommendation is therefore made to approve the proposal subject to conditions.

### **Recommendation**

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

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



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

2. The development hereby permitted shall be carried out in accordance with drawing Nos. 08, 09, 10 and 11 received on 13th July 2015 unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

3. No development relating to the construction of the replacement dwelling shall be commenced 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 character and appearance of the area.

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

Reason: In the interests of the appearance of the area and in order to safeguard the protected trees on the site, recognising that initial clearance and groundworks could compromise the long term health of the trees/hedgerows affected.

5. 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.

6. No development relating to the construction of the replacement dwelling shall be commenced until details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels have been 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.

7. No development relating to the construction of the replacement dwelling shall be commenced until a suitable scheme for the prevention of ground gas ingress has been submitted to and approved in writing by the Local Planning Authority (LPA). Alternatively, the site shall be monitored for the presence of ground gas and a subsequent risk assessment 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'.

Upon completion of either, verification of the correct installation of gas prevention measures (if any) shall be submitted to and approved in writing by the LPA prior to the occupation of the development hereby permitted.

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 the development.

8. No development relating to the construction of the replacement dwelling shall be commenced until space has been provided within the site curtilage for the storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives' and visitors' vehicles, laid out and constructed in accordance with details to be submitted in advance to the Local Planning Authority for written approval, and maintained throughout the contract period in accordance with the approved details free from any impediment to its designated use.

Reason: In the interests of highway safety.

9. No development relating to the construction of the replacement dwelling shall be commenced (excluding demolition and site clearance and the requirements of condition 8 above) until the existing access to The Castle Way (A5132) has been modified, laid out, constructed and provided with visibility sightlines extending from a point 2.4m from the carriageway edge, measured along the centreline of the access, to the extremities of the site frontage abutting the highway in each direction. The land in advance of the sightlines shall be maintained in perpetuity 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.

10. The replacement dwelling shall not be occupied until space has been provided within the application site for the parking and manoeuvring of residents' vehicles, 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.

11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 the garage accommodation and parking spaces to be provided in connection with the development shall not be used other than for the above stated purpose except with the prior permission of the Local Planning Authority granted on an application made in that regard.

Reason: In the interests of highway safety.

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

Reason: In the interests of highway safety.

13. No caravans or other domestic paraphernalia shall be located, parked or stored within the designated parking area unless expressly agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

14. The development hereby approved shall be carried out in accordance with the recommendations of the Ecology Appraisal for the incorporation of integrated bat roost features and alternative nesting opportunities for House Sparrow and Swallow within the new buildings in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority before any development commences for the construction of the replacement dwelling and detached garage.

Reason: In order to provide replacement roosting and nesting features and opportunities for bats and birds that would be lost as a result of the proposed development.

#### Informatives:

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 Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

The applicant is advised to seriously consider the installation of a sprinkler system to reduce the risk of danger from fire to future occupants and property.

The buildings, trees or shrubs on the application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to August inclusive and no removal of buildings, trees or shrubs that may be used by breeding birds should take place during that period unless a competent ecologist has undertaken a careful, detailed check for active birds' nests immediately before the work is commenced and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest. Any such written confirmation should be submitted to the Local Planning Authority. If you are in doubt as to the requirements of the law in this regard you should contact Derbyshire Wildlife Trust, East Mill, Bridge Foot, Belper, Derbyshire DE56 1XH, telephone: 01773 881188 or email [enquiries@derbyshirewt.co.uk](mailto:enquiries@derbyshirewt.co.uk)

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

**Item**            **1.9**

**Reg. No.**        **9/2015/0692/NA**

**Applicant:**  
**Messrs Atkin Brothers**  
**Grange Farm**  
**70 Twyford Road**  
**Barrow on Trent**  
**Derby**  
**DE73 7HA**

**Agent:**  
**Mr James Wilks**  
**J S Wilks FRICS**  
**6 Old Saddlers Yard**  
**Uttoxeter**  
**ST14 7RT**

**Proposal:**        **THE ERECTION OF A STEEL PORTAL FRAME WITH**  
                         **OPEN SIDES AND CLADDING TO ROOF AT 70 GRANGE**  
                         **FARM TWYFORD ROAD BARROW ON TRENT DERBY**

**Ward:**            **ASTON**

**Valid Date:**     **27/07/2015**

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

The item has been brought to Committee as a member of the Council has an interest in the land.

#### **Site Description**

The site is located on flat land within a cluster of existing farm buildings.

#### **Proposal**

The proposed building would be sited at the furthestmost north western point of the existing cluster of agricultural buildings and is intended to be used for hay and straw storage. It would comprise of a steel frame with open sides and a cladded roof. The length of the building would be 38.1m and the width would be 12.1m, the height to the eaves would be 6.6m and 8.3 metres to the ridge. The materials would be grey in colour to blend in with the existing buildings.

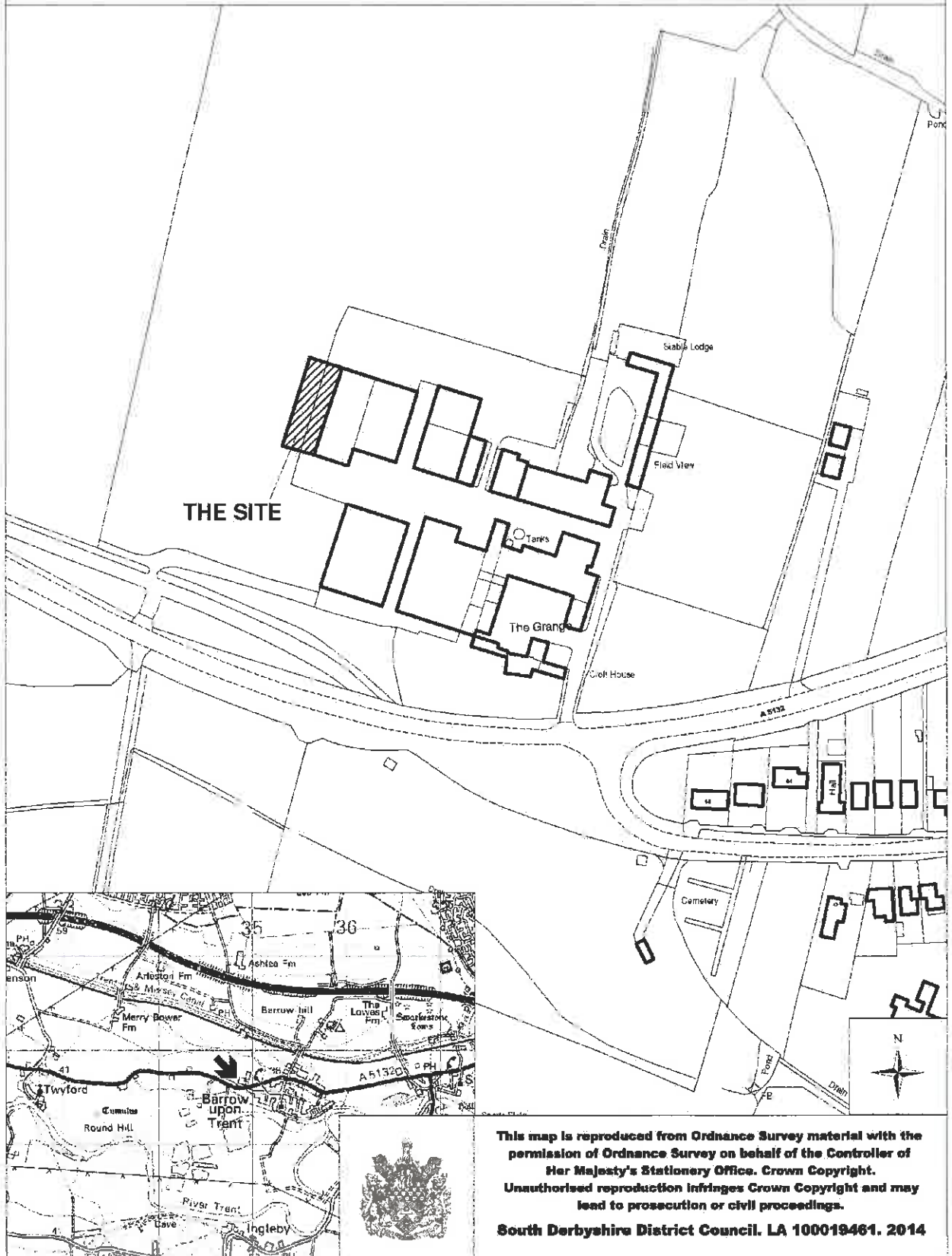
#### **Planning History**

9/2012/0015 - The erection of an end extension and lean to – Approved with Conditions - 08/02/12

9/2013/0421 - The erection of an agricultural building for storage of grain - Approved with Conditions – 17/07/2013

9/2013/0422 - The erection of an agricultural building for loose housing of cattle – Approved with Conditions – 17/07/2013

9/2015/0692 - Grange Farm, 70 Twyford Road, Barrow on Trent, Derby  
DE73 7HA





## **Responses to Consultations**

No comments received.

## **Responses to Publicity**

No comments received.

## **Development Plan Policies**

The relevant policies are:

- Saved Local Plan (SDLP): Environment Policy 5 (EV5).

National Guidance

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

## **Planning Considerations**

The main issue central to the determination of this application is whether further details of the siting, design and external appearance of the building are required.

## **Planning Assessment**

This is not a planning application. As a prior notification permission is deemed to be granted in principle. The notice gives the Council to opportunity to request further information about the proposal. However, in this instance, the proposed building would be located around a cluster of existing farm buildings and the proposed materials would match the existing buildings as much as is practicable. Therefore, the proposed building would not pose any risk to the visual amenity of the area.

The proposed development has been assessed against the requirements of Part 6 of the General Permitted Development Order 2015 and there are no objections to the proposal.

## **Recommendation**

**Advise the applicant that further details are not required.**

**Item**            **1.10**

**Reg. No.**        **9/2015/0731/FH**

**Applicant:**  
**Mr Adrian Dawson**  
**The Hill Lodge**  
**Deep Dale Lane**  
**Barrow On Trent**  
**Derby**  
**DE73 7NH**

**Agent:**  
**Mr Tim Foster**  
**2 Broomfield Cottages**  
**Morley**  
**Ilkeston**  
**Derby**  
**DE7 6DN**

**Proposal:**        **THE ERECTION OF NEW ENTRANCE GATES AND**  
                         **BOUNDARY WALLS AT THE HILL LODGE DEEP DALE**  
                         **LANE BARROW ON TRENT DERBY**

**Ward:**            **ASTON**

**Valid Date:**     **05/08/2015**

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

The application is reported to Committee at the request of Councillor Watson because, local concern has been raised about a particular issue and unusual site circumstances should be considered by the Committee.

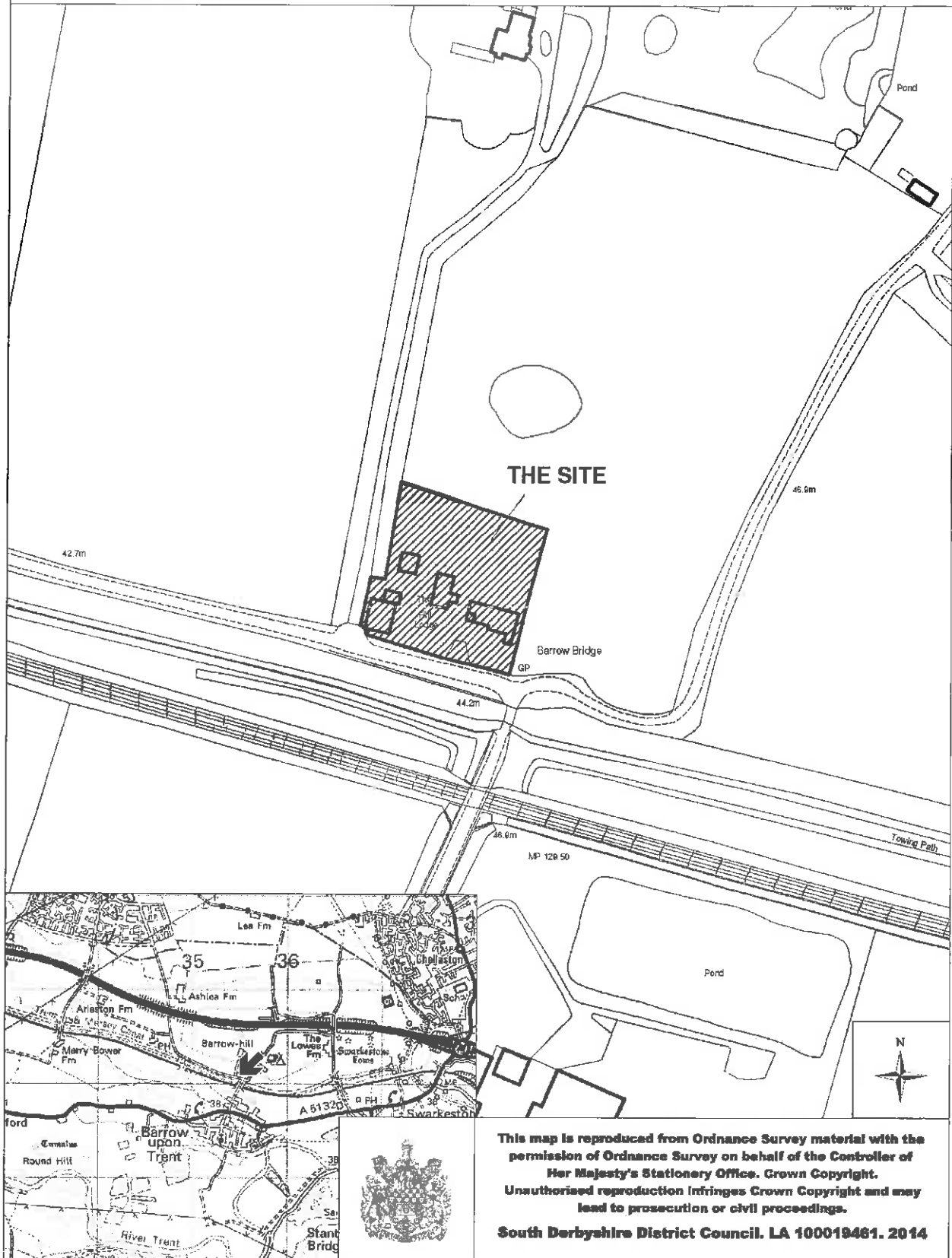
#### **Site Description**

The Hill Lodge is situated in open countryside about 500 m to the north of the village of Barrow on Trent. The site is located close to the bridge over the Trent and Mersey Canal, on Deepdale Lane. The property has been extended and altered and there are free standing buildings in the curtilage. A new access direct to Deepdale Lane is now in use. The Deepdale Lane boundary consists of conventional timber screen fencing to the west and a 3m high timber sleeper wall to the east of the access. The gates to the access are set back some 8m from the highway carriageway edge.

#### **Proposal**

The application seeks to retain two sections of brick wall and associated piers to connect the access gates to the existing boundary treatment either side.

**9/2015/0731 - The Hill Lodge, Deep Dale Lane, Barrow on Trent, Derby  
DE73 7NH**



## **Planning History**

The full site history is set out below:

9/0390/1320/F - Stable block. Permitted. Work commenced within five years of the grant of permission.

9/2002/1020/F - Conservatory to dwelling. Permitted.

9/2002/1038/F - Storage shed and revised plan for stables. Permitted.

9/2002/1211/F - Hardstanding and access - permitted.

9/2003/0267/F Erection of feed store and tack shed to be attached to stable.

Permission refused on the grounds of visual impact.

9/2003/0480/F - Conservatory to dwelling and garage permitted.

9/2003/1026/U - Change of use and alterations to stables for office use. Refused on the grounds of traffic and the visual impact of the proposed changes.

9/2004/0534/FH - The installation of a balcony to the dwelling, and alterations to previously approved shed - permitted.

9/2005/0194/F - Animal rearing shed. Refused on the grounds of visual impact.

9/2005/0040/F - Garage (revised elevations) - permitted.

9/2005/0807/U - Change of use of stable to office and retention of hardstanding - permitted.

9/2006/0423/F - Animal rearing shed. Refused on the grounds of visual impact.

9/2007/0076/F - Extension to office. Refused on policy, visual impact and sustainability grounds. Appeal Ref. APP/F1040/A/07/2046425 dismissed.

9/2008/0579/U - Change of use of paddock to garden - permitted. Permitted development rights are removed by Condition No 2.

9/2008/1059 - Covered structure attached to garage - permitted.

9/2010/0674 Formation of vehicular access - permitted.

9/2011/0391 - Retrospective application for the installation of dormer windows in garage roof -permitted.

9/2011/0389 - retrospective application for the erection of a garden store, -permission refused and appeal APP/F1040/C/11/2159044 (enforcement) dismissed.

9/2012/0644 – extension to annex – refused

9/2013/0408 - Carp pond – permitted.

9/2013/0572 – Conversion of building to holiday lets - refused and dismissed on appeal

9/2014/0225 – Garage (refused and dismissed on appeal) and 3m high sleeper wall to frontage (refused but allowed on appeal).

An Article 4 Direction precluding new 'permitted development' buildings was not confirmed by the Secretary of State.

The decisions most relevant to the current application are 9/2010/0674 and 9/2014/0225.

## **Responses to Consultations**

The Highway Authority has no objection in principle.

## **Responses to Publicity**

The Parish Council objects as follows:

- a) The application states that this project has not yet been started - it has actually been in place for several months.
- b) The walls are very close to the highway in a position that may cause an accident if a car goes over the bridge and loses control in icy / wet conditions.
- c) The wall and gates are not in keeping with the rest of the surrounding buildings in this rural area.
- d) The site to which these gates give access contains properties that do not have the relevant planning permissions – the need for the gates is thus questioned.

## **Development Plan Policies**

The relevant policies are:

South Derbyshire Local Plan Saved Environment Policy 1 and Transport Policy 6.

Emerging Local Plan Policy BNE1.

## **National Guidance**

National Planning Policy Framework (NPPF), in particular:

Paras 6-10 (Achieving sustainable development)  
 Paras 11-14 (The presumption in favour of sustainable development)  
 Para 17 (Core principles)  
 Chapter 7 (Requiring good design)  
 Paras 186 & 187 (Decision-taking)  
 Para 196 & 197 (Determining applications)  
 Paras 203-206 (Planning conditions and obligations)  
 Annex 1 (Implementation)

NPPG ID 26 (Design)

## **Planning Considerations**

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

- Impact on the character of the countryside.
- Highway safety.

## **Planning Assessment**

Planning permission 9/2010/0674 is a material consideration as it granted permission for the erection of walls and gates in the same location as now proposed. However the walls gradually reduced in height either side of the gates for that scheme. At that time the frontage boundary fence to the west was in situ, but the eastern boundary was defined by a hedge.

Since then planning permission has been granted on appeal to retain the high sleeper wall to the east of the access. This has resulted in a clear change in context to the site frontage. The proposed walls would be higher than the fence to the west but lower than the sleeper wall to the east. Given the changed circumstances since the last permission, the contrast between the existing boundary treatment and the proposal



would not produce a significant change to the site's context. Therefore no demonstrable harm would occur to the character of the locality, in conformity with Saved Environment Policy 1 and Policy BNE4. As these policies are consistent with the NPPF there would be no conflict with the relevant government guidance.

Although the Parish Council has expressed concern about the safety of the access its geometry is as previously approved and the Highway Authority does not object. In these circumstances the development conforms to the requirements of Saved Transport Policy 6.

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

### **Recommendation**

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

1. Visibility splays of 2.4m x 30m in the eastern direction and 2.4m x 100m in the western direction shall be retained throughout the lifetime 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.

### **Informatives:**

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

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

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

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/Delegated</b>	<b>Page</b>
9/2014/0249	Mickleover	Etwall	Allowed	Committee	89
9/2014/0948	Drakelow	Linton	Allowed	Committee	123
9/2015/0004	Stenson Fields	Stenson	Dismissed	Delegated	141



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## Appeal Decisions

Inquiry held on 12 – 15 May 2015

Site visit made on 28 May 2015

**by Phillip J G Ware BSc DipTP MRTPI**

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

**Decision date: 18 August 2015**

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### **Appeal Ref: APP/F1040/A/14/2228361**

**(Appeal A – ‘Traffic lights scheme’)**

**Land at New House Farm, Etwall Road, Mickleover, Derby**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by CEG Land Promotions Limited & Robert William Walmsley against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/0249, dated 11 March 2014, was refused by notice dated 29 October 2014.
  - The development proposed is the construction of up to 300 dwellings with associated vehicular access.
- 

### **Appeal Ref: APP/F1040/A/15/3005774**

**(Appeal B – ‘Roundabout scheme’)**

**Land at New House Farm, Etwall Road, Mickleover, Derby**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by CEG Land Promotions Limited & Robert William Walmsley against South Derbyshire District Council.
  - The application Ref 9/2014/1136 is dated 27 November 2014.
  - The development proposed is the construction of up to 300 dwellings with associated vehicular access.
- 

### **Decisions (Appeals A and B)**

1. Appeal A is allowed and planning permission is granted for the construction of up to 300 dwellings with associated vehicular access on land at New House Farm, Etwall Road, Mickleover, Derby in accordance with the terms of the application, Ref 9/2014/0249, dated 11 March 2014, subject to the conditions set out in Schedule A below.
2. Appeal B is allowed and planning permission is granted for the construction of up to 300 dwellings with associated vehicular access on land at New House Farm, Etwall Road, Mickleover, Derby in accordance with the terms of the application, Ref 9/2014/1136, dated 27 November 2014, subject to the conditions set out in Schedule B below.

### **Application for costs (Appeals A and B)**

3. At the Inquiry applications for costs were made by CEG Land Promotions Limited & Robert William Walmsley against South Derbyshire District Council. These applications are the subject of separate Decisions.

### **Main issues (Appeals A and B)**

4. Both proposals are in outline, with only the principle of the development and the means of access to be considered at this stage. The only difference between the proposals relates to the means of access onto the A516 Mickleover by-pass.
5. There are two main issues in relation to Appeal A. These are the effect of the proposal on highway safety, and the effect on the character and appearance of the area.
6. There is one main issue in relation to Appeal B. That is the effect of the proposal on the character and appearance of the area.

### **Background (Appeals A and B)**

7. The appeal site is a broadly rectangular area of around 16 hectares, located at the edge of the urban area. Part of the eastern boundary of the site abuts residential properties in Mickleover, whilst the remainder of the eastern edge of the site adjoins a block of woodland. To the north and west is agricultural land, whilst to the south is the old line of the A516, beyond which is the newer Mickleover by-pass. There is a block of trees between the old and new roads.
8. Both proposals are for up to 300 dwellings and associated vehicular access. In the case of Appeal A the access would be formed by a traffic light controlled junction, which also provides a pedestrian crossing facility. Pedestrian and cycle links would be provided onto Old Etwall Road. In the case of Appeal B a roundabout junction is proposed.
9. The development plan comprises the saved policies of the South Derbyshire Local Plan (1998) (LP). There are no site specific policies affecting the land, which is shown as being outside the settlement limits of Mickleover and is therefore subject to open countryside policies (particularly EV1), subject to what follows. LP policy T6 provides that development should not interfere with the safe flow of traffic. This reflects the national policy in paragraph 32 of the National Planning Policy Framework (the Framework) which provides that safe and suitable access must be achieved.
10. There is agreement that the housing policies in the LP are out of date, with the consequences set out in paragraphs 49 and 14 of the Framework. However there is no agreement on whether LP policy EV1 falls into the same category (the Council argued that it is not a policy for the supply of housing). The policy provides that outside settlements new development will not be permitted unless certain circumstances prevail (which they do not in this case). The Courts have considered the phrase "policies for the supply of housing" in paragraph 49 of the Framework on several occasions.
11. In this case EV1 is a policy which, in stating that new development outside settlements will not be permitted unless certain criteria are met, significantly



affects the quantum, distribution and location of housing, and paragraph 49 of the Framework is therefore engaged. The policy is therefore out of date.

12. The Examination of the draft South Derbyshire Local Plan (2014) (DLP) was the subject of Hearing sessions in 2014 and, following letters from the Inspector, the Council is undertaking further work related to housing provision. The appeal site has been promoted in the DLP by the appellants – it was identified as a Reserve Housing Site in an earlier iteration of the DLP, but was not included in the plan submitted for examination. The main parties agree that the DLP can only be given limited weight at this stage and that the development would not be premature in the light of the advice in Planning Practice Guidance.

### **Reasons – Appeal A ('The traffic lights scheme')**

#### *Highways issues (Appeal A)*

13. The A516 is a derestricted two lane dual carriageway road with streetlights. It links the A38 trunk road to the east and the A50 to the south west. Around 500 metres west of the appeal site it becomes a single carriageway road. Just to the east of the appeal site there is a grade separated junction between the A516 and local distributor roads.
14. The main parties have agreed a range of matters in the Transport Statement of Common Ground. These include the role and use of the local highway network, the capacity of roads and junctions in the area, trip rates related to the proposal, and the contents of the appellants' Travel Plan. The Council agreed that the submitted Transport Assessments and Travel Plans show that the development related trips by all modes can be safely accommodated on the surrounding highway network.
15. A Stage 1 Road Safety Audit and Designer's Response were undertaken, and the proposed signalised junction was amended. However the Council objects on the basis that the principle of a signal controlled junction on such a road is unacceptable in safety terms. That was the sole reason for refusal of this proposal.
16. The A516 was 'de-trunked' in 2002, but the main parties agreed that the Design Manual for Roads and Bridges (DMRB) should be used as the only relevance guidance. I have no reason to disagree with this approach. This guidance is that traffic signal controlled junctions should not be used on high speed roads where the speed is over 65mph at the 85th percentile. It is on this basis that the Highway Authority object to the use of traffic signals on existing roads to facilitate access to development sites.
17. The A516 is subject to the national 70mph speed limit. The wet weather observed speeds are 64mph and 67mph, and 69mph and 72mph in dry weather (the Council's preferred measure).
18. There is no agreement between the parties as to whether it is appropriate to use wet or dry weather speeds, as there is no guidance produced in relation to the system (MOVA) being put forward – although the normal DMRB approach is to use dry weather speeds. However, it was accepted by the Council at the Inquiry that, if wet weather speeds were to be used, the proposal would have been finely balanced. Under those circumstances, it was confirmed that the

Council would have exercised its discretion to allow a traffic light junction in this location.

19. The remaining issue is therefore whether, using dry weather speeds, there are any factors which support the use of a traffic light junction in a situation where the observed speeds exceed the guidance in the DMRB. In my view there are a number of factors which, taken together, are persuasive:
- Although the DMRB is a well-established source of advice, it is not mandatory and allows for the exercise of discretion. It has not been updated to incorporate the newer technologies such as that currently proposed. The DMRB was based on the two types of technology in existence at the time the document was published, and does not allow for a driver discretion system which minimises number of drivers having to stop.
  - Traffic light systems on high speed dual carriageways are far from uncommon. The appellant produced a number of examples of this, and the evidence was not contested by the Council, nor was there any evidence of accidents arising from this type of junction.
  - The appellant produced unchallenged evidence that the installation of traffic lights would, in itself, lower traffic speeds to well below the speed limit.
  - It was agreed that the A516 operates at only 17% of its capacity – this was explained to be due to the presence of the A50, which has substantially reduced the use of the A516. The Council accepted that this is a very significant factor.
  - Finally, the main parties agree that the appropriate Stopping Sight Distances (as required in the DMRB) would be achieved. A Stage 1 Safety Audit was undertaken of the preliminary design, and recommendations made, all of which were incorporated into the proposed junction. The conclusion of the auditors was that the design was safe, and the Council did not contest this Audit.
20. On the basis of the above matters, and bearing in mind the limited extent to which the guidance would be exceeded, I am led to the conclusion that the proposed signal controlled junction would not be unsafe.
21. Two further matters need comment. Firstly the appellants' had, at one stage, suggested that speed limits on this stretch of the A516 could be reduced. This was not a matter they subsequently relied upon. In any event this would have to be the subject of a Traffic Regulation Order, the outcome of which would be uncertain. I have not accorded this matter any weight.
22. There was some suggestion from the Council that the decision on this appeal should be based on an assessment of which appeal scheme was considered safer. However that is not the approach which I have adopted, and I have dealt with each appeal on its merits.
23. For all the above reasons, I conclude that the proposal would not harm highway safety and would not conflict with LP policy T6 and the Framework.

*The character and appearance of the area (Appeal A)*

24. The Council did not raise the effect on the landscape in relation to this appeal in the reason for refusal, or in the Statement of Case. It was raised in the evidence of the landscape consultant acting for the authority and the Council contended at the Inquiry that this proposal would have an adverse landscape impact.
25. In the Closing Submission for the Council it was explained that to consider Appeal A, without regard to the landscape evidence of both main parties in relation to Appeals A and B, would not be a rational basis for making a decision. As a result the authority additionally objected to Appeal A on landscape grounds.
26. Whether it would be rational for the Council to object on landscape grounds only to the chronologically later Appeal B, bearing in mind the considerable similarity of the proposals, is not for me to consider in these decisions. However the fact that the Council formally raised no objection on landscape grounds to Appeal A, and only added this objection at a late stage in the appeal process, is relevant to the weight I can attach to this objection. Furthermore it was confirmed at the Inquiry that the Council has never formally revised its position on the landscape impact of Appeal A. These matters significantly weaken the Council's position in relation to the landscape effect of Appeal A.
27. I note the suggestion from Council's landscape witness that the authority always had a concern about the landscape impact of Appeal A. However there was no evidence to support this contention, and it is notable that the Council's decision on Appeal A was a considerable time before the Council's landscape witness was appointed. I have not attached any weight to this unproven assertion.
28. Turning to the landscape considerations themselves, the effect on the landscape in relation to Appeal A would be identical (in all but one respect) to the effect of Appeal B. The great majority of the landscape evidence focussed on this second appeal, which I discuss below. The only difference is that Appeal A, featuring a traffic light junction, involves less land-take and therefore less removal of existing trees. In relation to Appeal B, I find that this would not be harmful, and I reach the same conclusion in relation to this appeal.
29. I am mindful of the policy in the Framework that the intrinsic character and beauty of the countryside should be protected, but for the reasons set out below and replicated in relation to this appeal, I conclude that the character and appearance of the area would not be materially harmed.

**Reasons – Appeal B ('The roundabout scheme')**

*Background (Appeal B)*

30. This proposal features a four arm roundabout on the A516. This was the subject of a Road Safety Audit and a Designer's Response. The Highway Authority has confirmed that this proposal would provide a safe means of access, and no objection has been raised by the Council on highway grounds to this proposal.

*The character and appearance of the area (Appeal B)*

31. The only putative reason for refusal<sup>1</sup> related to the effect on the character of the countryside and the felling of trees at the proposed access.
32. At the national level the site is within the Needwood and South Derbyshire Claylands – noted as being a predominantly pastoral landscape of rolling countryside. More locally, in the East Midlands Regional Landscape Character Assessment, it is in an area known as Village Farmlands, featuring moderately sized well maintained hedged fields across a rolling landform. The site itself is two improved grassland parcels, along with a portion of an adjacent field to the west. It falls from the north and has a slight bowl shaped depression facing away from the existing housing to the east. The site is not in any form of designated landscape, nor is it prominent from one.
33. I would not disagree with the general descriptions in the character assessments summarised above, but it is also important to note that the edge of Mickleover/Derby is directly adjacent to the site, and therefore when standing on the site or viewing it from a distance there is a clear feeling that one is on the fringe of an urban area. There is a disagreement between the parties as to whether the existing edge of the housing possesses a 'hard' or 'soft' edge – to my mind, the houses in Mickleover are clearly visible and give a hard edge to the settlement.
34. The proposal would obviously extend this edge of the settlement into existing pasture land. Self-evidently this would be a change in the landscape, which would be most pronounced in the immediate area surrounding the site. However the broader landscape is well able to accommodate this change, and this is not a sufficient reason to dismiss the appeal.
35. In addition, there are a relatively small number of public receptors who would experience this change from the near distance. Longer distance views from the west, northwest and north (including footpaths/cycle routes) would also change although, from those directions, the appeal site is seen in part against a backdrop of existing urban development. The consequence of the proposal would be to move the urban edge (which could be softened by new planting) into the countryside.
36. More localised views from the south would change to a degree, although the visibility of the site from that direction, as I saw on my extensive site visit, are not readily apparent. The Council has also referred to views for users of the A516, but it is hard to understand what appreciation travellers in fast moving cars would realistically gain.
37. There was also a concern raised by the Council and others at the loss of ridge and furrow which is visible on part of the site - not from any archaeological perspective but in terms of the effect on landscape character. However, as I saw on my visit to the area, ridge and furrow is not an uncommon feature of the landscape in these parts, and this adds little to the argument against the proposal.
38. The illustrative proposals indicate a significant amount of mitigation planting, especially on the western edge of the development and beyond, along with an area of green space closest to the existing houses. Although this would not in

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<sup>1</sup> Pursuant to a Council resolution on 24 March 2015

any way recreate the impression of being in a rural area, it would go some way to mitigating the loss of the countryside and softening the edge of the development.

39. Appeal B incorporates a roundabout junction and this would necessitate the removal of a group of trees adjacent to the A516. This planting formed part of landscaping which apparently took place some 40 years ago as part of the landscaping of the A516. The loss of these trees was the subject of objection by the Council, but I have seen nothing which persuades me that the trees have any intrinsic landscape importance. They were a function of the road which was laid out at the time, and the new proposal would be conditioned so that new planting, appropriate to the new road layout, could be required by way of a condition.
40. Two factors significantly weaken the Council's position in relation to the effect on the area. Firstly the authority has produced a Strategic Housing Land Availability Assessment which considered a much larger area (including the appeal site) which did not identify any adverse effect on the character of the landscape as a constraint. Secondly, as discussed above, landscape issues were not a reason for refusal when the Council refused planning permission for Appeal A, and only subsequently emerged in the context of Appeal B at a late stage. There is a clear lack of consistency in the Council's position.
41. There was also criticism of the approach of the Council's landscape consultant, who produced a critique of the appellants' Landscape and Visual Impact Assessment, rather than undertaking any new work. However this critique and subsequent evidence was sufficient to understand the position of the authority, and I do not find this approach to have weakened the Council's position. However the fact that the Council's landscape consultant had never gone onto the site (or asked to do so) is surprising, and casts some doubt on the rigour of his assessment.
42. Overall, I do not consider the proposal would harm the character and appearance of the area, in the light of national policy summarised above.

#### **Other matters (Appeals A and B)**

43. The parties agree that the site is sustainably located and that there is a range of existing facilities in close proximity to serve residents of the proposed development. In particular there are employment, leisure and retail facilities in Derby City centre, along with the provision of day to day needs in Mickleover District Centre<sup>2</sup>. Although I note the concern of some residents concerning education provision in the area, I am mindful of the provisions of the Planning Obligation (discussed below), this is not a matter which would cause these appeals to fail. There are a number of bus services serving the area around the site, with stops in various locations nearby<sup>3</sup>.
44. The parties agree that there is a record of persistent under-delivery of housing in the area, with the Council assessing the supply as 3.88 years. The appellant considers that this is a substantial understatement but, in any event, there is a significant shortfall in the supply of housing land. It is further agreed that the

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<sup>2</sup> Planning Statement of Common Ground Appendix 2; Transport Statement of Common Ground paras 40 - 49

<sup>3</sup> Planning Statement of Common Ground paras 3.11-3.13, and Appendix 1; Transport Statement of Common Ground paras 20 - 22, 50 - 52



relevant housing policies of the LP are out of date<sup>4</sup>. Furthermore the parties agree that there is a significant requirement for 2, 3 and 4+ bedroom dwellings, and that the provision of housing as shown in the illustrative housing mix would help meet this requirement. There is further agreement that there is a requirement for 30% of any dwellings on the site to be affordable – and that the provision of affordable dwellings is a significant material consideration in favour of the scheme.

45. The parties are agreed that the work on the DLP which is in hand may require the identification of additional housing sites. This may potentially include the appeal site, as this is being promoted by the appellants through the DLP.

46. There are a number of other matters on which the main parties are agreed. These include:

- That there would be no unacceptable harm to wildlife.
- That the site does not fall within the category of best and most versatile land, and that there is no objection in principle to the loss of the agricultural land.
- There is no objection related to the approach to design and layout as shown on the indicative plans.
- That (subject to mitigation measures) future residents would not be adversely affected by traffic noise.
- That (subject to mitigation) there are no flooding or drainage problems.
- That (subject to mitigation) the proposals would not harm wildlife or protected species.
- That there is no issue regarding ground contamination which could not be addressed by conditions.

47. I have considered all the evidence on these matters, including the representations submitted by local residents, but do not find any reason to disagree with the main parties. In particular I have carefully considered the concerns raised regarding pedestrian safety, but I am not persuaded that the result of the proposals would be to expose pedestrians to unusual hazards when travelling from the site to local facilities – especially bearing in mind the pedestrian provisions incorporated into both schemes.

48. Although not a matter raised by the main parties, some residents have raised the effect on 'Designated Heritage Assets'<sup>55</sup>, specifically three Listed Buildings. In considering proposed development affecting listed buildings, Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty to have special regard to the desirability of preserving the listed building or its setting. The Framework confirms the great weight to be accorded to the conservation of designated heritage assets.

49. The setting of a heritage asset is defined as the surroundings in which it is experienced in line with Historic England's Good Practice Note 3 'The Setting of Heritage Assets'. In the case of two of the buildings, Mickleover Manor and All

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<sup>4</sup> Planning Statement of Common Ground para 5.7

<sup>55</sup> As defined in the Framework

Saints Church (both Grade II) the proposed development is clearly not in the setting of the Hall due to intervening development and vegetation. The position in relation to Radburne Hall (Grade I) is slightly different. I have looked towards the buildings from the appeal site and from the A516 northwest, in the reverse direction from the entrance to the Hall back towards the site, and in both directions from the footpath which runs approximately between the two locations. I conclude that the appeal site is not within the setting of the heritage asset due to the distance involved and the lack of significant inter-visibility. On that basis I conclude that the proposals would not fall within the setting of the Listed Buildings.

### **Conditions and Planning Obligation (Appeals A and B)**

50. The conditions related to both schemes were discussed and agreed (without prejudice) at the Inquiry. Aside from references to plan and document numbers (conditions 24, 32, 36 and 37) the conditions are identical, and are treated as such below.
51. Along with a condition specifying the approved plans for the avoidance of doubt (37) and the standard commencement and detail conditions (1, 2) it is reasonable to indicate certain elements which the details should include (3), and address the phasing of the development (4). Each phase of the development should incorporate noise mitigation measures as appropriate and public open space (34 and 35).
52. In the interests of the appearance of the area, boundary treatment, landscaping, tree protection, details of materials, planting and landscape maintenance need to be the subject of conditions (5, 6, 7, 8, 9, 10, 11 and 14).
53. In the interests of preventing flooding and pollution, conditions providing for details of these matters need to be submitted for approval (12 and 13).
54. As there is a slope on the land, it is necessary to control floor levels in the interests of the appearance of the development and the amenity of existing residents of the area (16). Also in the interests of the living conditions of existing residents, conditions should require measures for dust and noise controls and hours of construction (16 and 17).
55. So as to ensure the recording or preservation of any items of archaeological interest, a condition should require a scheme of investigation (18).
56. For biodiversity reasons, conditions are necessary related to the protection of badgers, the creation of habitat, and the production of a landscape and ecological management plan (19 - 21).
57. So as to avoid pollution, conditions should require the submission of a scheme to control any contamination, and provisions to address any unexpected contamination which may be uncovered (22 and 23).
58. A range of conditions are necessary in the interests of highway safety. These include the details of the new junction and temporary access works, wheel cleaning facilities, the internal layout of the development and parking provision (24 - 31). In order to encourage the use sustainable means of transport, conditions are necessary related to the Travel Plan and pedestrian access (32 and 33).

59. Turning to the Planning Obligation, this provides that 30% of the dwellings should be affordable housing, with an agreed tenure split. The evidence is clear that this would assist in meeting the demonstrable need for low cost housing in accordance with emerging policy and the Council's Guide for Developers.
60. The Obligation also provides for a contribution to off-site recreation facilities, specifically to meet the demonstrable need for improvements to the existing facilities at the nearby Etwall Leisure Centre which is operating close to, or beyond, capacity. The contribution is based on LP policy C1, emerging local policy and the Council's Guide for developers.
61. The education contribution is aimed at primary, secondary and post-16 ages, and would be phased as the development progressed. It is clearly necessary in the light of the likely demand for education which would be generated by the development. The contribution is based on LP Policy C1, emerging policy, the Council's Guide for developers, and the County Council's Protocol.
62. The evidence clearly demonstrates that the contributions are directly related to the proposed developments and are necessary to make the developments acceptable in planning terms. Therefore the Obligation meets the policy in paragraph 204 of the National Planning Policy Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010.
63. Some elements of the Obligation are designed to mitigate the impact of the proposals, and these elements therefore do not provide benefits in favour of the schemes. However the provision of affordable housing weighs in favour of the appeals.

### **Planning balance and conclusions (Appeals A and B)**

64. The schemes achieve the economic and social dimensions of sustainable development as set out in the Framework. This is agreed by the main parties and there is no reason to disagree<sup>6</sup>. The only issue in this respect is whether the proposals are environmentally sustainable. For the reasons set out above, the evidence clearly leads to the conclusion that the proposals are sustainable in environmental terms.
65. Both parties also accept that allocations and other housing policies in the LP are out of date. In addition, as set out above, it is considered that LP policy EV1 is a relevant policy for the supply of housing in terms of paragraph 49 of the Framework, and is also out of date. With that background, national policy is that permission should be granted unless any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
66. It is noted that, as matters currently stand, that the site is not identified as a housing site in the emerging DLP (nor in the LP). However it was identified as such as part of a wider site in an earlier iteration of the DLP, and may be included as a result of work currently being undertaken as part of the local plan process.
67. Set against that lack of a site identification, there are four main factors weighing heavily in favour of both proposals:

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<sup>6</sup> Planning Statement of Common Ground para 5.6

- The relevant policies of the development plan are out of date.
  - The proposal represents sustainable development.
  - There is a significant shortfall in housing land supply and the proposal would add significantly to housing provision in the area.
  - The proposal would deliver much needed affordable housing.
68. Given these matters, and my conclusions regarding highway safety and the effect on the landscape, for the reasons given above I conclude that Appeal A and B should both be allowed.

*P. J. G. Ware*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr A Hogan of Counsel	Instructed by the Solicitor to the Council
He called	
Mr S Watkins CMLI	Principal, Watkins Design Associates
Mr D Allsop HNC	Project Engineer, Derbyshire County Council
Mr G Fairs FIHIE MCIHT	Development Manager Highways Development Control
Mr B Davies BSc MRTPI	Director, Asbri Planning

### FOR THE APPELLANT:

Mr P Village QC	Instructed by Messrs Walton & Co
He called	
Mr D Appleton NDH MA CMLI	Director, Appletons
Mr D Bell MEng CENG MCIHT	Director, Bryan G Hall Consulting
Mr M V Watts Dip URP (Dist) MRTPI	Senior Director, Nathaniel Lichfield and Partners

### INTERESTED PERSONS:

Ms P McCahey	Local resident
Mrs S Huskins	Local resident
Ms C Allen	Local resident
Mr J Froggatt	Local resident
Dr K Griffin	Local resident
Councillor J Keith	(City Councillor, Mickleover Ward)

## DOCUMENTS

1	Lists of persons present at the inquiry
2	Statement of Mrs Huskins
3	Statement of Ms McCahey
4	Email (30 March 2015) appointing Mr Watkins
5	Email (13 April 2015) from Mr Watkins to LPA
6	Extract from the DMRB related to traffic signal junction speeds
7	Supplementary Statement of Common Ground (land supply and emerging local plan
8	High Court decision – Woodcock Holdings v SSCLG and Mid Sussex District Council [CO/4594/2014]
9	Statement by Ms Allen
10	Statement by Mr Froggatt
11	Email (8 April 2015) from Mr Allsop to DfT
12	CIL Regulations Compliance Statement
13	Planning Statement of Common Ground
14	Highways Statement of Common Ground
15	Statement by Dr Griffin
16	Statement by Cllr Keith
17	Rebuttal note by Mr Bell to Mr Froggatt's statement
18	Extract from Local Plan Sustainability Appraisal
19	South Derbyshire SHLAA (August 2014)
20	High Court decision – M Wenman v SSCLG and Waverley Borough Council [CO/5795/2014]
21	Closing submission by the Council
22	Closing submission by the Appellant
23	(Costs claim by the Appellant)
24	(Costs response by the Council)
25	Planning Obligation (15 May 2015)



**Schedule A**

**APP/F1040/A/14/2228361**

**Appeal A – 'traffic lights scheme'**

**Conditions:**

1. Approval of the details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") for each phase of the development shall be obtained from the Local Planning Authority in writing before any development is commenced in that phase. Plans and particulars of the reserved matters for each phase of the development shall be submitted in writing to the Local Planning Authority and the development of each phase shall be carried out as approved.
2.
  - 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.
3. Notwithstanding the submitted master plan, the reserved matters submitted in accordance with condition 2 shall include the following urban design principles:
  - The provision of large growing tree species as described in the submitted Design and Access Statement (DAS) (para 4.14)
  - The provision of tree lined streets (DAS para 5.13) and retention of existing landscape features in accordance with the principles set out in the DAS.
  - The provision of greenway routes/green corridors to connect key green spaces as described in the DAS (para 4.2)
  - Provision for future pedestrian access as indicated in the DAS (Section 6.0).
  - Provision for future pedestrian access to the areas north and west.
  - Provision for pedestrian access towards bus stops
  - A central area of open space
  - Measures to minimise the risk of crime to meet the specific security needs of the application site and the development.
4. No development shall commence until a scheme for phasing of the development has been submitted to and approved in writing with the Local Planning Authority. The scheme for phasing shall show the boundaries of the proposed phases of the development and shall include reference to the provision of the children's play spaces and other open spaces. The development shall be carried out in accordance with the approved scheme unless otherwise agreed through the approval of an updated phasing scheme for the development. In this planning permission, a reference to a 'phase' shall be construed as a reference to a phase as defined in the scheme for phasing approved pursuant to this condition 4.
5. No development of any phase shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved,

unless otherwise agreed in writing by the Local Planning Authority. These details shall include trees to be retained showing their species, spread and maturity; proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.).

6. For the purposes of condition 5 above soft landscape works shall include planting plans; written specifications; schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and implementation programme.
7. All hard and soft landscape works approved pursuant to condition 5 above shall be carried out in accordance with the approved details and finished not later than the first planting season following completion of the relevant phase of the development.
8. For each phase a landscape management plan for the phase, including phasing and implementation strategy, long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority as part of the reserved matters submission in accordance with conditions 2 and 7. For each phase the landscape management plan shall be implemented as approved.
9. Any tree or shrub which forms part of the approved landscaping scheme for a phase pursuant to Condition 5 which within a period of five years from planting fails to become, established, or becomes seriously damaged or diseased, or dies, or for any reason is removed, shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be approved in writing by the Local Planning Authority.
10. No site clearance works or development of a phase shall take place until there has been submitted to the Local Planning Authority for their written approval a scheme showing the type, height and position of protective fencing to be erected around each tree or hedgerow to be retained in that phase. The scheme shall comply with BS 5837:2005. The area within each phase surrounding each tree or hedgerow within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:
  - (i) There shall be no changes in ground levels;
  - (ii) No material or plant shall be stored;
  - (iii) No buildings or temporary buildings shall be erected or stationed;
  - (iv) No materials or waste shall be burnt within 20 metres of any retained tree or hedgerow; and
  - (v) No drain runs or other trenches shall be dug or otherwise created; without the prior written consent of the Local Planning Authority.

11. No development of a phase shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected within that phase. The boundary treatment shall be completed in accordance with a timetable agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
12. Prior to the commencement of development, a surface water drainage strategy outlining the general system of drainage for surface water flows arising from the entire site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, shall be submitted to the local planning authority and approved in writing in consultation with the Environment Agency.

Thereafter, prior to the commencement of any phase of the development, a detailed surface water drainage scheme for that phase, shall be submitted to and approved in writing by the Local Planning Authority. The detailed surface water scheme for the phase shall accord with the approved surface water drainage strategy for the entire site unless otherwise agreed in writing with the local planning authority.

The surface water drainage strategy and each surface water drainage scheme to be submitted for a phase thereunder shall:

- (i) Demonstrate that the surface water drainage system(s) are designed in accordance with CIRIA C697 and C687 and the National SuDS Standards, should the latter be in force when the detailed design of the surface water drainage system is undertaken.
- (ii) Limit the discharge rate generated by all rainfall events up to and including the 100 year plus 30% (allowance for climate change) critical rain storm to ideally the greenfield runoff rates for the site. As a minimum, the developed site must not exceed the run-off from the undeveloped site and must not increase the risk of flooding off-site.
- (iii) Demonstrate the provisions of surface water run-off attenuation storage in accordance with the requirements specified in 'Science Report SC030219 Rainfall Management for Developments'.
- (iv) Demonstrate detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details of any attenuation system, and outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods.
- (v) Confirm how the on-site surface water drainage systems will be adopted and maintained in perpetuity to ensure long term operation at the designed parameters.

No building shall be occupied within a phase until surface water drainage works for that phase have been implemented in accordance with the approved surface water drainage scheme.

13. No phase of the development shall take place until details of the proposed means of disposal of foul sewage for the phase have been submitted to and approved in writing by the Local Planning Authority. All foul water shall be directed into the main foul sewerage system. The development of each phase shall be carried out in accordance with the approved details.
14. No development of a phase shall take place until details of the materials proposed to be used within the phase on the surfaces of the roads, footpaths, car parking areas and courtyards along with samples of the materials to be used on the external surfaces of the buildings have been submitted to and approved in writing by the Local Planning Authority. The development of each phase shall be carried out using the approved materials unless otherwise agreed in writing with the Local Planning Authority.
15. No development of a particular phase shall commence before details of the finished floor levels of each building within the phase has first been submitted to and approved in writing by the Local Planning Authority. The buildings within that phase shall be constructed in accordance with the approved details.
16. No development of any phase shall take place until a scheme has been submitted to and approved in writing by the Local Planning Authority that specifies the provision to be made for dust mitigation measures and the control of noise emanating from the site during the period of construction of the phase. The approved measures shall be implemented throughout the construction period.
17. During the period of construction, no construction work shall take place within 200 metres of the eastern boundary of the site outside the following times: 0730 - 1900 hours Monday to Friday and 0730 - 1330 hours on Saturdays and at any time on Sundays, Bank and Public Holidays.
18. No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the local planning authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the local planning authority. The scheme shall include an assessment of significance and research questions; and
  - (i) The programme and methodology of site investigation and recording
  - (ii) The programme for post investigation assessment
  - (iii) Provision to be made for analysis of the site investigation and recording
  - (iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation
  - (v) Provision to be made for archive deposition of the analysis and records of the site investigation
  - (vi) Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation

No development shall take place other than in accordance with the archaeological Written Scheme of Investigation.

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 and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

19. For any phase no works which include the creation of trenches or culverts or the presence of pipes within the phase shall commence until measures to protect badgers from being trapped in open excavations and/or pipe and culverts are submitted to and approved in writing by the local planning authority. The measures may include:
- (i) creation of sloping escape ramps for badgers, which may be achieved by edge profiling of trenches/excavations or by using planks placed into them at the end of each working day; and
  - (ii) open pipework greater than 150 mm outside diameter being blanked off at the end of each working day.

The approved measures shall be implemented as part of the development of the phase.

20. Where applicable to each phase, the reserved matters of landscaping shall provide for undeveloped areas of green infrastructure along the eastern boundary and adjacent to Brown Cross and Forty Acre plantations, the retention of mature trees, creation of wetland habitat and sufficient native hedgerow planting to ensure no net loss of hedgerow habitat.
21. For any phase no development or other operations shall take place until a landscape and ecological management plan (LEMP) for the phase has been submitted to and approved in writing by the local planning authority. The LEMP shall provide details of the long-term design objectives for nature conservation, management responsibilities and maintenance schedules for all landscape areas which are not in the ownership of individual properties. The approved LEMP shall be implemented and subsequently maintained in accordance with the approved details.
22. For any phase 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.

Prior to occupation of any phase 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'.

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'.

If required by the conceptual model, no development shall take place until monitoring at the site for the presence of ground 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'.

23. 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.
24. Prior to any other works commencing, additional details of the new junction into the site from the A516 (Reference Bryan G Hall Limited Dwg. No. 10/117/TR/007 Revision C) shall be submitted to and approved in writing by the local Planning Authority in consultation with the County Highway Authority. The details shall include lighting, drainage and landscaping within highway limits including the removal and reinstatement of the existing slip roads onto the westbound A516 carriageway. The new junction hereby approved shall be implemented in accordance with the approved designs prior to the occupation of the first dwelling on the application site. The applicant will need to enter into an Agreement with Derbyshire County Council under Section 278/38 of the Highways Act 1980.
25. No work on the access from the A516 shall be commenced pursuant to Condition 24 until a temporary access for construction purposes has been provided in accordance with a detailed design submitted to and approved in writing by the Local Planning Authority. The temporary access shall be retained in accordance with the approved scheme throughout the construction period of the A516 access, or such other period of time as may be agreed in writing by the Local Planning Authority, free from any impediment to its designated use. Once the A516 access is completed in accordance with Condition 24, all construction and house building operations within the site shall be accessed via the A516 and not via the temporary access unless agreed in writing by the Local Planning Authority.
26. Before any other operations are commenced within a phase, excluding construction of the temporary access referred to in Condition 25 above, space shall be provided within the phase for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking and manoeuvring of employees and visitors vehicles. The space shall be laid out and constructed within the phase in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority. Once implemented the facilities shall be retained free from any impediment to their designated use throughout the period of construction of the phase.



- 27 Throughout the period of development, vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.
- 28 Notwithstanding the submitted information any subsequent reserved matters application for the layout of a phase shall include design of the internal layout of the phase in accordance with the current national and local guidance.
- 29 For any phase, a dwelling shall not be occupied until the proposed new estate street, between the respective plot and the existing public highway has been laid out in accordance with the approved reserved matters drawings, such 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.
- 30 For each phase a swept path diagram shall be submitted at Reserved Matters stage to demonstrate that emergency and service vehicles can adequately manoeuvre within the phase.
- 31 Unless otherwise agreed in writing, space shall be provided within the site for the parking of two vehicles per house and these shall be retained throughout the life of the development free of any impediment to their designated use.
- 32 Before development begins details of how the Travel Plan submitted with the application (Reference Bryan G Hall Limited 10-117-007-05 Travel Plan) ("Travel Plan") will be implemented, including timetables (which may provide for phased implementation), shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in accordance with the timescales specified therein, to include those parts identified as being implemented prior to occupation and following occupation, unless alternative timescales are agreed in writing with the Local Planning Authority. Reports demonstrating progress in promoting sustainable transport measures in accordance with the objectives of the Travel Plan shall be submitted annually to the Local Planning Authority for approval for a period of five years from the date of first occupation of the relevant phase of the development. In the event of an annual report concluding that the objectives of the Travel Plan are not being met, the annual report shall also include for the approval of the Local Planning Authority a scheme detailing remedial measures to be undertaken in order to achieve the objectives of the Travel Plan, as well as a timetable for the implementation of the remedial measures. The scheme detailing the remedial measures shall be implemented as approved and in accordance with the approved timetable.
- 33 No development shall commence until a scheme for the improvement within the existing highway boundary of access for non-motorised highway users along the connecting road, which exists between the point at which the proposed footway/cycleway to be constructed in the south eastern corner of the site meets the connecting road and Old Etwall Road and the point at which the connecting road meets Ladybank Road, has been submitted to and approved in writing by the LPA. The scheme shall include details of the timing

of the implementation of the improvement works. The development shall be carried out in accordance with the approved details and timing.

- 34 Notwithstanding the submitted Masterplan, the reserved matters submitted for each phase of the development in accordance with condition 2 shall include a detailed scheme of noise mitigation measures to demonstrate how the development will be protected from traffic noise, as recommended by the Noise Impact Assessment produced by Hepworth Acoustics accompanying the application. No development, on the relevant phase, shall be commenced before the Noise Mitigation measures have been approved, in writing, by the LPA. The development shall be implemented in accordance with the approved measures.
- 35 No development within a phase shall commence until the Local Planning Authority has approved in writing the details of and arrangements for the setting out of the public open space within the phase. Such arrangements shall address and contain the following matters:
- (i) The delineation and siting of the proposed public open space within the phase.
  - (ii) The type and nature of the facilities to be provided within the public open space, including where appropriate the provision of play equipment within a play area, which shall be supplied and installed to a specification as agreed by the local planning authority.
  - (iii) The arrangements to ensure that the public open space is laid out and completed during the course of the development.
  - (iv) The arrangements for the future management and maintenance of the public open space.

The public open space within the phase shall be completed in accordance with the approved details for that phase.

- 36 No development of any phase shall take place until an off-site landscaping scheme in accordance with the principles of the Landscape Masterplan (Reference Appletons Dwg. No. APP 7a) has been submitted to and approved in writing by the LPA. The scheme shall be implemented in the first planting season following the commencement of development.
- 37 The development hereby permitted shall be carried out in accordance with the following approved plans:
- Red Line Plan (Reference Nathaniel Lichfield & Partners Drg. No. IL50105-016 Rev A)
  - Proposed Site Access (Reference Bryan G Hall Limited Dwg. No. 10/117/TR/007 Rev C)
  - Proposed Footpath Alignment to west of New House Farm (Reference Nathaniel Lichfield & Partners Dwg. No IL50105-018 Rev B)
  - Proposed Footpath Alignment to east of New House Farm (Reference Nathaniel Lichfield & Partners Dwg. No IL50105-019 Rev A)

**Schedule B**

**Appeal Ref: APP/F1040/A/15/3005774**

**Appeal B – 'roundabout scheme'**

**Conditions:**

1. Approval of the details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") for each phase of the development shall be obtained from the Local Planning Authority in writing before any development is commenced in that phase. Plans and particulars of the reserved matters for each phase of the development shall be submitted in writing to the Local Planning Authority and the development of each phase shall be carried out as approved.
2.
  - 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.
2. Notwithstanding the submitted master plan, the reserved matters submitted in accordance with condition 2 shall include the following urban design principles:
  - The provision of large growing tree species as described in the submitted Design and Access Statement (DAS) (para 4.14)
  - The provision of tree lined streets (DAS para 5.13) and retention of existing landscape features in accordance with the principles set out in the DAS.
  - The provision of greenway routes/green corridors to connect key green spaces as described in the DAS (para 4.2)
  - Provision for future pedestrian access as indicated in the DAS (Section 6.0).
  - Provision for future pedestrian access to the areas north and west.
  - Provision for pedestrian access towards bus stops
  - A central area of open space
  - Measures to minimise the risk of crime to meet the specific security needs of the application site and the development.
4. No development shall commence until a scheme for phasing of the development has been submitted to and approved in writing with the Local Planning Authority. The scheme for phasing shall show the boundaries of the proposed phases of the development and shall include reference to the provision of the children's play spaces and other open spaces. The development shall be carried out in accordance with the approved scheme unless otherwise agreed through the approval of an updated phasing scheme for the development. In this planning permission, a reference to a 'phase' shall be construed as a reference to a phase as defined in the scheme for phasing approved pursuant to this condition 4.
5. No development of any phase shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved,

unless otherwise agreed in writing by the Local Planning Authority. These details shall include trees to be retained showing their species, spread and maturity; proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.).

6. For the purposes of condition 5 above soft landscape works shall include planting plans; written specifications; schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and implementation programme.
7. All hard and soft landscape works approved pursuant to condition 5 above shall be carried out in accordance with the approved details and finished not later than the first planting season following completion of the relevant phase of the development.
8. For each phase a landscape management plan for the phase, including phasing and implementation strategy, long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority as part of the reserved matters submission in accordance with conditions 2 and 7. For each phase the landscape management plan shall be implemented as approved.
9. Any tree or shrub which forms part of the approved landscaping scheme for a phase pursuant to Condition 5 which within a period of five years from planting fails to become established, or becomes seriously damaged or diseased, or dies, or for any reason is removed, shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be approved in writing by the Local Planning Authority.
10. No site clearance works or development of a phase shall take place until there has been submitted to the Local Planning Authority for their written approval a scheme showing the type, height and position of protective fencing to be erected around each tree or hedgerow to be retained in that phase. The scheme shall comply with BS 5837:2005.

The area within each phase surrounding each tree or hedgerow within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:

- (i) There shall be no changes in ground levels;
- (ii) No material or plant shall be stored;
- (iii) No buildings or temporary buildings shall be erected or stationed;
- (iv) No materials or waste shall be burnt within 20 metres of any retained tree or hedgerow; and
- (v) No drain runs or other trenches shall be dug or otherwise created; without the prior written consent of the Local Planning Authority.

11. No development of a phase shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected within that phase. The boundary treatment shall be completed in accordance with a timetable agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
12. Prior to the commencement of development, a surface water drainage strategy outlining the general system of drainage for surface water flows arising from the entire site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, shall be submitted to the local planning authority and approved in writing in consultation with the Environment Agency.

Thereafter, prior to the commencement of any phase of the development, a detailed surface water drainage scheme for that phase, shall be submitted to and approved in writing by the Local Planning Authority. The detailed surface water scheme for the phase shall accord with the approved surface water drainage strategy for the entire site unless otherwise agreed in writing with the local planning authority.

The surface water drainage strategy and each surface water drainage scheme to be submitted for a phase thereunder shall:

- (i) Demonstrate that the surface water drainage system(s) are designed in accordance with CIRIA C697 and C687 and the National SuDS Standards, should the latter be in force when the detailed design of the surface water drainage system is undertaken.
- (ii) Limit the discharge rate generated by all rainfall events up to and including the 100 year plus 30% (allowance for climate change) critical rain storm to ideally the greenfield runoff rates for the site. As a minimum, the developed site must not exceed the run-off from the undeveloped site and must not increase the risk of flooding off-site.
- (iii) Demonstrate the provisions of surface water run-off attenuation storage in accordance with the requirements specified in 'Science Report SC030219 Rainfall Management for Developments'.
- (iv) Demonstrate detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details of any attenuation system, and outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods.
- (v) Confirm how the on-site surface water drainage systems will be adopted and maintained in perpetuity to ensure long term operation at the designed parameters.

No building shall be occupied within a phase until surface water drainage works for that phase have been implemented in accordance with the approved surface water drainage scheme.



13. No phase of the development shall take place until details of the proposed means of disposal of foul sewage for the phase have been submitted to and approved in writing by the Local Planning Authority. All foul water shall be directed into the main foul sewerage system. The development of each phase shall be carried out in accordance with the approved details.
14. No development of a phase shall take place until details of the materials proposed to be used within the phase on the surfaces of the roads, footpaths, car parking areas and courtyards along with samples of the materials to be used on the external surfaces of the buildings have been submitted to and approved in writing by the Local Planning Authority. The development of each phase shall be carried out using the approved materials unless otherwise agreed in writing with the Local Planning Authority.
15. No development of a particular phase shall commence before details of the finished floor levels of each building within the phase has first been submitted to and approved in writing by the Local Planning Authority. The buildings within that phase shall be constructed in accordance with the approved details.
16. No development of any phase shall take place until a scheme has been submitted to and approved in writing by the Local Planning Authority that specifies the provision to be made for dust mitigation measures and the control of noise emanating from the site during the period of construction of the phase. The approved measures shall be implemented throughout the construction period.
17. During the period of construction, no construction work shall take place within 200 metres of the eastern boundary of the site outside the following times: 0730 - 1900 hours Monday to Friday and 0730 - 1330 hours on Saturdays and at any time on Sundays, Bank and Public Holidays.
18. a) No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the local planning authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the local planning authority. The scheme shall include an assessment of significance and research questions; and
  - (i) The programme and methodology of site investigation and recording
  - (ii) The programme for post investigation assessment
  - (iii) Provision to be made for analysis of the site investigation and recording
  - (iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation
  - (v) Provision to be made for archive deposition of the analysis and records of the site investigation
  - (vi) Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation
- b) No development shall take place other than in accordance with the archaeological Written Scheme of Investigation.



c) 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 and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

19. For any phase no works which include the creation of trenches or culverts or the presence of pipes within the phase shall commence until measures to protect badgers from being trapped in open excavations and/or pipe and culverts are submitted to and approved in writing by the local planning authority. The measures may include:
- (i) creation of sloping escape ramps for badgers, which may be achieved by edge profiling of trenches/excavations or by using planks placed into them at the end of each working day; and
  - (ii) open pipework greater than 150 mm outside diameter being blanked off at the end of each working day.

The approved measures shall be implemented as part of the development of the phase.

20. Where applicable to each phase, the reserved matters of landscaping shall provide for undeveloped areas of green infrastructure along the eastern boundary and adjacent to Brown Cross and Forty Acre plantations, the retention of mature trees, creation of wetland habitat and sufficient native hedgerow planting to ensure no net loss of hedgerow habitat.
21. For any phase no development or other operations shall take place until a landscape and ecological management plan (LEMP) for the phase has been submitted to and approved in writing by the local planning authority. The LEMP shall provide details of the long-term design objectives for nature conservation, management responsibilities and maintenance schedules for all landscape areas which are not in the ownership of individual properties. The approved LEMP shall be implemented and subsequently maintained in accordance with the approved details.
22. For any phase 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.

Prior to occupation of any phase 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'.

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) If required by the conceptual model, no development shall take place until monitoring at the site for the presence of ground 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'.

23. 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.
24. Prior to any other works commencing, additional details of the new junction into the site from the A516 (Reference Bryan G Hall Limited Dwg. No.10/117/TR/003 Revision G) shall be submitted to and approved in writing by the local Planning Authority in consultation with the County Highway Authority. The details shall include lighting, drainage and landscaping within highway limits including the removal and reinstatement of the existing slip roads onto the westbound A516 carriageway. The new junction hereby approved shall be implemented in accordance with the approved designs prior to the occupation of the first dwelling on the application site. The applicant will need to enter into an Agreement with Derbyshire County Council under Section 278/38 of the Highways Act 1980.
25. No work on the access from the A516 shall be commenced pursuant to Condition 24 until a temporary access for construction purposes has been provided in accordance with a detailed design submitted to and approved in writing by the Local Planning Authority. The temporary access shall be retained in accordance with the approved scheme throughout the construction period of the A516 access, or such other period of time as may be agreed in writing by the Local Planning Authority, free from any impediment to its designated use. Once the A516 access is completed in accordance with Condition 24, all construction and house building operations within the site shall be accessed via the A516 and not via the temporary access unless agreed in writing by the Local Planning Authority.
26. Before any other operations are commenced within a phase, excluding construction of the temporary access referred to in Condition 25 above, space shall be provided within the phase for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking and manoeuvring of employees and visitors vehicles. The space shall be laid out and constructed within the phase in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority. Once implemented the facilities shall be retained free from any impediment to their designated use throughout the period of construction of the phase.

- 27 Throughout the period of development, vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.
- 28 Notwithstanding the submitted information any subsequent reserved matters application for the layout of a phase shall include design of the internal layout of the phase in accordance with the current national and local guidance.
- 29 For any phase, a dwelling shall not be occupied until the proposed new estate street, between the respective plot and the existing public highway has been laid out in accordance with the approved reserved matters drawings, such 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.
- 30 For each phase a swept path diagram shall be submitted at Reserved Matters stage to demonstrate that emergency and service vehicles can adequately manoeuvre within the phase.
- 31 Unless otherwise agreed in writing, space shall be provided within the site for the parking of two vehicles per house and these shall be retained throughout the life of the development free of any impediment to their designated use.
- 32 Before development begins details of how the Travel Plan submitted with the application (Reference Bryan G Hall Limited 10-117-007-07 Travel Plan) (Travel Plan") will be implemented, including timetables (which may provide for phased implementation), shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in accordance with the timescales specified therein, to include those parts identified as being implemented prior to occupation and following occupation, unless alternative timescales are agreed in writing with the Local Planning Authority. Reports demonstrating progress in promoting sustainable transport measures in accordance with the objectives of the Travel Plan shall be submitted annually to the Local Planning Authority for approval for a period of five years from the date of first occupation of the relevant phase of the development. In the event of an annual report concluding that the objectives of the Travel Plan are not being met, the annual report shall also include for the approval of the Local Planning Authority a scheme detailing remedial measures to be undertaken in order to achieve the objectives of the Travel Plan, as well as a timetable for the implementation of the remedial measures. The scheme detailing the remedial measures shall be implemented as approved and in accordance with the approved timetable.
- 33 No development shall commence until a scheme for the improvement within the existing highway boundary of access for non-motorised highway users along the connecting road, which exists between the point at which the proposed footway/cycleway to be constructed in the south eastern corner of the site meets the connecting road and Old Etwall Road and the point at which the connecting road meets Ladybank Road, has been submitted to and approved in writing by the LPA. The scheme shall include details of the timing

of the implementation of the improvement works. The development shall be carried out in accordance with the approved details and timing.

- 34 Notwithstanding the submitted Masterplan, the reserved matters submitted for each phase of the development in accordance with condition 2 shall include a detailed scheme of noise mitigation measures to demonstrate how the development will be protected from traffic noise, as recommended by the Noise Impact Assessment produced by Hepworth Acoustics accompanying the application. No development, on the relevant phase, shall be commenced before the Noise Mitigation measures have been approved, in writing, by the LPA. The development shall be implemented in accordance with the approved measures.
- 35 No development within a phase shall commence until the Local Planning Authority has approved in writing the details of and arrangements for the setting out of the public open space within the phase. Such arrangements shall address and contain the following matters:
- (i) The delineation and siting of the proposed public open space within the phase.
  - (ii) The type and nature of the facilities to be provided within the public open space, including where appropriate the provision of play equipment within a play area, which shall be supplied and installed to a specification as agreed by the local planning authority.
  - (iii) The arrangements to ensure that the public open space is laid out and completed during the course of the development.
  - (iv) The arrangements for the future management and maintenance of the public open space.

The public open space within the phase shall be completed in accordance with the approved details for that phase.

- 36 No development of any phase shall take place until an off-site landscaping scheme in accordance with the principles of the Landscape Masterplan (Reference Appletons Dwg. No. APP 7b) has been submitted to and approved in writing by the LPA. The scheme shall be implemented in the first planting season following the commencement of development.
- 37 The development hereby permitted shall be carried out in accordance with the following approved plans:
- Red Line Plan (Reference Nathaniel Lichfield & Partners Dwg. No. IL50105-016 Rev A)
  - Proposed Site Access (Reference Bryan G Hall Limited Dwg. No. 10/117/TR/003 Rev G)
  - Proposed Footpath Alignment to west of New House Farm (Reference Nathaniel Lichfield & Partners Dwg. No IL50105-018 Rev C)
  - Proposed Footpath Alignment to east of New House Farm (Reference Nathaniel Lichfield & Partners Dwg. No IL50105-019 Rev A)



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## Costs Decisions

Inquiry held on 12 – 15 May 2015

Site visit made on 28 May 2015

**by Phillip J G Ware BSc DipTP MRTPI**

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

**Decision date: 18 August 2015**

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### **Costs application in relation to Appeal Ref: APP/F1040/A/14/2228361 (Appeal A – ‘Traffic lights scheme’)**

#### **Land at New House Farm, Etwall Road, Mickleover, Derby**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by CEG Land Promotions Limited & Robert William Walmsley for a full award of costs against South Derbyshire District Council.
  - The Inquiry was in connection with an appeal against the refusal of planning permission for the construction of up to 300 dwellings with associated vehicular access.
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### **Costs application in relation to Appeal Ref: APP/F1040/A/15/3005774 (Appeal B – ‘Roundabout scheme’)**

#### **Land at New House Farm, Etwall Road, Mickleover, Derby**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by CEG Land Promotions Limited & Robert William Walmsley for a full award of costs against South Derbyshire District Council.
  - The Inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the construction of up to 300 dwellings with associated vehicular access.
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### **Decisions (both applications)**

1. The application for an award of costs in relation to Appeal A is refused.
2. The application for an award of costs in relation to Appeal B is allowed in part in the terms set out below.

### **The submissions for CEG Land Promotions Limited & Robert William Walmsley (both applications)**

3. In relation to Appeal A, the Council’s refusal of permission was unreasonable in that it slavishly followed the advice of the Highway Authority, who had in turn slavishly followed the advice in the Design Manual for Roads and Bridges. The particular circumstances of the case, including the low volume of traffic on the road and other factors, were not considered. The Council’s approach, based on out of date guidance, was therefore unreasonable.
4. In relation to Appeal B, the Council’s position was unreasonable in that it had not refused permission for an earlier scheme – Appeal A – on landscape



grounds. The schemes were materially similar and there was no change in circumstances. This was unreasonable.

### **The response by South Derbyshire Council (both applications)**

5. In relation to Appeal A, the Council's decision was based on the reasonable objection of the Highway Authority. This decision was supported by evidence to justifying the decision.
6. In relation to Appeal B the Council accepted that landscape issues were not raised as a reason for refusal on the first scheme (Appeal A), but this does not mean that it was unreasonable to raise the issue in relation to Appeal B.
7. The Council's landscape evidence was thorough and, even if the appeal were to succeed, it was not unreasonable to raise the issue.

### **Reasons**

8. Planning Practice Guidance advises that costs may 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.

#### *Appeal A*

9. In relation to Appeal A, it is clear from my decision on the merits of the appeal that I concluded that the Council, on the advice of the Highway Authority, had not interpreted the relevant guidance (Design Manual for Roads and Bridges) with sufficient flexibility in the light of the particular circumstances of the appeal site and the scheme. However that does not equate to acting unreasonably.
10. The advice of the Highway Authority was clear and consistent, and was based on a well-respected guidance document. The reason for refusal was supported at the Inquiry by experienced and qualified officers from the Highway Authority. The fact that I differed from their judgement does not mean that the Council acted unreasonably.

#### *Appeal B*

11. In this case the situation is significantly different. Although I again found in favour of the appellant on the merits of the appeal, and consider that the landscape architect who appeared at the Inquiry supported the reason for refusal with sufficiently substantial evidence, I am concerned as to whether the Council's decision to refuse planning permission on landscape grounds was reasonable in itself.
12. National advice on this matter is to be found in Planning Practice Guidance. Amongst other matters this advises that one reason for an award of costs against a local planning authority is if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
13. Leaving aside the additional tree loss envisaged by Appeal B, to which I return below, the two appeal schemes were identical. In October 2014 the Council refused planning permission for the Scheme A, and landscape issues were not a reason for refusal. In March 2015, following an appeal against the Council's refusal to issue a decision, the Council resolved that it would have refused

planning permission solely for landscape reasons. It was agreed by the main parties at the Inquiry that no policy or any other circumstances had changed between the Council's decisions/putative decisions. (It was also agreed that the Council never reconsidered its position on Appeal A.)

14. The Council's position on Appeal B, however it may have been defended on appeal, is directly at odds with the Guidance, which cautions against determining similar cases in an inconsistent manner. The evidence base and policy was unchanged and (save for the effect on trees at the entrance) the scheme had not been amended in any material respect.
15. Having resolved (by way of the omission of any landscape reason for refusal) that there was no material harm to the landscape in October 2014, to refuse and essentially identical proposal in March 2015 was unreasonable. The Council's landscape witness suggested that the authority had always harboured concerns about the landscape impact at the time of the refusal of the first scheme – but this suggestion was unsupported by any evidence and was not reflected in the reason for refusal.
16. The only difference between the two schemes related to the type of junction onto the main road. In the case of Appeal B this was by way of a roundabout, rather than the traffic light junction previously proposed. This led to a greater loss of trees, and this was the subject of objection by the Council. This matter, which it was reasonable of the Council to raise even though I did not agree with their position, was a discrete element of the landscape case and was handled as such at the Inquiry. This element of the Council's position was not unreasonable.

*Conclusions (both applications)*

17. In the case of Appeal A, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.
18. In the case of Appeal B, I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Planning Practice Guidance, has been demonstrated and that a partial award of costs (excluding the issue of the tree loss at the access point) is justified.

**Costs Order**

19. 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 CEG Land Promotions Limited & Robert William Walmsley, the costs of the proceedings in relation to Appeal B excluding those costs incurred in relation to the issue of the trees to be lost at the access to the site; such costs to be assessed in the Senior Courts Costs Office if not agreed.

*P. J. G. Ware*

Inspector



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## Appeal Decision

Hearing held on 30 June 2015

Site visit made on 30 June 2015

**by Sarah Housden BA (Hons) BPI MRTPI**

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

**Decision date: 24 August 2015**

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**Appeal Ref: APP/F1040/W/15/3014387**

**Land east of Rosliston Road South, Drakelow, Derbyshire DE15 9UD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Providence Land Ltd against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/0948, dated 30 September 2014, was refused by notice dated 29 January 2015.
  - The development proposed is 'erection of up to 75 dwellings with associated public open space and sustainable drainage'.
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### Decision

1. The appeal is allowed and outline planning permission is granted for up to 75 dwellings with associated public open space and sustainable drainage at land to the east of Rosliston Road South, Drakelow, Derbyshire DE15 9UD in accordance with the terms of the application Ref 9/2014/0948, dated 30 September 2014, subject to the conditions attached as a Schedule to this decision.

### Procedural Matters

2. The application was made in outline with all matters of detail reserved for future approval except for access. In addition to a site location plan and a plan showing the layout of the proposed vehicular access and visibility splays, an indicative site layout was submitted together with a topographical survey, tree constraints plan, opportunities and constraints plan and concept layout. I have taken the indicative plans that have been submitted into account insofar as they are relevant to my consideration of the principle of the development on the appeal site.
3. A revised indicative site layout was submitted with the Statement of Common Ground (SOCG) (drawing ref 0129\_SK\_02B). The revised indicative layout incorporates a wider landscape belt to the southern boundary of the site but with the overall number of dwellings the same at up to 75. The scheme is in outline only with detailed layout to be reserved for later approval and the concerns of those who would normally have been consulted are clear from consultation at the application stage and responses to the appeal. I do not consider that the interests of third parties would be prejudiced by not having had an opportunity to comment on the revised indicative layout. Accordingly, I have had regard to it in reaching my decision.

4. A completed Planning Obligation under section 106 of the Town and Country Planning Act 1990 dated 26 June 2015 (s106) was submitted at the hearing. This provides for the payment of various financial contributions in accordance with the Council's Supplementary Planning Guidance 'Section 106 Agreements: A Guide for Developers' (April 2010) (SPG), a copy of which was submitted at the hearing. I return to the Planning Obligation later in my decision.
5. After the hearing, I requested further details of the status of pooled contributions for items of infrastructure contained in the s106 in order to clarify the position in relation to the Community Infrastructure Levy Regulations 2010, Regulation 123(3) as amended. This limits the number of contributions from s106 agreements for a specific project or type of infrastructure to no more than five. The Council responded by emails dated 27 July and 10 August 2015 and the appellant's observations were received on 27 July 2015. I assess the provisions of the s106 later in my decision.
6. I visited the area and observed the site from Rosliston Road South the day before the hearing and made a formal site visit accompanied by the Council and the appellant on the same day as the hearing.
7. At the hearing, the appellant made reference to a recent appeal decision at Sutton-on-the-Hill. However, copies of the decision were not supplied and I have therefore not had regard to it in coming to my decision.

### **Main Issues**

8. The main issues in this case are:
  - whether in the development would accord with national and local policies relating to the location of development in the District;
  - the effect of the development on the character and appearance of Drakelow and the surrounding area; and
  - the effect on highway safety with particular regard to the capacity of Rosliston Road South to accommodate the additional traffic from the development.

### **Reasons**

#### ***Main issue 1: Whether the development would accord with national and local policies relating to the location of development in the District***

9. The appeal site covers 2.89 hectares and comprises two parcels of land which have been used in connection with a 'hobby farming' business managed from the existing bungalow at No 39 Rosliston Road South (No 39). The site is bounded by the existing residential development at Drakelow to the west and by the Leicester-Burton freight railway line to the east. To the north, the railway bridge creates a point of transition between the countryside of South Derbyshire and Stapenhill, part of the urban area to the south of Burton-on-Trent.

10. The railway line is in a cutting alongside the site but is well defined by the mature trees at the top of the embankment which provide a green backdrop to the site and are visible between the houses on Rosliston Road South. The established hedge on the southern boundary is a strong landscape feature containing mature trees. The undulating topography of the area and the extent of tree cover and hedges create a sense of enclosure in the landscape. From longer distances to the south, views of Burton-on-Trent are distant and whilst the houses at Drakelow are visible, they are seen within the context of the surrounding rural landscape.
11. The existing detached bungalow on the appeal site is accessed via a private driveway which runs between Nos 37a and 41 Rosliston Road South. The property is excluded from the application site but is shown as being retained within the indicative site layout plan. The existing access would become a pedestrian/cycle path with the development being served by a new access to the south of No 45 in the position of the existing field access.
12. The National Planning Policy Framework (the Framework) seeks to boost significantly the supply of housing and requires local planning authorities to identify and update annually specific, deliverable sites sufficient to provide five years' supply of housing against their objectively assessed housing requirements.
13. As outlined in the SOCG and confirmed at the hearing, there was consensus between the parties that a five year supply of deliverable housing land did not exist as required by paragraph 47 of the Framework. The officer report to Committee in January 2015 indicated that the figure was 'below four'. At the hearing, the appellant confirmed that the figure put forward in their evidence was 3.24 years, a figure which was not disputed by the Council. This being the case, under the terms of paragraph 49 of the Framework, any relevant policies for the supply of housing should not be considered up to date. However, there was disagreement between the parties as to which of the policies in the South Derbyshire Local Plan (1998) (LP) were 'relevant' policies for the supply of housing, whether they could be considered as being 'up to date' and the weight that should be attached to them.
14. Drakelow is defined as a 'rural settlement' in the LP where Policy H6 restricts new housing development to the infilling of a small gap for normally not more than 2 dwellings. Policy H8 seeks to restrict housing development in the countryside to that which is necessary for the operation of rural based activities.
15. The parties agreed at the hearing that the purposes of Policy H6 were twofold, to direct development to more sustainable locations as well as protecting the character of the countryside. In the sense that the policy seeks to assign development to certain locations within the settlement hierarchy for the District, I consider that it is a relevant policy for the supply of housing. In the context of a plan where the identified locations for housing have been taken up, the policy should be considered as being out of date. Policy H8 sets out the circumstances in which proposals for isolated residential development in the countryside may be acceptable, none of which apply in this case. I therefore conclude that Policies H6 and H8 are relevant in terms of housing supply, are not up to date and can be afforded limited weight in my decision.



16. Policy EV1 seeks to protect landscape quality and does not permit development in the countryside except in the circumstances outlined in Policy H6. There was disagreement about the status of Policy EV1 and whether it should be regarded as a relevant policy for the supply of housing.
17. The appellant argued that in restricting development beyond the settlements identified in the LP hierarchy, Policy EV1 is relevant to the supply of housing. Reference was made in the evidence to a number of other appeal decisions in support of this argument. In the Linton appeal<sup>1</sup>, the Inspector concluded that Policy EV1 was a 'blanket ban' type policy, restricting the location of new development in the countryside in a general way. He concluded that it should be accorded little weight, both in terms of its age, but also because housing provision in the LP has been used up.
18. The appellant also drew my attention to the South Northamptonshire High Court Judgement (HCJ)<sup>2</sup> in which Mr Justice Ouseley indicated that policies restraining development in the countryside fall into two categories – a general restriction on the location of development or to protect specific landscape features such as a green wedge. Paragraph 49 of the Framework would apply in relation to the former but not the latter. The appellant considered that as a general countryside protection policy, Policy EV1 falls into the former category and as such paragraph 49 of the Framework applies in this case.
19. However, the Council considered that the primary purpose of Policy EV1 is to safeguard and protect the character of the countryside rather than being relevant to the supply of housing. As such, it was argued that it should be considered up to date and afforded significant weight in this decision. It advanced three appeal decisions in support of this argument.
20. The appeal decision at Weston on Trent<sup>3</sup> in South Derbyshire relied on Policy EV1 to justify the dismissal of housing in the countryside. The Irchester<sup>4</sup> appeal decision was in a different local planning authority area but referred to Policy G6, the purpose of which was to restrain development in the countryside and therefore broadly similar to Policy EV1. However, these decisions pre-date the South Northamptonshire HCJ which limits the weight that can be afforded to them in coming to my decision. I acknowledge that Policy EV1 was given weight in the appeal decision at Melbourne<sup>5</sup>. However, given the smaller number of dwellings proposed in that case, the balance of benefits versus harm was different compared with the scheme before me.
21. To my mind, Policy EV1 is general in nature and does not seek to protect specific landscape features. I therefore conclude having had regard to the appeal decision and HCJ referred to above that it is a policy that is relevant to the supply of housing. In the context of a District where housing needs cannot be accommodated within the limits of existing settlement boundaries, it should therefore be regarded as out of date and accorded little weight. I

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<sup>1</sup> Appeal Decision APP/F1040/A/14/2214428; outline application for 100 dwellings at 50 High St, Linton, Swadlincote, Derbyshire DE12 6QL; allowed 27 October 2014

<sup>2</sup> High Court Judgement between South Northamptonshire Council (claimant) and Secretary of State for Communities and Local Government and Barwood Land and Estates Ltd (defendants) 10 March 2014

<sup>3</sup> Appeal Decision APP/F1040/A/13/2202043; erection of a dwelling at The Field, Trent Lane, Weston-on-Trent, Derby, Derbyshire DE72 2BT dismissed 3 January 2014

<sup>4</sup> Appeal Decision APP/H2835/A/12/2182431; erection of up to 124 dwellings at Site A Land west of High Street, Irchester Northants and Site B Land off Alfred Street, Irchester, Northants; dismissed 5 June 2013.

<sup>5</sup> Appeal Decision APP/F1040/A/14/2214209; residential development at Main St, Melbourne, Derby DE73 8BS; dismissed 4 June 2014.

recognise that my conclusion differs from those of the Inspectors in the Melbourne and Yoxford<sup>6</sup> appeal decisions referred to by the Council. However, in this case I am persuaded by the weight of the evidence from other appeals and the HCJ that Policy EV1 should be accorded little weight in my decision.

22. The replacement South Derbyshire Local Plan examination hearing sessions will be reconvened in Autumn and the matter of housing land supply is an outstanding issue. This being the case, the parties agreed at the hearing that in line with the advice in paragraph 216 of the Framework, the policies in the RLP can be given limited weight including Policy H1A in which Drakelow is classified as a 'rural settlement'. I agree with that assessment.
23. I conclude in relation to the first main issue in this case that the proposal would not comply with policies H6, H8 and EV1 of the LP. This would normally weigh heavily against the proposal. However, the Council does not have a five year housing land supply. In these circumstances, paragraph 49 of the Framework directs that policies covering land supply should not be regarded as up to date and Policies H6, H8 and EV1 can therefore be afforded limited weight in coming to my decision.
24. The presumption in favour of sustainable development as set out in paragraph 14 of the Framework applies in this case which means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework, taken as a whole. The effect on the character and appearance of Drakelow and the wider countryside are material considerations that must be weighed in that balance and I address these matters below.

***Main Issue 2: The effect of the development on the character and appearance of Drakelow and the surrounding area***

25. The site is not covered by any statutory landscape designation. Nevertheless, the importance of recognising the countryside's intrinsic character and beauty is one of the Framework's core principles as set out in paragraph 17. Paragraph 109 recognises that non-designated landscapes are valued. Notwithstanding my conclusion that Policy EV1 of the LP has limited weight, it is necessary to assess the contribution made by the appeal site to the wider landscape of South Derbyshire in order to conclude against the Framework when read as a whole.
26. The form and character of Drakelow and its relationship to the surrounding open countryside were matters of disagreement between the parties. The Council argued that the construction of up to 75 new dwellings on the site would represent a significant intrusion into open countryside which would adversely affect the existing landscape character of this part of the District. This is defined as 'village estate farmlands' within the Landscape Character Area 72 'Mease/Sence Lowlands'<sup>7</sup> and comprises 'well ordered, gently rolling agricultural landscape punctuated by discrete villages'. It was argued that this landscape type would not support a new housing estate and the cumulative impact of the appeal proposal with the development underway at

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<sup>6</sup> Appeal Decision APP/J3530/A/13/2204639; residential development of 26 dwellings, associated access and landscaping at Land at Old High Road, Yoxford, Suffolk dismissed 15 July 2014.

<sup>7</sup> The Landscape Character of Derbyshire, Derbyshire County Council 2007.

Drakelow Park would have a cumulative and significant adverse effect on the landscape character of the area. The Council considered that the appeal site acts as a 'buffer' between the urban edge of Burton-on-Trent and the rural landscape of South Derbyshire.

27. The appellant's view was that the site adjoins and is influenced by the urban edge of Burton-on-Trent and after crossing the railway bridge, the development on Rosliston Road South is a continuation of the urban area of Stapenhill. It was argued that the site has the character of urban fringe and is occupied by various buildings associated with its existing use. The appellant considers that it is well contained by existing development and the railway cutting and the proposed development would not alter the setting of Burton-on-Trent. The appeal proposal would not extend the existing limits of the development further than the existing linear development on Rosliston Road South.
28. At my site visit, I saw that Drakelow has a distinctly different character to the urban area of Stapenhill. The linear form of the frontage development along Rosliston Road South represents a transition between the urban edge of Burton-on-Trent and the more scattered form of development which is characteristic of the village estate farmlands in South Derbyshire. The introduction of development to the rear of the existing houses would consolidate development along Rosliston Road South, changing the character and appearance of the site itself and the wider area. The existing views of trees in the gaps between the houses in Drakelow would be replaced with houses. A section of the established hedge to the south of No 45 would be removed to accommodate the proposed vehicular access and although it would be re-planted around the visibility splay this would have an urbanising effect on the edge of the site.
29. It was accepted by both parties at the hearing that longer distance views of the site from vantage points to the south would be limited by the undulating topography and hedge and tree cover. I saw from my site visits that glimpses of the development would be possible but it would be seen in the context of the existing distant views of the urban area of Burton-on-Trent and the houses at Drakelow. There would be views of the development from closer vantage points such as from the farm track to Stapenhill Fields Farm. Whilst the revised indicative layout shows how a 'buffer' could be incorporated along the southern boundary of the site to soften the edge of the development, there would still be a significant change in the existing character of the site. The fact that a development would be well contained or screened does not mean that it would not cause harm to the intrinsic value of the countryside.
30. Whilst not part of a designated landscape, it is evident from representations and views expressed by interested parties at the hearing that the site is valued locally. Notwithstanding its enclosed character, it is clearly part of the open countryside of South Derbyshire. My conclusion is that development of the site would consolidate the existing development in Drakelow and result in a change to its existing form and character and landscape setting. However, the extent to which this would cause harm must take into account the development underway in the vicinity of the site.
31. The appellant drew my attention to the scheme for Drakelow Park which is now underway and will eventually comprise 2600 houses together with a new

- primary school and two local centres. It was argued by the appellant that this development will change the character of Drakelow to a much larger settlement with a wider range of facilities.
32. The Council's landscape consultant considered that the visual impact of Drakelow Park would be contained due to its location behind the main roads bounding the site and that the character and appearance of the wider open countryside to the south-west of the junction of Walton Road and Rosliston Road South would not be harmed. It was also argued that unlike the appeal site, part of the site is brownfield land.
33. At my site visit, I saw the houses currently under construction to the north-west of the junction of Walton Road and Rosliston Road South which are part of the Drakelow Park site. The development is clearly visible after passing over the railway bridge and when fully developed it will be in close proximity to the existing development on Rosliston Road South, changing the existing character and appearance of Drakelow as a small rural settlement within open countryside. From longer distances, it will be seen as a continuation of the urban area of Burton-on-Trent and features such as street lighting and access roads into the site will change the character of the area.
34. The existing hedgerows and tree cover across the appeal site provide a framework for the development of the site as well as opportunities for assimilating the development into the wider landscape. The Tree Constraints Plan (drawing ref 1420-14-01) shows that with the exception of one horse chestnut tree, the condition of existing hedges and trees would enable them to be retained as part of the proposed development. Whilst the scheme is in outline only at this stage, the retention and longer term management of existing trees and hedgerows together with additional planting where required could be secured as part of a detailed scheme by means of a planning condition. The exception would be the hedgerow to the south of No 45 a section of which would have to be removed to provide the visibility splays associated with the site entrance. However appropriate replacement planting around the splay can be secured by a planning condition.
35. The revised indicative site layout also shows that there is scope for a landscape buffer along the southern boundary of the site. Whilst the edge of the development would still be visible, the buffer would provide an opportunity for additional planting to reduce the visual impact of the edge of the development and can be conditioned to be incorporated within a detailed layout for the site.
36. I conclude in relation to the second main issue in this case that the appeal scheme would consolidate the existing form of development in Drakelow and result in a change to its form and character and landscape setting. On the other hand, the landscape setting of Drakelow will be changed by the development at Drakelow Park and the visual impact of the development would be mitigated by the retention of existing trees and hedgerows and provision of a landscape buffer to the south of the site. On balance I conclude that there would be limited harm to the character and appearance of Drakelow and its landscape setting.

***Main Issue 3: the effect on highway safety with particular regard to the volume and free flow of traffic on Rosliston Road South.***

37. The effect of the development on existing traffic levels and the increased use of the local highway network has been raised by a number of local residents.
38. At the time of my site visit during early afternoon, Rosliston Road South was busy and large HGVs formed a component of the traffic. However, in assessing the accident data for the wider road network, the Highway Authority confirmed that whilst a number of collisions were identified at the Flint Mill crossroads approximately 120 metres to the south of the appeal site, no collisions resulted from vehicles turning into or out of Rosliston Road South towards Swadlincote. On this basis, the Highway Authority concluded that there is no evidence to suggest that the proposed development would exacerbate the existing situation with regard to highway safety.
39. The Transport Assessment submitted with the planning application demonstrates that the additional traffic generated by the proposal could be satisfactorily accommodated within the existing highway network without the need for new highway infrastructure. The new vehicular access proposed to the south of No 45 in the position of the existing field access would be within the 30mph traffic calmed zone and adequate visibility could be achieved by the removal of a section of the existing hedge with re-planting around the splay secured as a condition of planning permission. The existing footway on the east side of Rosliston Road South would be extended to the new access point and would be opposite the footway on the west side of the road. Whilst the design does not fully comply with the Highway Authority's design criteria with regard to width, the benefits would outweigh this, particularly as an additional pedestrian and cycle path from the site would be created along the existing driveway access to No 39.
40. The s106 agreement makes provision for the production and monitoring of a Travel Plan to encourage increased use of sustainable means of travel.
41. In relation to the third main issue, there is nothing in the evidence before me to suggest that the proposed development would exacerbate existing highway safety issues or affect the free flow of traffic on Rosliston Road South. Accordingly, there would be no conflict with saved LP Policy 6 which seeks adequate provision for access and states that planning permission will not be granted for development which interferes with the free and safe flow of traffic. In coming to this view, I have had regard to the lack of objection from the Highway Authority.

***Planning balance - sustainable development***

42. Paragraph 14 of the Framework indicates that the presumption in favour of sustainable development applies where the development plan is absent, silent or relevant policies are out of date. This leads me to an assessment of whether the development would meet the three dimensions of sustainable development as the first part of the test set out in paragraph 14 of the Framework before coming to a conclusion on the overall planning 'balance'.
43. The distance to local services and their accessibility by sustainable modes of transport are important considerations in assessing whether this would be a sustainable location for housing development. The site is within walking and



- cycling distance of local shops and facilities in Stapenhill, with the nearest shop being approximately 0.4km away and accessible by existing footways. There are regular bus services along Walton Road and additional services in Stapenhill into Burton-on-Trent and Swadlincote.
44. The catchment primary school at Rosliston approximately 3.7km away has spare capacity. I have no information regarding the availability of a primary school bus service, although there are other primary schools nearby in Stapenhill. The secondary school is accessible by school bus which serves Drakelow. Furthermore, the development at Drakelow Park will incorporate retail, leisure, health and community uses together with a primary school. Notwithstanding the designation of Drakelow as a rural settlement in the LP, I conclude that the site is in a sustainable location based on the proximity to local services and facilities and their accessibility by sustainable modes of transport.
45. In terms of the economic aspects, it was agreed by both parties at the hearing that the proposal would have benefits to the construction industry and the creation of jobs during construction. Residents would be likely to support nearby shops and facilities.
46. The Framework advises that the economic and other benefits of the best and most versatile agricultural land should be taken into account and that where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality. Although development of the site would result in the loss of some Grade 2 agricultural land, they are small parcels of land that do not form part of a larger farming unit and the profitability of arable cropping would be limited by their shape and size. As such, their loss is unlikely to harm the rural economy.
47. Overall, I conclude that the contribution to the economic dimension weighs in favour of the proposal.
48. The principal social benefit would be the provision of additional housing in an area where there is currently a significant shortfall in the supply of housing land. The resolution of this through the Local Plan process will be some time ahead. The Section 106 Planning Obligation provides for 30% affordable housing with a mix of house types and intermediate and social rented and/or affordable rented tenures which would represent a significant benefit. It was agreed by the parties that the development would contribute to the social aspect of sustainability and I agree with that assessment.
49. The environmental dimension is less clear cut. I have found that the appeal proposal would cause limited harm to the character and appearance of Drakelow and its landscape setting as development of the site would be seen in the context of the changes to the landscape arising from the much larger development at Drakelow Park. Other aspects of the environmental dimension that are relevant include the maintenance and possible enhancement of biodiversity.
50. The ecological value of the appeal site is limited. The Ecological Appraisal indicates that there was no evidence of protected species within the two small ponds on the site and no evidence of bats using the existing buildings during the surveys. However, the hedges, trees and scrub provide suitable nesting



habitat for birds and foraging for bats and I have already concluded that their retention would be important for landscape purposes. The retention of the pond together with further biodiversity enhancements such as nesting boxes could be secured by a condition to ensure that these are provided as part of any reserved matters application. The contribution to National Forest Planting both on-site as part of the laying out of the open space area and off-site could also lead to biodiversity benefits.

51. Overall, I conclude in relation to the environmental dimension that the impact on character and appearance of Drakelow and its landscape setting would be offset by the changing context of the site created by the development at Drakelow Park, the retention of existing hedges and trees which would provide a framework for the development and the measures to safeguard biodiversity.

### ***Section 106 Planning Obligation***

52. The Section 106 Planning Obligation covers a range of contributions, none of which are in dispute between the main parties. These include provision and maintenance of on-site open space, contributions to National Forest planting and off-site recreation, provision of affordable housing, a contribution to secondary school places and household waste management facilities, maintenance of drainage infrastructure and the monitoring of a Travel Plan. I have assessed the s106 agreement in the light of CIL Regulation 122 and the Framework which set out three tests for planning obligations - necessary to make the proposed development acceptable in planning terms, directly related to the proposed development and fairly and reasonably related in scale and kind to the development.
53. From April 2015, CIL Regulation 123 (3) also restricts the use of pooled contributions.
54. The Section 106 SPG sets out the requirements for contributions for provision and maintenance of on-site open space, off-site recreation, provision of affordable housing, education and National Forest Planting. As such, I am satisfied that the contributions to these items meet the tests in the Framework and CIL Regulation 122.
55. The provision for household waste management facilities at the Newhall Bretby Household Waste Recycling Centre (NBHWRC) arises from Derbyshire County Council's Developer Contributions Protocol. I am satisfied that the contribution meets the tests in the Framework and Regulation 122. However, Derbyshire County Council confirms that the number of pooled contributions to the NBHWRC since April 2010 exceeds five. Therefore in accordance with Regulation 123, I disregard the contribution to the HWRC in my decision.
56. The maintenance of drainage infrastructure and the monitoring of a Travel Plan are not specifically required in the SPG or the County Council's Developer Contributions Protocol. However, I consider that these are necessary to make the development acceptable, relate directly to the development on the site and are reasonably related in scale and kind and I am satisfied the contributions to those items meet the tests in CIL Regulation 122 and the Framework. These items would be specific to the site and do not raise any issues in respect of pooled contributions.

57. The contribution to National Forest Planting would secure planting within the open space area and make provision for maintenance. In the event of this not being provided on site, the s106 makes provision for planting off-site. The Council has confirmed that there have been three contributions to off-site National Forest planting since April 2010 and I am therefore satisfied that I can take the contribution into account in my decision.
58. The contribution to off-site recreation is to Rosliston Forestry Centre, approximately 2 miles from the site. At the hearing the parties confirmed that this is the nearest outdoor recreation facility within the District to the appeal site. The Council has confirmed that there have been no other contributions to Rosliston Forestry Centre since April 2010 and I am therefore satisfied that I can take the contribution into account in my decision.
59. The education contribution provides for 11 additional secondary school places at William Allit School. The Council has confirmed that there has been one other contribution to this school since April 2010 and I am therefore satisfied that I can take the contribution into account in my decision.

### ***Other Matters***

60. The developer of the Drakelow Park site considers that the appeal scheme should not commence until the Walton-on-Trent bypass has been constructed and in addition that a financial contribution to highway works should be sought via a s106 contribution. However, I note that the Highway Authority does not require a contribution towards works on Walton Road or to the Walton bypass. There is nothing in the evidence to suggest that the development would have an effect on traffic flows in the vicinity of the Walton bypass to the extent that it would justify a financial contribution towards the planned works.
61. Many representations referred to the proposal being over-development and detrimental to the rural character of Drakelow and to highway safety which I have addressed in relation to the main issues above.
62. The need for the development in addition to that taking place at Drakelow Park has been questioned in representations, but as I have outlined above, the Council cannot demonstrate a five year supply of land for housing and in these circumstances, the Framework indicates a presumption in favour of sustainable development.
63. Residents referred to the potential for overlooking of existing properties and loss of privacy. However, the application is in outline only and ensuring that there is sufficient distance between existing and new properties to safeguard the living conditions of existing and future occupiers can be addressed as part of the detailed layout at the reserved matters stage.
64. The presence of an existing livestock operation close to the site was also referred to but no indication of its exact location has been given. Stapenhill Fields Farm adjoins the site to the south but there is nothing in the evidence before me to suggest that there would be problems arising from disturbance or smell that would adversely affect the living conditions of new residents.
65. The de-valuing of existing property and the existence of a covenant restricting the use of the land are not planning matters.

66. There is nothing in the evidence before me to suggest that there is potential for the proposed development to increase levels of crime.
67. The lack of capacity in local schools was also referred to by residents. The Education Authority has confirmed that the catchment primary school at Rosliston has capacity and the financial contributions set out in the s106 agreement would address the shortfall in secondary school places. No evidence has been supplied by health organisations to indicate that there is a lack of capacity in local health services.
68. Problems with surface water flooding on Rosliston Road South have been raised by local residents. A Sustainable Urban Drainage system (SuDs) is proposed which would limit surface water run-off flows to the existing greenfield rate via a system of on-site storage and attenuation and would improve the existing situation. The Council as LLFA has no objections to these arrangements subject to conditions requiring details of the scheme at the reserved matters stage.
69. I do not dismiss the concerns of local residents lightly, but neither these nor any other considerations are of such significance as to outweigh my conclusion on the main issues in this case.

### ***Conditions***

70. I have based the conditions on those that the Council indicated it would wish to impose were the appeal to be allowed. I have taken into account the advice on the use of conditions in the Planning Practice Guidance and made amendments in the light of corrections discussed at the hearing and to improve precision and enforceability.
71. This is an outline permission, however there are a number of detailed conditions that cover aspects which I consider must be attached to the permission to ensure that they are incorporated as part of any reserved matters scheme.
72. In addition to the standard time limits for submission and approval of reserved matters and the commencement of development, a condition requiring the implementation of landscaping is necessary. I have added a requirement for the retention of existing trees and hedgerows and provision of a landscape buffer on the southern boundary to form part of the landscaping details to be submitted.
73. Other areas where conditions at this stage are necessary for the proper implementation of the development include details of foul and surface water drainage, a scheme of boundary treatment and existing site and proposed floor levels. I have altered the condition relating to boundary treatment to refer to the current General Permitted Development Order 2015.
74. Conditions to prevent contamination, deal with any landfill gas and mitigate noise from the railway line are necessary in the interests of the health and safety and living conditions of existing and future occupiers.
75. A programme of archaeological work is necessary to safeguard the historic environment.

76. The submission of a Nature Conservation Management Plan is necessary in the interests of biodiversity, as is a condition to control the timing of removal of vegetation.
77. Conditions requiring details of the layout and controlling timing of highways works and management during construction are necessary in the interests of vehicular and pedestrian safety as is a condition to provide for parking.

### **Conclusion**

78. I have found that the proposal would be in a sustainable location and would contribute to the economic and social aspects of sustainable development. In relation to the second main issue I have concluded that the character and appearance of Drakelow and its setting within the wider landscape would be changed by the proposal, but I have concluded that the harm would be limited by the changing context of the site and the mitigation afforded by the retention of existing hedges and trees. Taking all of the above matters into account, I conclude that, on balance, the proposal would represent sustainable development.
79. I have concluded in relation to the first main issue that the policies in the LP that relate to the supply of housing are out of date in so far as they relate to the circumstances of this appeal and can be afforded limited weight in coming to my decision. As such, the presumption in favour of sustainable development set out in paragraph 14 of the Framework is clear that having considered sustainability aspects, the test is to assess whether any adverse impacts would *significantly and demonstrably* outweigh the benefits.
80. I conclude that the adverse impacts of the proposal would not be so significant as to outweigh the social and economic benefits of the proposal. These include the contribution that it would make to addressing the under supply of housing land in the District and to boosting the supply of housing, including affordable housing, as required by the Framework. Subject to the s106 planning obligation and the conditions set out in the Schedule, the development would be in accordance with the provisions of the Framework when read as a whole. In these circumstances, paragraph 14 of the Framework states that planning permission should be granted and I therefore conclude that the appeal should be allowed.

*Sarah Housden*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Robert Wickham	Howard Sharp & Partners
Jonathon Harbottle	Howard Sharp & Partners
Tom Hutchinson	Howard Sharp & Partners
Jeremy Emmerson	Providence Land Ltd
Katharine Schofield	PPCR Environment & Design Ltd

### FOR THE LOCAL PLANNING AUTHORITY

Ian McHugh	IMcH Planning & Development Consultancy
Peter Wood	Consultant Landscape Architect

### INTERESTED PERSONS

Sue Sheratt	Local Resident
John Grant	Ward Councillor, South Derbyshire District Council
Andy Roberts	Ward Councillor, South Derbyshire District Council

### DOCUMENTS SUBMITTED AT THE HEARING

1. Section 106 Agreements (Version 8) – A Guide for Developers (April 2010)
2. Section 106 agreement dated 26 June 2015
3. Land Registry Register of Title Number DY296401.
4. Letter from Howard Sharp & Partners to Derbyshire District Council dated 16 June 2015 with a copy of the Council's proposed amendment to paragraph 1.18 of the emerging South Derbyshire Local Plan.

## SCHEDULE OF CONDITIONS

1. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
2. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved. The submitted landscaping details shall include a significant amount of new tree planting to reflect the site's location within the National Forest and shall provide for a landscape buffer along the southern boundary of the site.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The submitted landscaping scheme required under Condition 2 above shall include details to show how the existing trees and hedgerows would be retained and protected during the course of development. The hedgerows that are to be retained and incorporated within the development shall be provided with undeveloped green corridors. The works shall be carried out in accordance with the approved details.
5. All planting, seeding or turfing comprised in the approved details of landscaping under condition 2 above 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.
6. 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.
7. No development shall take place until details of a scheme for the disposal of surface and foul water has 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.
8. 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 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 local planning authority dispenses with any such requirement specifically and in writing.



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'.

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'.

9. 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 local planning authority, 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'.

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.

10. Prior to the commencement of development details of a scheme of noise mitigation, specifically detailing how noise impact from the adjacent railway line will be controlled, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
11. No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the Local Planning Authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the Local Planning Authority. The scheme 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/organisation to undertake the works set out within the Written Scheme of Investigation.

No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under 'A' above.

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 'A' above and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

12. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 2015, no development shall take place until there has been submitted to and approved in writing the 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.
13. 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).
14. Prior to the commencement of development a Nature Conservation Management Plan, to include biodiversity enhancements and the incorporation of bat and bird boxes within the development shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.
15. No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive unless a competent ecologist has undertaken a careful check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation shall be submitted to and approved in writing by the Local Planning Authority.
16. Prior to any other works commencing, a detailed design based on the topographical survey shall be submitted to and approved in writing by the Local Planning Authority in consultation with the County Highway Authority for the new access into the site, the new footway on the eastern side of Rosliston Road South fronting Nos. 41 to 45 and the application site and the realignment of the carriageway, generally in accordance with the amended application drawing No. 1240-01 Revision B.
17. No development shall be commenced until a temporary access for construction purposes has been provided in accordance with a detailed design first submitted to and approved in writing by the Local Planning Authority. The access shall have a minimum width of 5.5m and be provided with 2.4m x 35m visibility sightlines in each direction, the area forward of which shall be cleared and maintained clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge.
18. No development shall take place until a construction management plan or construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved plan/statement shall

- be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto the highway, pedestrian and cyclist protection, proposed temporary traffic restrictions and arrangements for turning vehicles.
19. Before any operations commence involving the movement of materials in bulk to or from the site, facilities shall be provided that have previously been approved in writing by the Local Planning Authority, to prevent the deposition of mud or extraneous material on the access roads to the site. All construction vehicles shall have their wheels cleaned before leaving the site.
  20. The gradient of the new estate street shall not exceed 1 in 30 for the first 10m into the site and 1 in 20 thereafter.
  21. No building shall be occupied until a drainage scheme for the disposal of highway surface water has been completed in accordance with details first submitted to and approved in writing by the Local Planning Authority. The drainage scheme shall take the form of a positive gravity-fed system, discharging to an approved outfall/public sewer, highway drain or watercourse, or a sustainable drainage system, which shall be managed thereafter in accordance with the agreed management and maintenance plan.
  22. Prior to the first occupation of any dwelling, the new estate street junction shall be constructed to Rosliston Road South. The access shall be laid out in accordance with the detailed design approved under condition 16 above, having a minimum width of 5.5m, 2 x 2m footways, 6m radii and visibility sightlines of 2.4m x 43m in each direction. The area forward of the sightlines shall be cleared, constructed as footway and taken into the highway.
  23. Prior to the first occupation of any dwelling, the carriageway realignment and provision of the footway on Rosliston Road South in the vicinity of the application site shall be provided. The works shall be laid out and constructed in accordance with the detailed design approved under Condition 16 above.
  24. The internal layout of the site shall be in accordance with Derbyshire County Council's 6C's Design Guide and Manual for Streets.
  25. A swept path diagram of the site shall be submitted at reserved matters stage to demonstrate that emergency and service vehicles can adequately enter/manoeuvre within the site and leave in a forward gear.
  26. The existing access to No.39 Rosliston Road South located between Nos. 37a and 41, shall be reserved for pedestrians and cyclists only. The route shall be constructed to adoption standards with measures to prevent vehicular use of the route. The existing dwelling shall be served via the new estate street.
  27. Unless otherwise agreed in writing by the Local Planning Authority, space shall be provided within the site for the parking of two vehicles per dwelling and maintained throughout the life of the development free of any impediment to their designated use.

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## Appeal Decision

Site visit made on 10 August 2015

**by Jonathan Price BA(Hons) DipTP MRTPI DMS**

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

**Decision date: 18 August 2015**

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**Appeal Ref: APP/F1040/D/15/3049307**

**14 Lupin Close, Stenson Fields, Derby DE24 3EY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs Gurmeet Sall against the decision of South Derbyshire District Council.
  - The application Ref 9/2015/0004, dated 6 January 2015, was refused by notice dated 21 April 2015.
  - The development proposed is 1. Move the fence closer to the highway. 2. To enclose the land. 3. Create hardstanding area.
- 

### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is the effect of this proposal on the character and appearance of the area.

### Reasons

#### *Character and appearance*

3. The appeal relates to a recently built detached house on a large, new housing estate parts of which remain under construction. The layout of the estate provides for fenced in private gardens but also adjacent open areas of landscaping which contribute to general character of the area.
4. I appreciate the appellant's desire for a larger private rear garden and understand the family benefits this would provide. I also note the frustration that whilst in the ownership of the property this piece of land does not provide private garden space. Furthermore the area of land in question has become overgrown and I accept the issues that make maintaining it inconvenient and that open grassed areas such as this can become eyesores due to litter and dog fouling and attract anti-social behaviour, particularly with no windows to provide a supervisory outlook. It is also noted that this cul-de-sac offers a pedestrian cut-through from Stenson Road, where the appellant advises a new bus stop is proposed, and I acknowledge that this could put particular pressure on this site with regard to the issues referred to.
5. However, I consider areas of landscaping such as this beneficial to the visual appearance of the housing estate as a whole and I consider these concerns insufficient to outweigh the need to preserve them. Difficulties regarding

maintenance are not insurmountable and no evidence has been provided to suggest that anti-social behaviour is an issue that needs addressing.

6. Moreover, fencing in the grassed area as proposed here, which contains two newly planted semi-mature trees, and adding a further vehicular access to a new hardstanding area, would in my opinion detract from the attractive open character and appearance that such unfenced spaces provide to this estate.
7. As a consequence I consider that the proposals would be contrary to saved Housing Policy 11 of the South Derbyshire Local Plan<sup>1</sup>. This requires new housing developments to provide a reasonable environment for the public at large and space for landscaping.
8. Despite the age of Housing Policy 11 I consider that it is consistent with the more recent National Planning Policy Framework<sup>2</sup> in setting out the desired quality of new development to create attractive places to live and in providing a basis on which to refuse designs which fail to improve the character and quality of an area.
9. In coming to that view I have considered the issues raised over the inconvenience of needing to manoeuvre vehicles on the property when another is blocked in. However the current parking provision of a garage and forecourt area is adequate for a property of this size and the visual harm of the loss of part of the open grassed area to provide an additional parking space is not justified in this case.
10. Finally, whatever arrangements might be provided through permitted development are not an issue for me and I can only make a decision on the plans submitted with this appeal.

### *Conclusion*

11. For the reasons set out above, and having taken into account all other matters, the appeal is dismissed.

*Jonathan Price*

INSPECTOR

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<sup>1</sup> South Derbyshire District Council – South Derbyshire Local Plan Adopted Version May 1998.

<sup>2</sup> National Planning Policy Framework – Department for Communities and Local Government March 2012. Section 7 Requiring Good Design – paragraphs 58 and 64.

<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM: 5</b>
<b>DATE OF MEETING:</b>	<b>15 SEPTEMBER 2015</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>DIRECTOR OF COMMUNITY AND PLANNING SERVICES</b>	<b>OPEN</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>CHRIS NASH (01283) 595926</b> <a href="mailto:chris.nash@south-derbys.gov.uk">chris.nash@south-derbys.gov.uk</a>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>TREE PRESERVATION ORDER 392 AT NEWTON ROAD, NEWTON SOLNEY</b>	<b>REF:</b>
<b>WARD(S) AFFECTED:</b>	<b>REPTON</b>	<b>TERMS OF REFERENCE:</b>

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## **1.0 Recommendations**

- 1.1 That this Tree Preservation Order (TPO) be revoked concurrent with the creation of a replacement Order.

## **2.0 Purpose of Report**

- 2.1 To consider revocation of this TPO.

## **3.0 Detail**

- 3.1 The TPO was originally made on 5 January 2015 and subsequently confirmed following its presentation to committee on 23 June 2015.
- 3.2 The TPO features individual trees (22 in number at present) as well as 11 groups and was made at the request of the Council's Principal Area Planning Officer in association with the Council's Tree Officer.
- 3.3 The land on which the trees sit is subject to development pressure, the Council having recently refused an outline planning application in the locality (ref 9/2014/1039 considered at the committee of 2 June) for up to 100 dwellings. That refusal has been appealed and will be considered by an Inspector at a forthcoming Inquiry.
- 3.4 The trees are seen to compliment the landscape and ecological value of the area, with the landscape best described as 'estate parkland' and can be well seen from Newton Road as well as a large number of private gardens along Dalebrook Road and Brookside.
- 3.5 Following representations, it was recommended that trees T10, T11 and T12 were omitted from the Order and the described species of tree T17 was corrected from Sycamore to Holly.



- 3.6 Unfortunately an administrative error led to the confirmation of the Order without the modifications ratified by the Committee. As such, whilst the Order has legal status, there is uncertainty over the soundness of its creation.
- 3.7 The Town and Country Planning (Tree Preservation) (England) Regulations 2012 allow for the amendment or revocation of Orders previously made. In this circumstance however, the soundness of its creation means amendment is not considered appropriate. It is also more prudent to 'replace' the Order given administrative processes are more straightforward.
- 3.8 At the same time as revoking the existing Order, a replacement Order would be made. The new Order would be subject to consultation in the same manner as previously undertaken, and the previous objector would be able to make new representations. However as the existing Order still has status there would be no 'window of opportunity' for undesirable works to the trees on the site.

#### **4.0 Conclusions**

- 4.1 It is expedient in the interests of amenity and biodiversity to ensure the soundness of the Order cannot be questioned. The replacement Order would not prevent or preclude ongoing management of the trees, whilst providing appropriate control over the trees for the long term.

#### **5.0 Financial Implications**

- 5.1 There would be a minor additional administrative cost in undertaking further publicity and notification, although this would be minimised by corresponding on the revocation of the existing Order and the creation of the new Order at the same time.

#### **6.0 Corporate Implications**

- 6.1 Protecting visually important trees contributes towards the Corporate Plan theme of Sustainable Development.

#### **7.0 Community Implications**

- 7.1 Trees that are protected for their good visual amenity value enhance the environment and character of an area and therefore are of community benefit for existing and future residents helping to achieve the vision for the Vibrant Communities theme of the Sustainable Community Strategy.

#### **8.0 Background Information**

- a) 1 December 2014: Council's Tree Officer Report.
- b) 5 January 2015: Tree Preservation Order 392.
- c) 9 February 2015: Letter from Helen Kirk (FPCR) on behalf of Barratt Homes.
- d) 23 June 2015: Report to Planning Committee seeking authority for confirmation of the Order.